OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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June 24, 2015

Re: LR-14-072

Dear

This is in response to your request for verification regarding the taxability of electronically delivered prewritten computer software (sold or leased) and optional maintenance contracts with prewritten computer software updates. Set forth are the facts and the response thereto.

FACTS

is an Oklahoma Corporation, which is currently registered in Oklahoma (Sales Tax Permit ; Sales Tax Account and collects/remits Sales Tax on a monthly basis. In 2015, plans to begin electronic delivery for the sale of software, software updates sold with an optional maintenance contract or leased software. Customers will no longer receive any tangible media (CD, DVD, etc.) to obtain their software or software updates. Software and software updates will only be available via download from the Internet.

would like to request a Letter Ruling verifying that when sells software, leases software or sells optional maintenance contracts with software updates where all software is transmitted electronically and no tangible media is given to any customer, the sales will not be taxable. only sells prewritten compute software.

RESPONSE:

Sales or leases of prewritten computer software, delivered electronically are not subject to sales and use tax. 68 O.S. 2011 § 1357(32). Charges for optional software maintenance contracts[1] 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, amounts billed by for the sale/lease of software and optional maintenance contracts where the software and any updates/upgrades are only transferred electronically and no tangible media is provided to customers would not be subject to sales/use tax. 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.

This response applies only to the circumstances discussed in your request of December 11, 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
Tax Policy Analyst

[1] "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).
[2] OAC 710:65-19-309