OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

March 24, 2000

Re: Our File Number LR 00-62; Taxability of computer hardware and software and related fees and services

Dear]

Please find attached the list you submitted regarding the taxability of the items listed in your correspondence. I have answered each item on the list. The answers and the references are to the specific subsections of Oklahoma Tax Commission Rule OAC 710:65-19-52, a copy of which is enclosed for convenient reference. A few questions on the list warranted further discussion and to clarify their tax status these are noted on the attachment.

This response applies only to the circumstances set out in your request of March 8, 2000 and may not be relied upon by any entity other than the addressee. In the event of any change in the facts surrounding the transaction described, this letter ruling would no longer be applicable. You are further advised that subsequent statutory or administrative rule changes or judicial construction of the statutes or rules upon which this advice is based may yield a different result from that which is expressed here.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure

ATTACHMENT

Installation services.

1. Labor charges for software installation are not taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice. See Commission Rules OAC 710:65-19-158, 710:65-19-159 and 710:65-1-11(c).

2. Training is not subject to sales tax.

3. Hardware maintenance agreements.

Service or maintenance contracts which only cover the provision of labor services or maintenance services are not subject to sales tax provided the contract is agreed to and billed separately from the sale of any article of tangible personal property with which the contract is associated. Any tangible personal property used in connection with the labor services performed under the contract which are not covered under the contract and which are billed/sold to the customer are subject to sales tax.

4. Freight charges.

Since November 1, 1998, the cost of transportation, i.e. shipping and handling charges, from a point outside Oklahoma to a point inside this State has not been subject to **use tax.**

The sales tax treatment of transportation and delivery charges is governed by Oklahoma Tax Commission Rule 710:65-19-70 and Title 68 Oklahoma Statutes Section 1354(1)(C). Charges that result from shipping merchandise to vendor's customers i.e. the cost of transportation from the vendor's inventory to the customer is not subject to **sales or use tax, if it is separately stated.** This exemption applies to all sales, taxable and non taxable.

Additionally, handling charges associated with the sale of tangible personal property, if they represent an element of cost to a seller, should be included in gross receipts or "gross proceeds", the total amount of consideration for the sale of any tangible personal property or service. See Title 68 Section 1352 (7).

For your information, please find enclosed Oklahoma Tax Commission Rules OAC 710:65-19-70 and 710:65-21-1 through 710:65-21-6.

March 8, 2000

Oklahoma Tax Commission P.O. Box 26850 Oklahoma City, OK 73126-0850

*RE: **Sales Tax Questions***

Please note that our company is considering expanding sales in your State. We would like to determine what would be taxable sales and what sales we perform would be tax exempt. Please review our following descriptions and let us know on an individual basis the ruling on each aspect of our sales. If you need further clarification on any of these descriptions below, please contact me at phone # ext

Computer Hardware Sales: This consists of the sale of tangible computer hardware.

Examples would be printers, monitors, hard drives, etc. Please indicate if this product sale is:

Taxable According to Subsection (b) OR Non-Taxable _____

Installation Time/Days: When we sell a computer system, we may need to send an employee on site to install *the system. Please* indicate if this component of the sale, if noted separately from the hardware purchase, is:

Taxable _____ OR Non-Taxable See Attachment

Freight: When sales of computer hardware occur, there are usually freight charges noted separately on the invoices. Would this freight be:

Taxable _____ OR Non-Taxable See Attachment

Software Sales: Our company sells software designed specifically for a certain type of industry. Our client base is limited to those dealerships working with and . When we sell them our computer systems, they must also purchase our designed software. Is this software:

Taxable According to Subsection (c) OR Non-Taxable_____

Customized Software Sales: There are times that our customers require customized software. This would be reports or changes to the software shell mentioned above that would be used for them exclusively. Sometimes we will invoice them separately for this, other times we will make some customization a condition of their sale. is this sale:

Taxable According to Subsection (f) OR Non-Taxable _____

Training Days: When a system is sold, we also sell our customers training days to learn how to use our software. This is necessary since much of the software is industry oriented and there are no other packages out there to compare it to. Would the days that our customers purchase training be:

Taxable _____ OR Non-Taxable See Subsection (e) and if separately stated on the invoice

Schools/Classes: There are occasions that our company will set up a class (school). This is a time that existing customers can send some of their new employees to a selected location for a week at a time and have instruction on how to use the routines. These classes are topic specific. Would these classes be:

Taxable _____ OR Non-Taxable if separately stated on the invoice

Support: One type of computer system we sell is referred to as Our customers, after purchasing the system are on a monthly support program. Each monthly payment provides the customer with 3 support components. They receive telephone support for any problems they have. They receive hardware maintenance - translates into any hardware on their main system that becomes defective will be replaced for free. They also receive a software enhancement release with the latest programming changes on a semi-annual or annual basis sent to them on computer tape. The price of their monthly support will covers each of these 3 components. Considering the entire package of what their support covers, is this entire amount:

Taxable _____ OR Non-Taxable _____

Note: The taxability of maintenance contract sold with canned software depends on whether
The maintenance contract is required or optional. See 710:65-19-52 (d)

Support: This is our second form of monthly support provided. Each support payment covers their telephone support, main system maintenance replacement contract, and EMAIL ON-LINE software enhancement releases. Considering the entire package of what their support covers, is this entire amount:

Taxable Same response as the above OR Non-Taxable _____

Support: Our last form of computer support is our Support. This support is telephone support only. Is this support:

Taxable _____ OR Non-Taxable if separately stated on the invoice

Reviewed by: Brenda J. Sullivan _____
(PRINT NAME) (SIGN NAME) (DATE)

Thank you for addressing our tax questions. This will assist greatly in the administration of our future business needs.

Please return completed form to my attention at fax

Or Mail to: