

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
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June 26, 2013

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: LR-12-010

Dear [REDACTED]

This is in response to your request for confirmation as to the taxability of [REDACTED] services that they provide to hospitals and nursing home for a monthly fee. Set forth verbatim are the facts presented in your correspondence of January 16, 2012 along with our response thereto.

FACTS

Background:

The Company developed a Service that it charges hospitals and nursing homes a monthly fee for.

[REDACTED] installs a box, similar looking to a TV cable box, to an existing TV in a hospital room, a room camera and a touch screen monitor at the nurses' station. Remotes and keyboards are also provided. All the hardware remains [REDACTED] property, no ownership transfers to the hospitals during or at the end of the contracted monthly service period. The video in the box is the hospitals property for liability review. The video can be viewed on over the counter software; [REDACTED] does not provide this software. The Company's system runs on each hospital's coaxial cable television network that provides television signals to patient room. The nurses would use the system to monitor numerous patient hospital rooms on one monitor. The nurses could enlarge a patient's room for a more detailed viewing. The system allows the nurses to enable virtual bed rails, monitor the patients for bed turning to prevent bed ulcers, etc. Each nursing station will have a monitor to monitor the rooms said nurse station is responsible for.

In the hospital room the patient would be able to 1) continue to watch the TV provider

that the hospital already has and [REDACTED] system allows for pre-selected on demand movies. The hospital usually keeps 20-25 movies available each month rotating 5-6 movies during the month. The hospital contracts directly with a movie provider and The Company ensures the movie is in the right format and is available to view through The Company's System, 2) text chat, through the TV in the room, with relatives and friends with video viewing through The Company's room camera, no audio yet 3) watch on the TV medical education videos, pre and post care plus an example surgery 4) browse the internet through the TV and 5) order meal room service through the TV.

will also offer "Sitter Management". Hospitals hire lower trained employees to sit one on one in patient's rooms. Sitters do not provide medical attention but can assist with needs such as a drink of water and alerts nurses of patient's medical needs. The Company provides an ipad that enables a sitter to watch over a small number of patient rooms (example 2-3 patients). The ipad has views of patient's rooms thru the installed room camera. The ipad also has built in alerts to keep the sitter from being distracted or falling asleep.

Back at The Company location in [REDACTED] [REDACTED] employees update software and roll it out to the hospital systems, monitor the in place systems (The Company knows when a box, camera, etc is unplugged or not working correctly), provides centralized reporting to upper hospital management and owners (number of patients, number of falls, etc), and security account management for upper management. The Company can view the video in the box but does not maintain ownership of the video but does retain ownership of the box.

The above is billed as follows:

1. The view at the nurse's station including the virtual bedrails, bed ulcers, along with the services done by the taxpayer at their [REDACTED] location in the last paragraph above (system management, management reporting and security management) are a separate line item on the invoice.
2. The view in the patient's room except movies is a separate line item on the invoice.
3. Movie(s), selected by the patient are billed as a separate line item on the invoice.
4. Sitter Program is also a separate line item on the invoice.

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. A sale includes but is not limited to "the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property." 68 O.S. §1352(22)(a). Gross receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold . . . whether received in money or otherwise. . . ." 68 O.S. § 1352(12)(a).

The furnishing for a charge of equipment with an operator is considered a service which is not subject to sales tax. OAC 710:65-1-11(g). For transactions to be considered a service and not the rental of tangible personal property [REDACTED] must be in direct control of the subject equipment. Merely providing personnel to supervise or monitor the operation of the equipment for your customer is insufficient. If [REDACTED] relinquishes control of said equipment to its customer the transactions constitute rentals of tangible personal property. Consequently, [REDACTED] is required to obtain an Oklahoma sales tax permit and collect Oklahoma sales tax from customers. Sales tax associated with the rental or lease of tangible personal property shall be computed on the gross amount without any allowance for service, laundering, cleaning, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee. 68 O.S. § 1354(18).

Based on the facts in your correspondence, [REDACTED] is renting tangible personal property i.e., tv cable boxes, cameras, monitors, ipads and other equipment to hospitals and nursing homes. Consequently, [REDACTED] required to obtain an Oklahoma sales tax permit and collect Oklahoma sales tax from its customers on the amounts billed in item 1 including charges for system management, management reporting and security management and items 2 & 4. Pursuant to an Oklahoma sales tax permit [REDACTED] can purchase the items it rents to hospitals and nursing home exempt from sales tax. 68 O.S. § 1357(3).

Sales of on demand movies 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. Therefore, the separately stated monthly fee for movies set out in item 3 is not subject to sales tax.

This response applies only to the circumstances discussed in your request of January 16, 2012. Pursuant to Oklahoma Administrative Code 710:1-3-73(e), this Letter Ruling may be generally accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION



Brenda J. Sullivan
Tax Policy Analyst