

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION



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October 24, 2011

Re: LR-09-107; Sales Tax Inquiry

Dear

I am writing in response to your inquiry regarding whether transactions are subject to sales tax in Oklahoma. Set forth verbatim are the facts presented along with the question posed and the response thereto.

FACTS

COMPANY XYZ is headquartered outside of Oklahoma. COMPANY XYZ has 40 employees outside of Oklahoma, including sales representatives. COMPANY XYZ is a privately held application services provider ("ASP"), supplying software applications and/or software-related services via the Internet. COMPANY XYZ offers; hosted software solutions to businesses in the home healthcare and hospice care industries. COMPANY XYZ's software provides a means for its customers to manage their customer billing functions and to manage operational requirements pertaining to clinical documentation and patient and employee management. In addition to its software solutions, COMPANY XYZ also offers a number of ancillary outsourcing services. Taxpayer maintains the following revenue streams:

1. *Software* - COMPANY XYZ provides licensed web-based proprietary software applications and services; software is accessible to customer over the internet via username and password with different levels of functionality.¹ The monthly fee includes both general technical support and emergency technical support. General Technical Support includes help desk services available to customers Monday through Friday, 7:00 am to 6:00 pm CST excluding holidays as part of monthly fee. Emergency Technical

¹ It should be noted that certain older based software product licenses were not web based; rather they were installed on customer systems via CD or disk. This product line is immaterial to taxpayer's operations currently and it is anticipated will be discontinued in the near future.

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Support includes help desk services available outside normal standard stated times for additional charge.

COMPANY XYZ will charge additional amounts based on the number of concurrent software users that the customer requires to be using the software at any point in time. There are also additional charges for customers using COMPANY XYZ software in additional locations or requiring multiple provider numbers. COMPANY XYZ also subleases some third-party licensed software to customers for additional charges.

2. Software Services - comprised primarily of billing services and coding services. Billing services include the electronic transmission of Medicare Hospice Claims to fiscal intermediaries; data entry of payments received from intermediaries; accounts receivable reporting including detail listing of accounts receivable general ledger entry, payment/adjustments, and outstanding accounts receivable aging available for viewing and printing by customer on a monthly basis. Coding services include the use of COMPANY XYZ staff certified in medical billing coding in connection with identifying, classify and process customers' coding events.

3. Point of Care Devices - includes a one time license fee, plus charges for annual support and updates to software loaded on to devices owned by the customer. The software is generally downloaded over the Internet directly to the customer's device. The devices (laptops/tablets) are used by the home healthcare and hospice care nurses/caregivers in the patient homes to record patient health related matters electronically in real time. The devices are later synchronized to COMPANY XYZ's software via the internet where the information is uploaded into COMPANY XYZ's servers (replacing the need for the customer to manually re-key handwritten patient records when back at the office). Occasionally the devices are purchased by COMPANY XYZ. If the devices are purchased by COMPANY XYZ the software is loaded onto the hardware at COMPANY XYZ's facility outside of Oklahoma and then shipped to the Oklahoma location. Reimbursement for the hardware is described below.

4. Hardware - laptops/tablets resold to customers at cost, which includes staged COMPANY XYZ software. The staged software enables the devices to record the information in a way that it can be later synchronized with COMPANY XYZ's software via the internet.

5. Home Health and Hospice Consulting Services - includes but is not limited to: on-site visit at customer's facility to discuss start-up requirements, costs, budgets, staffing. Additionally, COMPANY XYZ provides access to Policy and Procedure manual; Home Health Agency Management Software coding services, developing an agency marketing plan, addressing ADR's, operational telephone consulting through certification survey and pre-survey "readiness" visit at customer's facility.

6. Training Services - including optional startup end user training conducted by COMPANY XYZ staff. Most training classes are held outside of Oklahoma, although occasionally some customers are trained at their own location.

7. Reimbursement of Expenses - reimbursement of expenses associated with travel, hotel, meals, etc. for COMPANY XYZ staff paid by customer.

Taxpayer separately itemizes each charge for the abovementioned products and services on its invoices. Taxpayer anticipates a bundling option for the software revenue streams into one charge prospectively.

Issues

- A. Whether each of the above-mentioned revenue streams, if separately stated on an invoice, would be subject to Oklahoma's sales and use tax?
- B. Whether the bundling of software charges, billing and coding services invoiced as one charge would be subject to Oklahoma's sales and use tax?

RESPONSE

Sales of computer hardware, laptops and tablets, including staged COMPANY XYZ software are subject to Oklahoma sales and use tax. 68 O.S. § 1354(A)(9).

Sales of prewritten computer software that is delivered electronically, by other than tangible storage media, are not subject to sales or use tax. 68 O.S. § 1357(30).

OAC 710:65-19-86(a) relating to the taxability of electronic data processing services provides as follows:

Sales of electronic data processing services to others are exempt from sales tax. For purposes of this Chapter, "electronic data processing services" means the processing of another's data, including all processing such as key punching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, and also the providing of access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

In accordance with OAC 710:65-19-86 the charges for the above described transactions are not subject to sales tax in Oklahoma except for any transactions which relate to the transfer of duplicate copies of data on tangible media. Furthermore the bundling of software delivered electronically, billing and coding services as one charge would not be subject to Oklahoma sales and use tax.

This response applies only to the circumstances discussed in your request of June 12, 2009. Pursuant to Oklahoma Administrative Code 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



Marc Morrison
Tax Policy Analyst