

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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January 9, 2002

Re: Our File Number LR-01-189; Taxability of DSL services and other related services

Dear

This is in response to your inquiry for a written opinion concerning taxability of DSL services and other related services outlined in your fact situation and questions. The factual situation and questions that were presented in your correspondence have been scanned into this document below with our responses as to their tax status.

## SITUATION

I have a client, who we can call "Company A", located in Texas and they plan to expand their business activities into your state. Company A has several services that they offer. The work will be done initially using vendors in your state that Company A has contacted and it is anticipated that Company A will have some of its own employees working in your state in the next twelve months. The services that Company A will offer are as follows:

- A. Company A installs DSL on computers for clients of large Internet service providers. The way this works is as follows: A customer calls up one of the large Internet service providers and signs up to get connected to the internet using DSL. The Internet service provider calls up Company A and asks them to go to their client and install the DSL on their customer's computer. Company A goes out to the customer and installs the DSL on the customer's computer. The Internet service provider provides all of the materials to Company A. Company A only provides the installation service, not the materials. Company A bills the Internet service provider for the DSL installation. The Internet service provider bills their customer for DSL installation and any materials.

- B. Company A installs and services Local Area Networks "LAN". Local Area Networks are used to connect workstations and personal computers. The LAN allows users to communicate with each other, share data and share printers. The installation involves running cable between the computers and connecting the cables to a hub, so that the signals can be routed to the correct device. Company A will install, service and sell the materials needed to install and service the LAN. This work will be performed and billed to the end user. The work will be billed on a time and material basis.
- C. Company A will provide ongoing support to customers with Local Area Networks. This service will be to troubleshoot, reconfigure and upgrade the LAN. This support will be billed on an annual, monthly or per incident basis. This support will be primarily service, however there may be some small charges for materials.
- D. Company A will maintain a "Help Desk" at their location in Texas. The Help Desk will take phone calls from customers located throughout the United States. The nature of the calls will be customers looking for assistance troubleshooting problems with their Local Area Networks. The customers will be provided assistance for free during the first, fifteen minutes and a charge per minute after the first fifteen minutes.

## QUESTIONS

- 1. If Company A's, only connection with your state is through vendors that have been hired to provide the service in your state, will that create nexus and require Company A to collect sales tax on their taxable sales?

**Our Response:** No.

- 2. Is the installation of the DSL, as described in example A above, subject to sales tax in your state? If the installation is taxable, can Company A accept a resale certificate from the Internet service provider who is rebilling the charge back to their customer?

**Our Response:** Generally, labor charges for installation, repairs or other special services 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. Therefore, DSL installation services sold for use in connecting to an internet service provider is not subject to Oklahoma sales or use tax.

- 3. Are the separate charges for labor and materials during the installation of a Local Area Network, as described in example B above, subject to sales tax? If Company A provides service for a Local Area Network where they did not sell the equipment to the customer, is the labor charge for the service call taxable?

**Our Response:** Refer to the above response. The charge for materials is subject to sales tax.

4. Will the charges for ongoing support, as described in example C above be subject to sales tax? Would the answer be different if Company A did not sell the equipment to the customer they were working on? If the labor and the materials are separated on the billing, are they both subject to sales tax?

**Our Response:** The ongoing support is not subject to sales tax. Only the charge for materials and equipment is subject to sales tax.

5. Will the charges for providing troubleshooting over the phone, as described in example D above be subject to sales tax?

**Our Response:** Charges for troubleshooting are not subject to sales tax.

6. Assuming some of the services above are taxable, can the materials, which are sold to the customer, be purchased tax-free?

**Our Response:** Yes, as a sale for resale.

7. Assuming some of the services above are taxable, what rate of tax does Company A collect on the taxable sales?

**Our Response:** Oklahoma sales tax is a combination of the state rate of four and one-half percent (4 ½%) and any applicable city and county sales tax. The actual point of sale is the determining factor in computing the sales tax rate in Oklahoma. (See Oklahoma Tax Commission Rule 710:65-17-1 and the list of city and county tax rates for sales and use tax.)

8. What other taxes (i.e. state income, franchise or employment) would Company A be subject to based on the facts as described above?

**Our Response:** Section 1201 of Title 68 provides that the Franchise Tax Code applies to every corporation qualified to do or doing business in Oklahoma in a corporate capacity, and specifically includes corporations organized under the law of a state other than Oklahoma. Also see Section 1202 which defines “doing business”. Oklahoma Tax Commission rule 710:50-17-3 sets out activities that create nexus for income tax purposes.

Copies of the statutes and rules referenced herein and a booklet titled “Sales Tax Vendor Liability Notice, Rules and Forms” are enclosed. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan  
Tax Policy Analyst