OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 01, 2013

RE: LR-12-088 (Sales Tax Inquiry)

Dear

I am writing this letter in response to your request regarding Oklahoma sales tax. Set forth verbatim are the facts presented along with the responses thereto.

Facts:

My company is in the Information Technology consultancy business. I have signed up as a reseller with an out-of-state online backup service company to offer the solution to my clients in Oklahoma.

In this case if a client accepts the online backup service, his/her data will be sent to an offsite location regularly over the Internet. Nothing tangible will be transferred to the client except a piece of free software that will be installed on one of the computers at the client's place to facilitate the online backup process. My company manages the entire process for the client billing him/her periodically for the actual storage space used at the offsite location.

Do I need to charge sales tax for the amount billable to my clients in Oklahoma that sign up with my company for this online backup service?

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". Fees

charged for prewritten computer software[1] delivered in a tangible media format or delivered by means of load and leave[2], are subject to sales and use tax. Conversely, sales of prewritten computer software, delivered electronically are not subject to sales and use tax. 68 O.S. Supp. 2003, § 1357(32).

Based on the facts presented, acts wholly as a provider of a nontaxable service, and is the taxable consumer/user of all items of tangible personal property and taxable services used to provide the service. Oklahoma Administrative Code 710:65-19-309. As such, would owe state sales or use tax and any local tax as applicable on the items purchased to provide the online backup service. If makes purchases from outside Oklahoma, from a vendor that is not required to collect Oklahoma sales or use tax, it is required to accrue, report and remit, pursuant to its Oklahoma consumer use tax account, Oklahoma state and any local use tax on the items purchased. OAC 710:65-1-7.

Since the initialization software is provided incidental to the backup service without charge, the amounts billed for the on-line data backup are not subject to Oklahoma sales tax.

This response applies only to the circumstances discussed in your written request of October 17, 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

Marc Morrison

Marc Morrison
Tax Policy Analyst

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[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.