

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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June 18, 2001

Re: Our file Number LR-01-083; Sales tax on sales of goods and services related to electronic commerce.

Dear

This is in response to your inquiry in which you set out a list of products and services and requested confirmation as to whether they would be subject to sales tax in Oklahoma. I have set out your fact scenarios below, followed by our response.

Your Fact Scenarios

Our client ("Company Z") provides commercial customers with an integrated electronic commerce solution, which consists of canned and/or customized software, application hosting services, and other services designed to automate the Customer's business functions. Most revenues are realized through the execution of contracts for the license to use the Product, however, the access to this license is typically via the Internet. License agreements are typically structured for a three-year term, and automatically renew at the end of the term for additional one-year periods, unless terminated earlier by either party. During the term of the contract, Company Z realizes several standard revenue streams related to the Customer's utilization of its product and services: monthly subscription fees, license revenue, maintenance revenue and revenue for services billed on a time and materials basis (i.e. consulting services).

The following is a list of products/services for which we are seeking sales/use tax guidance:

- Application Hosting Services
- Usage and Hosting Services
- Hosting of Company Z's Software
- Hosting of Third Party Software
- Network and Server Hosting Services

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IT IS OUR MISSION TO SERVE THE PEOPLE OF OKLAHOMA BY PROMOTING TAX COMPLIANCE THROUGH QUALITY SERVICE AND FAIR ADMINISTRATION

Shared Server Option
Premium Shared Server Option
Single Dedicated Server Option
Dual Dedicated Server Option
Consulting and Development Services
Website Content
Other Incidental Services / Overhead
Computer Time
Communications Charges

The following is a list of descriptions of the above products/services for which we are seeking sales/use tax guidance:

- Application Hosting Services

- o Company Z has the ability to host, maintain, and support its customers' eBusinesses, at the customer's option. Hosting services include network services within Company Z's data center outside Oklahoma accessed by customers via the customer's ISP connection. Hosting Services include all network hardware (except (c) & (d)), maintenance of such hardware/software and security services. Basically, it's an outsourced technology department. Customers can opt to have Company Z host Company Z's software modules or the customer's own separate software licenses.

- o **Server Options** - Customers may select from one of four server options under the Hosting Services agreement:

- (a) Shared Server Option, which entitles the customer to 4 gigabytes of disk space for storage, 4 gigabytes maximum data transfer per month (bandwidth), access to the SQL server 7.0, an Internet connection license, a Verisign certificate, and PC Anywhere. PC Anywhere (software that allows the customer's PC to communicate with Company Z's network) is separately licensed and paid for by the customer from a third party.

- (b) Premium Shared Server Option, which entitles the customer to a maximum of 3-5 sites per year on a shared web server, a maximum of 3-5 sites per year on a shared data server, 10 gigabytes of disk space for storage, 5 gigabytes maximum data transfer per month (bandwidth), access to the SQL server 7.0, an Internet connection license, a Verisign certificate, and PC Anywhere (see above). PC Anywhere is separately licensed and paid for by the customer from a third party.

- (c) Single Dedicated Server Option, which includes one web/data/application server, server maintenance, and 6 gigabytes maximum data transfer per month (bandwidth). Customer provides hardware and operating system.

- (d) Dual Dedicated Server Option, which includes one web/application server, one data server, server maintenance; and 6 gigabytes maximum data transfer per month (bandwidth). Customer provides hardware and operating system.

- Customers are charged a flat monthly fee for any of the aforementioned server options (a-d).
- Consulting & Development Services
 - o Company Z will develop website content which may contain information, communications, software, photos, text, video, graphics, music, sounds, images, or other materials and services. Such content is delivered via the internet.
 - Company Z could host the website outside Oklahoma.

The customer could host the website.

- Such services are billed on a time and materials basis.
- Other Incidental Services / Overhead
 - o Incidental expenses, including computer time and communications charges that are separately stated on the invoice and charged with consulting-type services. Computer time is really an administrative charge based on minutes/hours of use, while communications are another type of administrative charge. Communications are NOT the reselling of telecommunications services, but merely an overhead charge.
 - Expenses are separately stated on each invoice.

Assuming that Oklahoma has jurisdiction to tax Company Z, please advise as to whether each revenue-generating product or service is subject to sales/use taxation in Oklahoma. Please assume that all base fees are separately stated on invoices sent to the Customer.

Under separate circumstances, please advise as to whether the true object of Company Z's Product is providing various services. Accordingly, if a single lump fee is charged, could the revenues from the product be classified by the State either in whole or part as nontaxable services?

Our Response:

The goods and services outlined above, provided under the circumstances set out in your fact scenarios, are not subject to Oklahoma sales or use tax. This position is based on Oklahoma Tax Commission Rule 710:65-19-156. Our position is unchanged whether the services and goods provided are invoiced in detail or as a lump sum. However, if as a lump sum, it may be difficult to

ascertain from the invoice of what the goods and services sold consist, and this ambiguity may lead to incorrect assumptions as to the taxability of the invoice..

This response applies only to the circumstances set out in your request of June 6, 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 cursive script that reads "Michael G. Pillow". The signature is written in dark ink and is positioned above the printed name and title.

Michael G. Pillow
Tax Policy Analyst