OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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March 28, 2001

Re: Our file Number LR-01-020; Sales tax on third party drop shipment sales.

Dear

This is in response to your inquiry concerning the sales taxability in Oklahoma of third party drop shipments. I have scanned into this letter your fact situations and your questions. Our responses follow each question.

Facts:

is a manufacturer of computer equipment, software, printers and related supplies. also sells various computer related repair services on a per-incident or contractual basis. We also sell optional software support agreements providing software users phone-in support capabilities and access to software updates, if any.

is registered in your State to collect sales and/or use taxes. We sell our products to both end-users and resellers.

For the purpose of this request, our customer is a retailer of computer goods and software solutions. Our customer claims to have no presence or nexus in your State and is not registered to collect sales and use taxes in your State.

An end-user located in your State contracts with the retailer, our customer, for the purchase of certain computer equipment and related software applications. Our reseller customer contracts with to purchase and resell manufactured computers and software applications has developed.

Our reseller customer requests that ship the computer products directly from our manufacturing site, which is located outside of your State, to their customer in your State. The products are shipped via common carrier.

Our customer has provided with a valid resale exemption certificate for their **home** State.

Questions:

1. Given that our reseller customer is neither registered in nor has nexus with your State, will you recognize sales as a tax exempt sale for resale? *(Yes or No)*

Response: Yes

If yes, what documentation must retain from our customer to support this exempt sale for resale? As stated above, our reseller customers cannot provide a valid resale certificate from your State.

Response: should obtain from their customer a statement that the goods are meant for resale. A Multistate Tax Commission form setting out their home state registration information and a statement that the purchase is for resale should be sufficient when the purchaser does not have a physical connection with Oklahoma.

If no, would the answer be different if the end-user in your State is exempt from sales tax (e.g. government agencies, non-profit organizations, etc ...)?

Response: Not applicable.

2. If given the facts cited below, how will the taxability of these transactions change for

a. The end-user customer in your State purchases from our reseller customer an optional hardware maintenance agreement. Our reseller customer contracts with to provide these services to their customer and the services are performed by employees or contractors at the end-users site in your State.

Response: As a result of the contractual relationship between and the reseller, the reseller has physical connection with the state and would be required to register with Oklahoma for sales/use tax. If it is not registered, they can not claim an exemption from sales tax on their purchases for resale, since in Oklahoma, the sale for resale exemption in the sales tax code is not available to entities that have nexus with the state if they have not registered.

b. The end-user customer in your State purchases the same hardware maintenance agreement, but rather than having technicians come to their site, the products are shipped to outside of your State for service or repair.

Response: Since the reseller does not otherwise have nexus as a result of having performing work for them in Oklahoma, they may properly claim an exemption, as set out in our response to question number one above, from on their purchases for resale.

3. Without regard to question 2, if given the facts cited below, how will the taxability of these transactions change for

The end-user in your State purchases from our reseller customer an optional software support agreement which provides technical software consulting services and access to software

application updates in the event they are released during the contract period. Our reseller customer contracts with for the delivery of these services; however, our technical software consulting service is provided via telephone by an software expert located in another State. Any software updates or manuals are shipped from an site located outside of your State to the end-user customer in your State.

Response: Since does not have a physical connection with Oklahoma with a sale made under these terms, the vendor has not established nexus with Oklahoma and cannot be required, unless nexus was established otherwise, to collect any Oklahoma tax. should handle this scenario in the same manner as the scenario in question number one.

4. Without regard to question 2 or 3, if given the facts cited below, how will the taxability of these transactions change for

not only ships the products to the end-user , but also sends an employee or contractor to install the computer equipment and software at the end-users site in your State?

Response: Our response to this scenario would be identical to the response to question number 2(a).

5. Lastly, if is required to charge sales and/or use tax on any of these types of transactions, what base is to be used to calculate the tax? Please keep in mind that has no knowledge of the purchase price paid by the end-user customer in your State for any products or services sold through a third party.

Response: For any scenario in which is obligated to tax, either sales or use tax, the sale being taxed is the sale to customer. The measure of the tax would be the selling price by customer may also be required to collect tax from its customers.

These answers are based on Oklahoma Tax Commission rules 710:65-13-200 and 710:65-15-1. Copies are enclosed.

This response applies only to the circumstances set out in your request of February 22, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

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

Sincerely,
OKLAHOMA TAX COMMISSION

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