OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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January 18, 2013

Re: Our File No. LR-12-072

Dear

This is in response to your request regarding the taxability of software license purchases. Set forth verbatim are the facts presented along with the questions posed and the responses thereto.

FACTS

designs, implements, programs, installs and maintains voice and data systems. sells new systems and system upgrades that include a server (which contains software), back-up disks and licenses for users to operate the system. A one-time fee is charged for each license sold.

We are inquiring about the taxability of the following transactions:

QUESTION:

1. An invoice is generated for a server, back-up disks and licenses purchased at the same time. In this case, would all of the items be taxable?

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". 68 O.S. § 1352(24). The items listed in the above transaction constitute tangible personal property and the charges therefore are subject to sales tax.

QUESTION

2. An invoice is generated at a later date for additional licenses only. No tangible items are associated with the transaction. The licenses are activated remotely. Would these licenses additions be subject to tax?

RESPONSE

Yes, because the original prewritten software was delivered in a tangible format, the charges for the additional licenses for expanded or additional use of that software are subject to sales tax.

This response applies only to the circumstances discussed in your request of August 27, 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

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst