**Opinion Letter**

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| **Letter Number:** | **O-2011-007** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Furnishing of equipment with an operator.** |
| **Keywords:** |  |
| **Approval Date:** | **07/18/2011** |

**Body:**

Office of Policy & Research

July 18, 2010

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RE: Your letter dated July 6, 2011

Dear XXXX:

Thank you for your recent letter. You work for an event-production company. Its clients sponsor concerts, fashion shows, beauty contests, awards banquets and other special events. Your company provides audio equipment, video equipment, video screens, video equipment to record the event, lighting equipment, and any other equipment to meet your clients' needs. Your technicians set up the equipment and operate it during the special event. Your company pays sales tax on all of the equipment it uses at special events, whether it buys the equipment or rents it.

Because your company provides the equipment with an operator, its customer charges are treated as charges for a service rather than as charges for the rental of equipment. K.A.R. 92-19-55b(g) discusses how Kansas sales tax applies to equipment furnished with an operator:

(g) Furnishing equipment with an operator.
(1) Each charge for furnishing equipment with an operator who will use the equipment to perform services shall be taxed as a service rather than a rental or lease and shall be subject to the impositions on services set forth in K.S.A. 79-3603, and amendments thereto.
(2) Each lessor shall charge and collect sales tax on each lease or rental charge that the lessor bills to a lessee who intends to use the equipment being rented or leased to perform services for others.
(3) When a lessee bills a customer for taxable services that it performed using leased equipment, the lessee shall not deduct or otherwise exclude the lease charges that it paid to the lessor when the lessee bills its customer for the taxable services.
(4) Equipment shall be considered to be leased or rented rather than provided with an operator if the only services the lessor provides are setup, inspection, or maintenance services that are performed on the leased equipment itself.

K.S.A. 79-3603 imposes sales tax on charges for certain enumerated services, which include repair and installation services, the services of washing and waxing motor vehicles, cable subscription services, dry cleaning services, and a number of other services. There are no services listed in K.S.A. 79-3603 that can be construed as taxing the special event services your company provides. Accordingly, your company's customer charges for special events are not subject to Kansas sales tax, with one exception.

That exception is if you edit and produce videos of the event. Charges for edited videos of the event are taxable, if provided on a tangible medium such as recording tape or a dvd. If you provide this service, the department recommends that you contract it separately rather than as part of the contract for furnishing equipment with an operator. Providing a client with raw, unedited video taken at an even, such as a recording of the images seen on video screens at the event, would be treated as part of the non-taxable service and would not be subject to sales tax.

Because your company provides the equipment with an operator, Kansas sales or use tax applies when it buys the equipment. Subsection (b) of K.A.R. 92-19-55b(g) means sales tax applies to any charges your company pays to rent equipment it will provide with an operator at a special event.

You do not anticipate that your company will provide equipment and allow it to be operated by a third-party. If this ever happens, the charges would taxable rental charges and your company would be required to collect sales tax on the entire amount billed. Rental charges also include equipment charges your company bills to third-parties, such as a competitor in an emergency. If your company ever rents equipment, it would not be allowed to claim a credit or deduction for the sales or use tax it paid when it purchased the equipment.

Please call me at 785-296-3081 if you need to discuss this matter further.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 07/20/2011 Date Modified: 07/20/2011**