

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
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May 02, 2013

RE: LR-12-019 (Sales Tax Inquiry)

Dear

This is in response to your request regarding the applicability of Oklahoma sales tax on the services that will be offered by your client, set forth are the facts presented along with the responses thereto.

Question:

Are the following services subject to sales tax as sales of taxable tangible personal property, prewritten computer software, telecommunications services, or ancillary services?

Service 1

This web-based service allows a subscriber's designated customer service technicians and/ or internal help desk to remotely assist and provide support to the subscriber's employees and/ or customers.

This service does not entail the transfer of any Company software or data to the subscriber. Further, the service does not allow subscribers to access the Company software code or manipulate the software in any way. Rather, the Company will use its own equipment to provide the service. The Company's proprietary software will be maintained in a hosted site, on its equipment, and the equipment and software will be at all times under the control of the Company.

This service works by allowing a subscriber's employee to access an Internet support portal and create a support request by typing in a URL to allow access to his or her computer. The support request is then queued for the subscriber's next available technical support representative. With the employee's permission, the representative

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accesses the employee's device through the Internet and begins a remote-support session with the employee.

Alternatively, the employee can move directly from a phone call to a remote-support session. To do so, the representative provides the employee with the web portal URL and a unique connection code to begin the remote-support session. By utilizing this web-based service, a representative can immediately diagnose, troubleshoot, and resolve issues remotely. The Company will charge its subscribers for this service on a per user basis. Alternatively, subscribers can purchase a day pass that allows for usage over a 24-hour period. Subscribers can also purchase multiple day passes.

Simply stated, the service provides subscribers with a tool that allows for their own technicians to gain remote access to their employees' or customers' computers, giving them the ability to view an employee's or customer's computer to fix the computer. The Company will not provide any troubleshooting beyond ongoing support for the service itself; it will only provide access for the subscriber's technician to perform the troubleshooting. All troubleshooting and support is performed by the subscriber's own technicians.

Service 2

This service deploys a similar technology to Service 1, except that it allows a subscriber to access their own computer remotely. Again, the service does not entail the transfer of any Company software to the subscriber (other than an applet necessary to access the service) and does not allow subscribers to access the Company software code or manipulate the software in any way. Rather, the service will be provided through the Company's own data centers on its proprietary equipment and software, which is at all times under the control of the Company.

This service allows a user access to a user's computer from any other Internet-connected computer in the world through a private, secure connection. In order to facilitate this ability, the service navigates through the user's firewalls to enable communication without compromising security. This service is predominantly used for home/office applications. It is sold mainly to individuals who wish to access their office PC from home or vice versa. While it is possible that a subscriber could allow a third party to use this service to view the subscriber's computer records, this scenario is highly unlikely due to the potential breaches in confidentiality and privacy that could occur. The third party view would receive unlimited access to the subscriber's computer (the third party could access the entire C drive or network drive on the remote computer).

This service encompasses four components: a remote (or client) computer, communication servers/brokers, any firewall, and permitted host computers. A subscriber can register up to x number of host computers, depending upon the level of service it purchases and can access these host computers remotely once the host computer is set up with an account name.

When a user attempts to access a host computer remotely from a client computer, the user visits the service website, enters a username and password, and clicks on a connect button for the desired host computer. The user is then authenticated through the web-based broker operated separately from the user's computer. This broker, located at the Company's server site and part of the Company's proprietary system, acts as an authorizer/traffic controller and grants permission for the users to access the service/host computers based on a verified user name and password. For network address and firewall independence, the remote user initiates all communication with the broker via URL. All transmissions are encrypted and only those subscriber computers previously configured will be displayed and accessed remotely.

Service 3

This service utilizes a similar technical infrastructure as previously described to allow multiple users to view a presenter's computer screen. The Company will not transfer any software (other than an applet necessary to access the service), and subscribers/users cannot access the Company software code or manipulate the software resident on the Company's equipment in any way. Once a connection is made, the service will be provided by the Company through one of its data centers. The Company does not have a data center in Oklahoma.

