OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

January 12, 2004

Re: Our File Number LR-03-290; Taxability of optional maintenance and support agreement delivered electronically

This is in response to your request for a written response confirming your understanding of the taxability for the above subject. I have scanned your fact scenario into this letter followed by our response.

"Effective February 1, 2004, will begin fulfilling all "canned software" electronically. XcelleNet, Inc. offers optional maintenance and support agreements that are renewable annually, which include:

1.) Call Support

2.) Bug Fixes sent electronically via downloadable format

3.) Upgrades sent electronically via downloadable format

The maintenance and support fees are billed separately; however, upgrades are not separately stated. Based an our review of the tax regulations for your state, we believe, given that no tangible personal property is delivered as a result of the maintenance and support agreement, that this transaction meets the state's criteria as being exempt from sales and use tax. Please provide a written response confirming our understanding as quickly as possible as XcelleNet, Inc. wishes to ensure that we collect and remit the proper amount of tax in a timely manner."

Pursuant to Commission Rule 710:65-19-156 subsection (c) (2) **Internet- related transaction to which the tax is applicable**, which states "sales of canned computer software, where the software is transferred from the seller to the purchaser in a manner not solely via the Internet", are subject to sales or use tax. Conversely, the transfer of canned computer software that is delivered solely via the Internet is not taxable.

However, the transfer of tangible personal property, e.g. user manuals, as a part of the sale of canned software means that the sale of the canned software is not sold "solely" over the internet as required by Oklahoma Tax Commission Rule 710:65-19-156 subsection (c) (2) as it must be in order for the sale to be exempt from sales or use tax.

Since optional maintenance agreements for upgrades and bug fixes are sent electronically via downloadable format and that no tangible personal property is delivered, these transactions are not subject to sales or use tax.

This response applies only to the circumstances set out in your request of December 16, 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

Brenda J. Sullivan
Tax Policy Analyst