OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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January 10, 2011

Fax

Re: LR-10-158; Sales Tax Inquiry

Dear

I am writing this response to your request regarding sales tax. Set forth are the facts presented along with the question posed and the response thereto.

Facts:

has a client who is arguing that a service we are providing is not taxable and it is somewhat unclear to us because it applies to several parts of the current tax rules.

We receive a computer hard drive (hdd) from a client that has malfunctioned. We ship the hdd to an out of state company that will attempt to retrieve the data from the hdd. The retrieval steps may consist of some or all of the following: (A) dismantling and rebuilding of the hdd, (B) examining and attempting to recreate the missing data, (C) other physical procedures performed on the drive to try to retrieve as much of the data as possible from it. When completed, we receive the retrieved data back on a different media (DVD, hdd, etc…) and we deliver the media to the client and may or may not actually restore the data back to their computer for them.

The transaction is billed as one single line item on the invoice that includes drive recovery service as well as the media that is returned to the client.

Question:

Is this a taxable service?

Response:

The sale of a hard drive with the retrieval data services appears to be a bundled transaction which is defined in pertinent part to mean "the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the

products are sold for one nonitemized price." OAC 710:65-1-2, copy enclosed. As such, sales tax is due on the lump sum charge for the hard drive and retrieval service. Without additional information, I am unable to provide a definitive answer regarding the sales taxability of retrieved data which is delivered on media other than hard drives

A copy of the referenced administrative rule provision is enclosed.

This response applies only to the circumstances discussed in your written request of November 4, 2010. 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