This service makes it easy for subscribers (individual and organizations) to meet with anyone and present information securely online. Subscribers are able to present an unlimited number of Internet meetings for a flat monthly or annual fee and invite anyone (up to 25 meeting participants) to attend and view the meeting material displayed during the meeting. This service also enables individuals and organizations to easily, securely, and cost-effectively screenshare information online to a broader audience. Subscribers may hold unlimited seminars ('webinars') on the Internet with up to 1,000 attendees. There is no charge to the meeting or webinar attendees and they do not have to be registered users.

To participate, organizers send participants a URL, which enables them to launch a separate software applet to support the connection which allows them to view the organizer's computer. There is no charge to the participants and they don't have to be registered users or subscribers. They are only required to enter the access code provided by the organizer. The online presentation is viewed by the participant from the participant's computer, but the content and application used to display the content remain resident on the presenter's computer at all times. The Company will not provide or transmit any application software used by the presenter.

This service offering has a recording feature by which the organizer has sole authority to initiate recordings. The recording is generally saved to the organizer's desktop; therefore, the Company does not have access to these recordings. Also, the organizer can post the webinar to a web server and can email a URL designation to participants/others for review.

As part of the service, the participants have an option to use a fully integrated voice-over-internet protocol (“VOIP”) feature to communicate with other online meeting participants. The Company will purchase the underlying VOIP services from an unrelated third party and will pay tax on the VOIP services at the time of purchase when such services are deemed taxable by the state in question. The Company will not resell the VOIP services to its subscribers. Instead, the subscribers and the other meeting participants have the option to use the VOIP feature free of charge as an integrated part of Service 3.

There is no requirement that the participants use the VOIP feature during the online meeting, and on occasion the subscribers and the other participants use their own alternative service (not provided by the Company) to communicate during the online meetings. In this manner, the VOIP feature is similar to other integrated features of Services 3 (such as screen-sharing capability – each customer has the ability to use the screen-sharing feature during an online meeting or training session, but the customer may not need, or want to, use the feature). The Company will not have a mechanism in place to determine whether the subscribers are actually using the integrated VOIP feature during the online meetings.

Service 4

This service enables subscribers to conduct online training sessions with their respective invited attendees. Service 4 allows online training sessions, distribution of course materials, testing and assessments, publishing upcoming courses to a catalog, and maintaining a reusable content library.

Similar to Service 3, the participants using Service 4 have an option to use a fully integrated voice-over-internet protocol (“VOIP”) feature to communicate with other online meeting participants. The Company will purchase the underlying VOIP services from an unrelated third party and will pay tax on the VOIP services at the time of purchase when such services are deemed to be taxable by the state in question. The company will not resell the VOIP services to its subscribers. Instead, the subscribers and the other training participants have the option to use the VOIP feature free of charge as an integrated part of Service 4.

Response:

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services including telecommunications and ancillary services¹ 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”. Sales of prewritten computer software, delivered electronically, by other than tangible storage media, are not subject to sales and use tax. 68 O.S. Supp. 2003, § 1357(32).

¹ 68 O.S. Supp. 2007, § 1354(A)(4).

The described services 1, 2, 3 & 4 do not constitute the sale of tangible personal property, prewritten software delivered in a tangible format, telecommunications or ancillary services nor do they fall within one of the other enumerated transactions subject to sales tax pursuant to Section 1354 of Title 68 of the Oklahoma Statutes. However, purchases in Oklahoma of telecommunications i.e., Voice-Over-Internet-Protocol services along with other taxable services and tangible personal property to provide the nontaxable services are subject to sales tax.² 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 written request of February 6, 2012. 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 black ink, appearing to read "Marc Morrison". The signature is written in a cursive, flowing style.

Marc Morrison
Tax Policy Analyst

² Oklahoma Administrative Code 710:65-1-7 and 710:65-19-309