

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
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September 23, 2013

Re: LR-13-034

Dear

This is in response to your inquiry regarding the sales tax treatment of Software Subscription and Support renewal fees. Set forth are the facts and question presented and the response thereto.

FACTS

Background:

is a Tulsa based company that sells small to medium sized business class servers and software, and provides technical support and consulting services for those products. We specialize in computer hardware and software products made by . The

Software products we sell are typically classified as Server Operating Systems, Server Databases, Network Infrastructure management, Groupware, Collaboration, Web Infrastructure, etc. These are the types of software products that businesses use to build and support their internal data processing infrastructure.

The initial sales price for an Software product includes a license to use the software itself, plus a one year "Software Subscription and Support" agreement from . After the first year, the customer can continue to use the Software, and can opt to renew the "Software Subscription and Support" agreement for that Software product for another year. These renewals can continue until no longer supports the Software.

sells the initial Software licenses, and we also sell the Software Subscription and Support renewal agreements.

"Software Subscription and Support" is a bundled offering from that includes the following components:

- Telephone and Electronic Problem Submission
- 24 x 7 mission critical support
- Unlimited telephone call support
- Voice and Email help with routine installation and usage, including "how to" questions and code related defect resolution
- Access to self-help databases
- The ability to upgrade to the latest version of the software
- Access to software updates, new versions and releases as they become available.

A general overview of "Software Subscription and Support" offering can be viewed on web site using this URL:

Note: does not provide "unbundled" pricing or SKUs for any of the individual components that make up the "Software Subscription and Support" offering.

routinely charges our customers sales tax associated with our sale of the initial Software license, plus we charge sales tax for the Software Subscription and Support renewals.

We currently have a customer who is disputing the sales tax being charged for the Software Subscription and Support renewals on the grounds that no physical media is supplied, and the software updates are available for download via the Internet.

QUESTION

Are the Software Subscription and Support renewal fees subject to Oklahoma Sales Tax?

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 software¹ delivered in a tangible media format or delivered by means of load and leave², 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).

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.

Charges for optional software maintenance contracts³ which provide prewritten software upgrades or updates delivered electronically by means other than tangible storage media are not subject to sales tax. OAC 710:65-19-52(d)(2)(A). Therefore, charges to its customers for the optional renewal of the Software Subscription and Support under the above-described circumstances where no physical media is supplied and software updates are available for download via the Internet are not subject to sales/use tax in Oklahoma. However, purchases in Oklahoma of taxable services and tangible personal property to provide the nontaxable services are subject to sales tax.⁴ 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 request of May 21, 2013. 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
Tax Policy Analyst

³ "Optional computer maintenance contract" means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software. OAC 710:65-19-52(9).

⁴ Oklahoma Administrative Code 710:65-1-7 and 710:65-19-309