**Private Letter Ruling**

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| **Ruling Number:** | **P-2010-005** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Data conversion services.** |
| **Keywords:** |  |
| **Approval Date:** | **08/19/2010** |

**Body:**

Office of Policy & Research

August 19, 2010

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RE: Your e-mail received on January 19, 2010

Dear XXXXs:

Thank you for your recent e-mail. Your company sells different software application programs. It intends to offer data conversion services to its software customers. You ask these services are subject to Kansas retailers' sales tax.

Software conversion is the conversion of computer data from one format into another. It is also called "data migration" when "migration" is used in the sense of moving data between different formats. Data-conversion software is widely available on the Internet. It appears that there are many data-conversion software applications that, after being loaded into a computer, run automatically with no or very limited human intervention. Businesses that develop these applications sometimes offer to modify an application to meet a particular customer's data conversion needs.

In Kansas, the sale of the use of canned software by way of a lease, license to use, or rental is subject to sales tax regardless of how title, possession, or the right to use the canned is transferred to the customer. *K.S.A. 2009 Supp. 79-3602(kk).* The sale or use of canned data-conversion software is taxable. Charges for modifying or enhancing canned data-conversion software are exempt if the charges are separately stated on the customer's invoice and the modifications or enhancements are developed and designed for that specific customer. *See EDU-71R, Revised Sales Tax Guidelines: Taxing Charges for Computer Products and Services and Internet Related Sales and Services*

Your company will provide the data-conversion service as an adjunct to its sale and installation of other software programs. Its customer charges for the separately-stated data-conversion services and any sale or use of data-conversion software are taxed as follows:

1. If your business is responsible for loading data-conversion software into a customer's computer, monitoring the software's operations, and taking steps to assure successful conversion of the data, the customer charges for the service and software are not subject to Kansas sales tax. These services are not subject to sales tax whether performed in person or from a remote location.
2. If your business delivers data-conversion software to a customer on a disc, by load and leave, electronically, or by another means and the customer is responsible for monitoring the software's operation and taking steps to assure successful data conversion, the customer charges are subject to Kansas sales tax as rental charges.
3. Charges to a customer for canned data conversion software are taxable if the customer acquires title to or the right to use the software.

Your company sells computer software and will provide data-conversion service that allows the customer to utilize the new prewritten software it is buying. Sales tax applies to services that are rendered in connection with sales of prewritten software, including:

Requirements analysis and feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs, identifying information and information access needs, and analyzing business-process analysis done to help a customer improve its information security, operations, quality control, budgeting, financial statements, etc.;
system design and development;
establishing the compatibility of the software with the hardware and other software products;
loading prewritten software into a computer;
configuring or setting up the software, provided these services do not involve changing the software's source code to meet the specific requirements of the purchaser (which would be software customization services); and
installing upgrades or enhancements. *EDU-71R, Revised Sales Tax Guidelines: Taxing Charges for Computer Products and Services and Internet Related Sales and Services*

These listed services are taxable whether the charges for them are separately stated on the customer's invoice or lumped together with other taxable charges.

These taxable charges *do not include* running a separate data-conversion program, if the charges for data-conversion service are separately stated on the customer's invoice. Running data-conversion software for a software customer is not considered to be part of the charges for configuring or setting up the customer's software, if the charges for data conversion are separately stated and the customer does not acquire title to or the right to use the data-conversion software. These same rules apply to charges for virus removal services and virus-removal software that a business provides to a customer who is buying canned software.

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.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 08/23/2010 Date Modified: 08/23/2010**