

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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April 5, 2001

Re: Our file Number LR-01-29; Sales and Use tax taxation of computer software and internet transactions.

Dear Sir or Madam:

This is in response to your inquiry concerning the subject referenced above. I have scanned your questions into this letter. Each is followed by our response.

1. Does attending a trade show create nexus?

Response: No, in and of itself, attendance at a trade show may not be sufficient physical presence to create nexus.

2. Does having a booth at a trade show create nexus?

Response: Yes.

a. Is there a minimum of days necessary to create nexus; e.g., does exhibiting for one day only create nexus?

Response: The physical presence required is set out in the Oklahoma Use Tax Code as "maintaining a place of business in this state". Entities that are maintaining a place of business in this state are required to register and collect use tax on their taxable sales.

3. Does sending a salesman into the state for a sales call creates nexus.

Response: Yes

a. Is there a minimum of days necessary to create nexus; e.g., does having a salesman in your state for one day only create nexus?

Response: The physical presence required is set out in the Oklahoma Use Tax Code as "maintaining a place of business in this state". Entities that are maintaining a place of business in this state are required to register and collect use tax on their taxable sales. Having a salesman in this state facilitating contact with customers with whom an entity has an ongoing business relationship would indicate the likelihood of continued presence in the state and therefore continued nexus with the state.

4. Does sending someone in to train, install, or debug software creates nexus?

Response: Yes.

a. Is there a minimum of days necessary to create nexus; e.g., does training, installing, or debugging for one day only create nexus

Response: The physical presence required is set out in the Oklahoma Use Tax Code as "maintaining a place of business in this state". Entities that are maintaining a place of business in this state are required to register and collect use tax on their taxable sales. Having an employee in this state training, debugging or installing at a customer's location would indicate the likelihood of continued presence in the state and therefore continued nexus with the state.

5. Is nexus determined annually? For example, if a vendor establishes nexus in July, 2001, by having a salesman in your jurisdiction for more than the minimum period, how long does the nexus exist. In other words, if the vendor never sends in another employee when does the nexus expire?

Response: Annual contact may be enough if that annual contact indicates an ongoing business relationship and continued presence in Oklahoma.

6. Is nexus retroactive? If the vendor establishes nexus in July 2001, and starts collecting sales tax, what requirement exists to collect sales tax on earlier orders?

Response: No, the establishment of nexus does not create a tax liability for sales that occurred before nexus was established.

a. Does it matter if the order has been processed but not shipped?

Response: If the order has been invoiced before nexus has been established, there is no need to retroactively apply the tax.

7. Once nexus has been established how is it de-established? For example, if an office is set up in your state and then closed without further employment etc. is that sufficient to remove nexus?

Response: If an office was closed and no further physical connection was established by the vendor, nexus would no longer exist. However, if the office was closed and the accounts were still serviced by travelling salespersons who entered Oklahoma, nexus would still exist.

8. Does simply having accounts with ongoing technical support/maintenance in your state establish nexus?

Response: If the ongoing technical support/maintenance is given by persons who are physically located in Oklahoma, nexus is established.

9. Do you distinguish between the sale of software and the license of software? Most software is never sold. Rather it is licensed by the developer to the user for perpetual use. The "license agreement" states that the software remains the property of the vendor even though the developer may have no future obligations. Does mere ownership of the software create nexus.

Response: Ownership of tangible personal property is sufficient physical connection with Oklahoma to require registration as a vendor for use tax and the collection of the taxes for all taxable sales.

10. Do you any rules regarding the internet and nexus? For example, if an out-of-state vendor has its software distributed via a web-hosting company who has servers in your state, is nexus created when the software is distributed to a customer in your state?

Response: Yes, the rule regarding internet transactions is enclosed. No, in Oklahoma, nexus is not created by web-hosting.

As requested, redacted copies of the seven letter rulings that deal with this subject are enclosed:

LR-96-400

LR-96-442

LR-97-559

LR-98-245

LR-00-026

LR-00-058

LR-00-149

Also enclosed are copies of the Oklahoma Tax Commission Rules relating to nexus and computers and the internet:

710:65-1-8

710:65-15-1

710:65-19-156

710:65-21-3

710:65-21-6

710:65-21-7

This response applies only to the circumstances set out in your request of March 19, 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

A handwritten signature in black ink, appearing to read "Michael G. Pillow". The signature is written in a cursive, somewhat stylized script.

Michael G. Pillow
Tax Policy Analyst