

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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January 14, 2004

RE: Our File Number LR-03-288; Taxability computer hardware, software and related services

This in response to your inquiry for guidance on the taxability for the above subject. I have scanned your question and transaction into this letter, followed by our response.

"We are seeking guidance on the taxability of computer hardware, software and related services. Our specific product taxability questions are detailed below. It would be helpful to us if you indicate any statutes or authorities you use.

Question: Are the following subject to sales or use tax in your state?

Canned computer software

1. The sale of canned computer software
  - a. delivered via tangible medium such as disk or tape

**Our response:** Yes, see Commission Rule 710:65-19-52 subsection (c).

- b. delivered via load and lead (going to the customer's place of business, loading it ourselves sometimes using tangible media, then taking all tangible media with us and leaving)

**Our response:** Yes, same as the above.

- c. delivered electronically (FTP)

**Our response:** No, see Commission Rule 710:65-19-156 subsection (c) (2).

2. The lease of canned computer software

**Our response:** Yes, subsection (c) of 710:65-19-52.

3. Charges to customize canned software

**Our response:** Yes, subsection (f) of 710:65-19-52.

4. Mandatory maintenance agreements as a condition of the sale of canned computer software

**Our response:** No, see subsection (d) (1).

5. Mandatory maintenance agreements for canned computer software which include upgrades or manuals

**Our response:** Yes, see subsection (d) (2)(A).

6. Mandatory maintenance agreements which include consulting, support services and training services

**Our response:** No, see subsection (d) (3).

7. Optional maintenance contracts for canned computer software that includes upgrades and manuals

**Our response:** Yes, see subsection (d) (2).

8. Optional maintenance contracts for canned computer software which include consulting, support services and training services

**Our response:** No, see subsection (d) (3).

Custom computer software

1. The sale or lease of custom computer software

**Our response:** Subsection (g) of the above rule states that "the sale of a customer program is a service transaction, and therefore, is not subject to tax. In addition, charges for maintenance are not taxable." Accordingly, the following transactions would not be taxable.

- a. delivered via tangible medium such as disk or tape
- b. delivered via load and lead (going to the customer's place of business, loading it ourselves sometimes using tangible media, then taking all tangible media with us and leaving)
- c. delivered electronically (FTP)
2. Optional custom computer software maintenance agreements which do not include an upgrade
3. Optional custom computer software maintenance agreements which include upgrades and manuals
4. Optional custom computer software maintenance agreements which include consulting, support services and training services"

This response applies only to the circumstances set out in your request of December 10, 2003. 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,

  
Brenda J. Sullivan  
Tax Policy Analyst