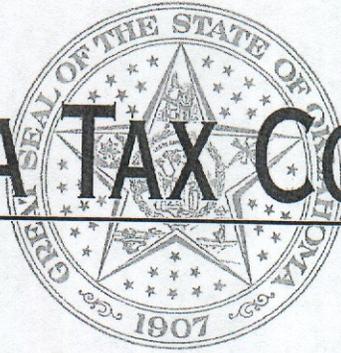


OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 18, 2012

Re: Our File No. LR-11-093

Dear [REDACTED]

This is in response to your request for assistance regarding your client, [REDACTED] registration requirements. Set forth verbatim are the facts presented and questions along with the response thereto.

FACTS

[REDACTED] is registered as a foreign entity in the State of Oklahoma.

Under the advice of the [REDACTED] they registered for a Sales Tax Permit in Oklahoma.

The entity does not have a physical presence in Oklahoma nor do they have any Oklahoma employees.

They sell software to oil field service companies, many of which reside in Oklahoma. This software is comprised of a standard program. However, some clients do get their software customized. The software is sold under a licensing agreement for a specific period of time. The software is delivered to their clients sometimes via download and sometimes via CD.

QUESTION 1.

What Oklahoma sales are taxable and non-taxable for this entity?

RESPONSE TO QUESTION 1

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". 68 O.S. § 1352(24). Therefore, if the license fees at issue relate to prewritten computer software¹ delivered in a tangible media format or delivered by means of load and leave², said fees are subject to sales and use tax. Sales of prewritten computer software that is delivered electronically, by other than tangible storage media, are not subject to sales and use tax. 68 O.S. § 1357(32). Likewise, sales of custom computer software³ are not subject to tax. OAC 710:65-19-52(g). Please note that modifications to "prewritten computer software" do not result in the production of custom computer software. OAC 710:65-19-52(f)

QUESTION 2

Since the company has no physical presence in Oklahoma do we need to file a Use Tax Return only when we have sales activity?

RESPONSE TO QUESTION 2

Regardless of whether a vendor is required to collect Oklahoma use tax or has voluntarily agreed to do so, the vendor must file a use tax report for each month for which a liability exists. OAC 710:65-21-7.

QUESTION 3

If the taxpayer is a cash basis taxpayer do we only remit our sales tax on paid invoices or, do we need to remit our sales tax liability on the accrual method when the invoice is issued?

RESPONSE TO QUESTION 3

Oklahoma sales and use tax reports are to be filed on an accrual accounting basis. Sales and use tax should be reported and remitted for the month that the sale is made regardless of whether payment is received, charged, deferred or otherwise to be made in the future, and regardless of the time or manner of payment." OAC 710:65-1-9.

¹ "**Prewritten computer software**" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. [68 O.S. § 1352(20)]

² "**Load and leave**" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

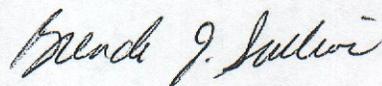
³ "**Custom computer software**" means a program prepared to the special order of a customer. The sale of a custom computer program is a service transaction.

Copies of the referenced statutory and administrative code provisions are enclosed.

This response applies only to the circumstances discussed in your request of August 10, 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

A handwritten signature in cursive script that reads "Brenda J. Sullivan".

Brenda J. Sullivan
Tax Policy Analyst