**Private Letter Ruling**

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| **Ruling Number:** | **P-2004-030** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sale of games for wireless phones.** |
| **Keywords:** |  |
| **Approval Date:** | **06/28/2004** |

**Body:**

Office of Policy & Research

June 28, 2004

XXXXXXXXXX
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XXXXXXXXXX

Dear XXXXXXXXXX,

This is a formal response to your letter dated XXXXXXXXXX. In that letter, you expressed your opinion that your client’s sale of games for wireless phones is not subject to Kansas retailer’s sales tax. This opinion is erroneous, and your client’s sales of these products are taxable.

Under Kansas law, computer software is “a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.” K.S.A. 2003 Supp. 79-3602(g). It is the the opinion of this office that games played exclusively on wireless phones are computer software.

Kansas retailer’s sales tax is imposed on “the gross receipts received from the sale of computer software . . . whether the computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;” K.S.A. 2003 Supp. 79-3603(s). Thus, the sale of games played exclusively on wireless phones is taxable.

The responsibility of collecting and remitting this sales tax would fall on the retailer. A customer’s billing address could be used to source the sale to Kansas.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. If I may be of further assistance to you, please contact me at your earliest convenience at (785) 296-5330.

Sincerely,

Mark D. Ciardullo
Tax Specialist

**Date Composed: 06/30/2004 Date Modified: 06/30/2004**