OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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April 15, 2009

RE: LR-07-026; Taxability of Computer Software and Maintenance Agreements

Dear

This is in response to your request for guidance concerning computer hardware purchases, software, and maintenance contracts prior (and first used in Florida) to your company's move to Oklahoma. What follows is verbatim your facts and requested ruling and our response thereto.

"We have paid all applicable Florida sales and use taxes on all computer hardware and taxable computer software purchases. Some of these purchases occurred over ten years ago. Concerning the move:

Question : Is there any exemption in Oklahoma statutes on tangible personal property first used in another state but later relocated in Oklahoma?

Our Response: Section 1402 of Title 68 of the Oklahoma Statutes imposes an excise tax for storing, using or otherwise consuming within this state, tangible personal property purchased or brought into this state.

Section 1404 of Title 68 of the Oklahoma Statutes sets out exemptions from such tax and at subsection (3) provides a credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State, but such credit must be computed by applying the rate of sales or use tax paid to another state to the "sales value" of the property at the time it enters Oklahoma. Please note that Section 1404 of Title 68, specifically states that "no credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in Oklahoma". Further, the credit allowed may be up to the state rate of four and one half percent (4 ½%), and against any municipal or county use tax that has been paid to an out-of-state municipality or county. See Commission Rule 710:65-21-20.

If not, how do we determine the taxable value of items relocated to Oklahoma (especially for items used in Florida for the last ten years)?

Our Response: See the above response for sales value and Oklahoma Tax Commission Rule 710:65-1-2.

Will Oklahoma give credit for the Florida taxes paid? If allowed and depreciation becomes an issue how should we pro-rata these taxes paid?

Our Response: See the above response.

The Software on our servers in Oklahoma will be accessed by all of our plants which are located over the United States and Australia. At the time of software purchases we usually purchase maintenance contracts which include upgrades, enhancements, and technical support. After the initial purchase of the software we continue to renew the maintenance contracts.

Software usually comes with a number of licenses to use, but sometimes we have to purchase additional licenses. What's the taxability of these additional licenses that we purchase?

Our Response: Additional licenses that provide upgrades or enhancements, etc that are delivered in a tangible media format are subject to sales tax. See Commission Rule 710:65-19-52 (c)(d).

Does Oklahoma consider licenses to use a service therefore not taxable?

Our Response: Title 68 O. S. Section 1354 (9) levies a sales tax on "Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded , including the gross receipts from the licensing of software programs."

Therefore, the sale of a software license in Oklahoma is subject to sales tax if the software which is licensed is not delivered electronically.

Rule 710:65-19-52 (d) states: Maintenance contract sold with prewritten software. The taxability of a maintenance contract sold with prewritten computer software delivered in a tangible media format depends on whether the maintenance contract is required or optional.

-if the contract is required, the entire sale price, including the charge for the contract, is subject to tax.

-A charge for an optional contract may be subject to taxation.

If it provides only upgrades or enhancements which include prewritten computer software delivered in a tangible media format: or,

If it provides both upgrades and support services, and the fee for the support services, the contract is not taxable.

It seems to be Oklahoma's intent to exempt custom and prewritten software delivered electronically. Rule 710:65-19-52 (d) addresses maintenance contracts sold with prewritten software delivered in a tangible format. Are we to conclude that maintenance contracts initially sold with prewritten software delivered electronically are exempt form Oklahoma's sales and use tax?

Our Response: Yes. Also see Commission Rule 710:65-19-156 (b)(5).

What's the taxability on maintenance contract renewals? These renewals usually are good for only one year, and they consist of upgrades, enhancements, and technical support. Considering they are separate contract, do they stand on their own? Do we have to consider how the original prewritten software was delivered?

Our Response: Contract renewals would be considered separate agreements if they are termed as optional and billed separately on the invoice and as such would stand on their own. The determination as to their taxability depends on the method of delivery under the guidelines in the above rules.

Consider the same elements as above, but Oklahoma has an exemption for tangible personal property purchased prior to our relocation (which will make the original prewritten software exempt although it was delivered in a tangible format), what will be the taxability of maintenance upgrades delivered electronically?

Our Response: See Commission Rule 710:65-19-156 (b) (5).

This response applies only to the circumstances discussed in your request of February 190, 2007. 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Brenda J. Sullivan

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