

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 7, 2014

Re: Our File No. LR-11-075

Dear

This is in response to your request regarding the exempt status of sales of software subscriptions. We are in receipt of the additional information that was request in our letter dated October 19, 2011 to Set forth verbatim are the facts presented and the response thereto.

FACTS

First, lest there be confusion based on our letterhead and documentation, our corporation is an Oklahoma non-profit corporation which is recognized by the IRS as tax-exempt under Code section 501(c)(3) The corporation's name is We are doing business as

Our primary business is the service of providing health information exchange, which we believe is consistent with OAC 710:65-19-156. Through the Internet for agreed-upon access charges, we offer hospitals, doctors, and other participating health care organizations the service of secure storage of their information on servers, consistent with State and Federal privacy regulations. Electronic data processing services are also available through which health care providers can request and receive relevant electronic information about their patients (except patients who have opted out of the network), from all participating organizations through custom-developed data interfaces. These services have the effect of eliminating the doctor's need to call many doctors and hospitals requesting records by fax and mail.

Other Internet-based services which are provided for separate charges include secure electronic delivery of lab results, secure electronic messaging to coordinate patient care, and a secure application allowing organizations to review and aggregate their data for approved analysis functions. We also anticipate soon being able to provide services to enable health care providers

to electronically coordinate with each other and their patients securely, privately and effectively. We have not finalized pricing for all of these services yet.

Participating organizations are charged for these services based on a common fee schedule (attached), which breaks down pricing by organization types and sizes. Based on their preferences, participating organizations determine whether they wish to pay monthly, quarterly or annually.

As requested in your letter, we have attached to this letter the most current pricing sheet for services; a sample Participation Agreement which an organization must sign to enable it to begin participating; the Terms and Conditions that are incorporated as part of the Participation Agreement; and the Privacy and Security Policies and Procedures, which are also incorporated into the Participation Agreement.

RESPONSE

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other transactions as specified in Section 1354 of Title 68 of the Oklahoma Sales Tax Code. Tangible personal property is defined to mean "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses . . . [and] includes electricity, water, gas, steam and prewritten computer software".

The described services of providing server storage of client information, electronic data processing, electronic delivery of lab results, electronic messaging, and an application allowing clients to review and aggregate data do not constitute the transfer of tangible personal property nor do they fall within the enumerated transactions subject to sales tax pursuant to Section 1354 of Title 68 of the Oklahoma Statutes. See OAC 710:65-19-86 and 710:65-19-156. Consequently, purchases by your company in Oklahoma of taxable services and tangible personal property to provide the nontaxable services are subject to sales tax.¹ Likewise, use tax is due on tangible personal property when purchased out-of-state and brought into Oklahoma for use or consumption.

This response applies only to the circumstances discussed in your request of December 6, 2011. 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



Brenda J. Sullivan
Tax Policy Analyst

¹ Oklahoma Administrative Code 710:65-1-7 and 710:65-19-309