OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 7, 2014

[redacted]

Re: LR-14-015

Dear [redacted]

This is in response to your request for clarification on the taxability of several products of your client, [redacted] Set forth are the facts and your positions taken and the response thereto.

FACTS

Our client, [redacted] is a [redacted] CO, based software company. Our client provides industry-focused software and strategic services such as consulting, implementation, training, and support to customer in Oklahoma. In connection with its sale of software, our client provides renewable maintenance contracts. We are writing for clarification on the taxability of several of their products.

Mandatory maintenance agreement in connection with the sale of canned software.

It is our understanding, based on Okla. Admin. Code § 710:65-19-52(d)(1), that such a contract is subject to tax. Therefore, a mandatory renewal to such a contract would also be subject to tax.

RESPONSE:

In accordance with OAC 710:65-19-52(d)(1), if the contract is related to the maintenance of prewritten software which was delivered in a tangible format and renewal of the maintenance contract is mandatory[1], the charge therefore would be subject to sales tax.

[1] Mandatory computer software maintenance contract means a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software. OAC 710:65-19-52(a)(8).

However, an optional renewal to a mandatory maintenance agreement may not be subject to tax depending on the circumstances identified in parts 2(a-c) below.

2. Optional maintenance agreements in connection with the sale of canned software.

a. Contract provides only canned software upgrades/updates in a tangible media format.

It is our understanding, based on Okla. Admin. Code § 710:65-19-52(d)(2)(A), that such a contract is subject to tax. Therefore, a renewal to such a contract would also be subject to tax.

RESPONSE

An amount billed for renewal of an optional maintenance agreement which provides prewritten software upgrades or updates delivered in a tangible media format would be subject to sales tax. OAC 710:65-19-52(d)(2)(A).

b. Contract provides only canned software upgrades/updates delivered electronically.

It is our understanding, based on Okla. Admin. Code § 710:65-19-52(d)(2)(A) and Okla. L.R. No. LR 13-034 (Sept. 2013), that such a contract is not subject to tax. Therefore, a renewal to such a contract would also not be subject to tax.

RESPONSE

A charge for renewal of an optional software maintenance contract which provides prewritten software upgrades or updates delivered electronically by means other than tangible storage media is not subject to sales tax. OAC 710:65-19-52(d)(2)(A). However, purchases in Oklahoma of 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.

c. Contract provides both canned upgrades/updates and support services without separately stating the support services.

It is our understanding, based on Okla. Admin. Code § 710:65-19-52(d)(2)(B), that such a contract is subject to tax. Therefore, a renewal to such a contract would also be subject to tax.

RESPONSE

In accordance with OAC 710:65-19-52(d)(2)(B), renewal of an optional maintenance contract that provides upgrades/updates in a tangible format and support services for a lump sum charge would be subject to sales tax.

d. Contract provides only maintenance agreement support services without updates/upgrades.

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

It is our understanding, based on Okla. Admin. Code § 710:65-19-52(3), that such a contract is not subject to tax. Therefore, a renewal to such a contract would also not be subject to tax.

RESPONSE

A renewal charge for an optional contract which only provides maintenance agreement support services is not taxable. OAC 710:65-19-52(d)(3).

This response applies only to the circumstances discussed in your request of March 5, 2014. 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