OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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April 28, 2011

RE: LR-11-031; Follow-up to sales tax inquiry

Dear

As a follow-up to our March 28, 2011 response to your request of January 6, 2011, please be advised that, unless otherwise exempt, Section 1354(9) of Title 68 of the Oklahoma Statutes levies a sales tax on sales of "computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs." Therefore, if the license fees at issue relate to prewritten computer software[1] delivered in a tangible media format or delivered by means of load and leave[2], said fees are subject to sales and use tax. Sales of prewritten computer software that is delivered electronically, downloaded from the internet, are not subject to sales and use tax. 68 O.S. § 1357(32). Additionally, in accordance with OAC 710:65-19-52(d)(2)(A), charges for optional software maintenance contracts[3] which provide only prewritten software upgrades or updates delivered in a tangible media format are subject to sales and use tax. Also, charges for optional software maintenance contracts which include both prewritten software updates delivered in a tangible media format and customer support where there is no separate itemization of the charges for the updates and support are taxable. OAC 710:65-19-52(d)(2)(B). If the optional contract only provides maintenance agreement support services, the contract is not taxable. OAC 710:65-19-52(d)(3).

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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.

[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.

This response applies only to the circumstances discussed in your written request of January 06, 2011. 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
Tax Policy Analyst

cc. Sen. Mike Mazzei
Dawn Cash / Secretary Member Oklahoma Tax Commission
Rick Miller / Director of Tax Policy and Research Division