OKLAHOMA TAX COMMISSION

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November 6, 2007

RE: Request for Letter Ruling;
Our File No. LR-07-019

Dear

Your correspondence dated September 24, 2007, was forwarded to me for response in the form of a Letter Ruling. A Letter Ruling from the Office of General Counsel, Oklahoma Tax Commission, is discretionary and defined as an "informal written statement of policy or treatment of specific fact situations under Oklahoma law." OTC Rule No. 710:1-3-73(e). Further, Letter Ruling requests from an individual taxpayer or groups of taxpayers will be honored by the Commission, at its discretion, and taking into consideration time and resources available to respond to each request. OTC Rule No. 710:1-3-73(f). Because of the extensive number of requests for Letter Rulings and the limited resources of the General Counsel's Office, procedures were implemented to control the process by which Letter Rulings are issued.

In your request for letter ruling, you conclude would owe no additional sales and/or use tax because its sales of customer premise equipment (fall under the exemption from sales tax provided in 68 O.S. § 1357(24). Section 1357(24) is an exemption for "sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft." For purposes of this letter, it is assumed the exemption you assert sales fall under is correctly cited at 68 O.S. § 1357(26), which provides an exemption from sales tax for "...sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services."

Section 1357(26) is inapplicable to internet access services. Internet access service is specifically excluded from the definition of "telecommunications services".[1] Section 1357(26)

[1] 68 O.S. Supp. 2007 § 1354(A)(4)(a)(6).

extends only to sales of "wireless telecommunications equipment" that is transferred at no charge or at a discounted charge as an inducement for "wireless telecommunications services". On its face, section 1357(26) does not apply to the facts presented.[2] Further, transactions involving tangible personal property used in internet access services are specifically taxable under OTC Rule 710:65-19-156, "Internet-related services and transactions." Leases or purchases of dedicated lines, ports, routers, or other hardware or software for use in providing internet access is taxable to the service provider.[3]

Your inquiry poses complex sales tax questions based on separate hypothetical fact patterns. As a general rule, the General Counsel's Office does not respond to Letter Ruling requests that involve hypothetical fact patterns. In this light, we respectfully deny your request for a Letter Ruling.

The Office of the General Counsel would consider a request for Letter Ruling submitting a specific question based on a description of current business practices, including but not limited to whether is domesticated in Oklahoma, whether has an Oklahoma sales tax permit, and provided submits copies of its contracts with both third-party dealers and subscribers along with its request. All requests for a Letter Ruling should include a legal brief.

Alternatively, for purposes of complying with the Oklahoma Sales Tax Code, 68 O.S. § 1350 et seq., the permanent rules of the Oklahoma Tax Commission, interpreting and applying Oklahoma tax statutes, should be helpful in determining the appropriate treatment of the transactions you contemplate. The rules of the Oklahoma Tax Commission are codified at Title 710 of the Oklahoma Administrative Code (OAC) and may be accessed at http://www.tax.ok.gov/rules/rules.htm.

Respectfully,

OKLAHOMA TAX COMMISSION

Abby Dillsaver

Abby Dillsaver
Assistant General Counsel

cc: Ernest H. Short, Opinion Conference Coordinator
Dawn Cash, Director, Tax Policy Division

[2] *Id.* This conclusion is further supported by OTC Rule 710:65-19-156, "Internet-related services and transactions" which provides that "charges for providing access to the Internet are not subject to Oklahoma's sales tax, since *they do not clearly fall within the levy on telecommunications services*." (Emphasis added.)

[3] OTC Rule 710:65-19-156(c)(3).