October 6, 2004

Re: Our File Number LR-04-184; Sales tax on the provision of various computer services.

Dear

This is in response to your inquiry concerning the sales taxability of the four products described in your email. I have copied the descriptions into this letter ruling and each is followed by our response.

**Product 1: Seminars**

We will occasionally be hosting seminars in Oklahoma, and inviting our customers to attend. At these seminars, the customers are led through a tutorial of our various products, current industry-related trends and news items are discussed, and a question-and-answer session concludes the seminar. When possible, we make arrangements with the state for our customers to receive a Continuing Education credit for their attendance. We do not provide lodging for the customers; we sometimes provide lunch. Copies of our software program are available (on CD) for purchase at these seminars, as well as sign-up sheets for our other products. We charge applicable sales tax on those purchases.

We typically charge each customer $150-$200 for admission to the seminar, although some customers receive free admission because they've previously purchased a higher-grade company membership. Is this $150-$200 charge taxable?

**Our Response:** The "seminar" fee is not subject to sales tax in Oklahoma as it is not an article of tangible personal property nor is it one of the services or transactions enumerated in 68 O.S. 1354 on which the tax is levied.

**Product 2: "Vault"**

For an annual fee, a customer may store an unlimited number of computer files on our servers. This provides the customer with "redundancy" - files are stored in multiple locations (the customer's computer, and our servers in two different cities). If the customer permanently loses
all or part of his/her hard drive (due to a computer crash, fire, accidental deletion, etc), he would still be able to recover a recent copy of those lost files by downloading them from our servers, at no additional charge. The amount of space that the customer occupies on our servers is made relatively miniscule by the number of other customers using the service, and by the large size of the servers. The servers are physically located in Oklahoma City, OK and Salt Lake City, UT. Is this annual fee taxable?

Our response: The annual “vault” fee is not subject to sales tax in Oklahoma based on the statute noted in the response immediately above and also on Oklahoma Tax Commission Rule 710:65-19-156.

Product 3: e-Mailboxes

For an annual fee, we will create and store an e-mail mailbox for the customer on our servers. This type of service is provided by most Internet Service Providers (note: we are not an ISP) and many other companies, but our version offers extra features and tools that are custom-made for our customers, to integrate with our software product. We create these e-Mailboxes ourselves, and they are not custom-designed to each customer's specifications - they are generic and "prepackaged". Since we are not an ISP, the customer would need to first purchase internet access from another company before purchasing these e-mailboxes from us - without internet access, the e-mailboxes would be useless. Is this annual fee taxable?

Our Response The annual fee for an “e-mailbox” is not subject to sales tax in Oklahoma based on the statute noted in the response for product number 1 above and also on Oklahoma Tax Commission Rule 710:65-19-156.

Product 4: Flood Maps

Most of our customers are real estate appraisers, and part of an appraisal involves determining whether a property is prone to flooding. A company called provides flood map data on its website. Anyone who holds a membership with can log onto its website and find flood information on any piece of land. We are a reseller of these memberships. For an annual fee, our customers get access to our servers, to view maps. Nothing is ever physically shipped. Is this annual fee taxable?

Our Response The membership fee is not subject to sales tax in Oklahoma based on the statute noted in the response for product number 1 above and also on Oklahoma Tax Commission Rule 710:65-19-156.

A copy of the rules and the statute section noted are attached.

Since you have operations in Oklahoma and are engaged in the sale of software, you may qualify for exemption from sales tax on certain of your purchases in Oklahoma. A copy of the Oklahoma Tax Commission Rule (710:65-13-54) covering the exemption and how to apply for it is also attached. Our records indicate that has not applied for the exemption in the past.
This response applies only to the circumstances set out in your request of August 25, 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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