# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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


July 10, 2015

Re: LR-14-32 (Sales Tax Inquiry)

Dear

This is in response to your request for a determination of whether the sale of software is subject to sales tax. Set forth verbatim are the facts presented in your correspondence of June 17, 2014, as well as, information gathered via a telephone conversation with along with the questions posed and our responses thereto.

Facts

I am writing to consult with you about certain tax questions related to our future potential business in We are a corporation based in Texas. The deal is among one of our vendors in TX who will provide and install a software, us who will provide the license of the software, maintain and update the software and use the software to compile data, and our customer in The software will be used only be this customer in for this deal.

The computer software is prewritten software with modifications for a specific customer. The software will be downloaded through an electronic link, along with any additional modifications and updates. Here are the questions we have:

Question #1:

Is the sale of software subject to sales tax in OK?

Response #1

The sale of prewritten computer software is taxable in the State of Oklahoma. 68 O.S. § 1352(20). This includes prewritten software that has been modified or enhanced, unless the

modifications or enhancements were separately stated charges. 68 O.S. § 1352(20). However, if this software is delivered electronically, it is exempt from Oklahoma sales tax. 68 O.S. § 1354(A)(4)(a)(9). Therefore, since the software along with any additional modifications and updates will be delivered to the customer by download through an electronic link, charges for these items will not be subject to sales tax in Oklahoma.

Question #2:

Is the license of software subject to sales tax in OK?

Response #2:

No. Since the software license relates to prewritten software delivered electronically, the licensing of the software is not subject to sales tax.

Question #3:

Is the maintenance and updating of the software subject to sales tax in OK?

Response #3:

The taxability of a maintenance contract sold with prewritten computer software delivered in a tangible media format depends on whether the maintenance contract is mandatory or optional. If the contract is mandatory, then it is subject to sales tax. If the contract is optional, then it is only taxable if the upgrades or updates are delivered in a tangible format, or if the fees for the tangible upgrades/updates and maintenance support are not separately stated. OAC 710:65-19-52(d). Further, charges for a mandatory maintenance contract in relation to the sale of electronically delivered software are not subject to sales tax.

Question #4:

Is a data compiling service subject to sales tax in OK?

Response #4:

No. Data compiling services are not one of the enumerated services considered taxable in the Oklahoma Statutes.

Question #5:

Does it make any difference if the software is delivered by different methods, i.e. by disc or by downloading from the link?

Response #5:

Yes. If the software was delivered in a tangible format, the software and the licensing would become taxable.

Question #6:

What the tax rates are if there is any?

Response #6:

Not applicable since the product is not subject to sales tax. Further, tax rate information can be found on the Tax Commission's website: www.tax.ok.gov.

Question #7:

Can the customer in OK pay the use tax instead of us collecting the sales tax? Are we required to obtain a sales tax permit assuming this is an ongoing business?

Response #7:

Since the product is not tangible, neither sales nor use tax is applicable in this matter.

Question #8:

Are there any other tax considerations we should include besides the sales tax?

Response #8:

Further information can be found on the Tax Commission's website: www.tax.ok.gov.

Attached is the copy of the above-referenced Oklahoma Tax Commission administrative rule provisions and forms.

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

Morgan E. Lankford

Morgan E. Lankford
Tax Policy Analyst