

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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November 1, 2004

Re: Our File Number LR-04-173; Sales taxability of sales order and processing and payment services

Dear

This is in response to your inquiry concerning the subject referenced above. I have copied into this letter the fact situation set out in the letter from your tax representatives,

I have also set out assumptions contained in that letter and each is followed by our response. Those responses are based on the understanding that Company ABC ("ABC") in their letter is actually and the fact situations set out in your tax representative's letter are based on the sample agreements you forwarded which are between and a "customer" and between and a "Network partner".

Your Fact Situation:

Company ABC ("ABC"), located in the State of Ohio, who in addition to being a supplier of maintenance, repair, operating and production products can provide customer specific consolidated order processing and payment services. ABC enters into an agreement to facilitate, through a proprietary software package, purchase order transmittal, consolidated invoicing and funds disbursement services for goods on behalf of customers ("customer") who are located in your State, from independent suppliers ("Network Partners") located in your State. Additionally, ABC enters into a separate agreement ("Network Partner Agreement") with the Network Partners which stipulates that ABC acquires no real property interest in the goods during the transaction

ABC utilizes a software package to facilitate the transaction that is described in detail in the following paragraph. The software was developed and is owned by ABC, but resides on the customer's system.

The process begins when the customer selects the Network Partners to provide specific goods and agrees upon product specifications, pricing and shipment method. Based upon

customer's requirements, an order for goods is transmitted to a Network Partner utilizing ABC's software. The selected Network Partner processes the orders and ships the goods directly to the customer. ABC does not in any way review, approve or modify the transmitted order between the customer and Network Partners. ABC's software invoices the customer on behalf of the Network Partner. The customer remits payment to ABC for the invoice total, which includes sales tax on items that are considered taxable. ABC remits payments to the Network Partner, after deducting a transaction service fee. ABC never takes possession of the goods or materials and never determines the cost of the goods being purchased or which transactions are taxable.

Your Assumptions and our responses:

Assumption 1. ABC is providing a nontaxable service by facilitating the order process for the customer. Therefore, ABC is not responsible for reporting or remitting sales or use tax on the goods transferred from the Network Partners to the customers.

Our Response: Pursuant to our telephone conversation of October 27, 2004, it is understood that the invoices prepared by software show that the seller of the goods covered by the invoice is a "Network partner". Since does not own the goods, is not a "vendor" and is not making "sales" as those terms are defined in 68 O.S. Section 1352. Therefore is not responsible for reporting or remitting sales or use tax on the goods transferred from the "Network Partners" to the "customers".

Assumption 2. The Network Partners are responsible for collecting, reporting and remitting sales or use taxes paid by the customers.

Our Response: The "Network partners" are responsible for collecting reporting and remitting sales or use taxes paid by the "customers". By providing services in Oklahoma, at the "customers" locations, to the "Network Partners", creates nexus for all of its "Network Partners" for which those services are provided in Oklahoma at a customers location. This sales and use tax nexus with Oklahoma, extends to all sales of those "Network Partners" made for delivery into Oklahoma, whether or not those sales are sales that are made in conjunction with the "Network Partners" relationship with Please refer to Oklahoma Tax Commission Rules 710:65-1-8 and 710:65-21-6.

Assumption 3. ABC's service fees (both the percentage fee and the annual fee) to the Network Providers are a nontaxable service.

Our Response: The provision of the services, as outlined in the letter and in the agreements you sent us are not among the services that are included in the levy of the sales tax in Oklahoma. The levy of the sales tax in Oklahoma may be found at 68 O.S. Section 1354.

Assumption 4. The customer (not ABC) is required to provide the Network Partners with a sales tax exemption certificate.

Our Response: Since is not a vendor making purchases for resale, there is no need for to provide sales tax exemption certification to the "Network Partners". If the "customer" is making purchases, exempt from sales tax, the "customer" should provide sales tax exemption certification to the "Network Partners".

Assumption 5. The fact that ABC's software resides on a computer system that does not belong to them does not create nexus in your State.

Our Response: Pursuant to Oklahoma Tax Commission Rule 710:65-19-156, the fact that software resides on a computer system that does not belong to does not create nexus in Oklahoma for if the software was transferred to the computer system electronically. However, if holds title to tangible personal property in Oklahoma, such as software media or manuals, then nexus for sales, use and franchise tax would be created. Additionally, nexus is created by providing staffing for "customers" storerooms, whether by employees of or by subcontracting the staffing. Please refer to the rules noted under our response to Assumption 2. Nexus for income tax may also be created by activities in Oklahoma. Please fill out the enclosed Analysis of Business Activity and submit it for a determination.

Copies of the rules and the statute mentioned above are enclosed.

This response applies only to the circumstances set out in your request of August 12, 2004. 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



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