OKLAHOMA TAX COMMISSION

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March 29, 2016

Re: Request for **File No. LR-16-005**

Dear

This letter is in response to your request for a letter ruling submitted on behalf of your client, ("Taxpayer') The Tax Policy and Research Division of the Oklahoma Tax Commission ("OTC") forwarded your request to the Office of the General Counsel for review. The facts, taken verbatim from your letter, are as follows:

1. Taxpayer has physical locations inside and outside the state of Oklahoma.

2. Taxpayer is registered for and current in filing Oklahoma sales and use tax returns as well as other state and local tax returns for which it is responsible to file.

3. Taxpayer purchases tangible personal property for its own use from in-state and out-of-state vendors which is shipped to Taxpayer's location in Oklahoma. At the time of purchase, Taxpayer does not know whether the property will be ultimately used outside the state or within Oklahoma. The property is not entitled to an exemption from Oklahoma tax based on the use of such property.

4. The tangible personal property in question can be purchased as a completed unit of property requiring no further change to the property or it can be purchased as components which require further alteration, modification, fabrication, or assembly before becoming a completed unit of property.

5. For property requiring further services, the services are performed by Taxpayer in Oklahoma then held as a completed unit of property ready for deployment to one of its retail store locations. Tangible personal property which does not require

further service to the property is shipped to and stored in Oklahoma as a completed unit of property.

6. Taxpayer pays sales tax on tangible personal property for its own use when such property is purchased from an in-state vendor and stored by Taxpayer in Oklahoma.

7. Taxpayer accrues and remits Oklahoma use tax on tangible personal property for its own use when such property is purchased from an out-of-state vendor and shipped to Oklahoma regardless of whether the property represents a completed unit of property or requires further servicing to the components before becoming a completed unit of property.

8. Taxpayer has not claimed a credit for Oklahoma sales or use tax remitted on tangible personal property purchased for its own use when said property is ultimately removed from the State for use solely in another state.

A letter ruling is requested on the following three issues:

1. Is Taxpayer entitled to a credit for Oklahoma sales tax on tangible personal property purchased for its own use from an in-state vendor, stored in Oklahoma and later removed from the state for use outside the state?

2. Is Taxpayer entitled to a credit for Oklahoma use tax on tangible personal property purchased for its own use from an out-of-state vendor and shipped to Oklahoma for storage when at the time of purchase Taxpayer cannot determine if the property is to be "solely for use in other states?"

3. Is Taxpayer entitled to a credit for Oklahoma use tax on tangible personal property purchased for its own use from an out-of-state vendor and shipped to Oklahoma for storage when at the time of purchase Taxpayer cannot determine if the property is to be "solely for use in other states" but temporarily stores said property in Oklahoma for the purpose of servicing or altering such property prior to removal for use solely outside the state?

Sales Tax

The Oklahoma Sales Tax Code ("Sales Tax Code") imposes "an excise tax of four and one-half percent (4.5%)" on non-exempt sales of tangible personal property and on certain enumerated services. 68 O.S. Supp. 2015, § 1354(A)(1). The term "sale" is defined by the Sales Tax Code to mean, among other things, "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state." 68 O.S. 2011, § 1352(22). The term "tangible personal property" is defined as "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses." *Id.* §

1352(24). All sales of tangible personal property and certain enumerated services are presumed to be taxable unless it is demonstrated that they are exempt by the Sales Tax Code. *See* OKLA. ADMIN. CODE § 710:65-1-4(a).

Further, unless the Sales Tax Code provides otherwise, "the [sales] tax . . . shall be remitted or paid to the Oklahoma Tax Commission by the vendor of tangible personal property, services, privileges, admissions, dues, fees, or any other item subject to the [sales] tax . . . ." 68 O.S.Supp. 2015, § 1362(A). "The vendor is required to add the tax to the selling price or charge. A vendor is specifically prohibited from advertising or holding out to the public . . . that he will absorb all or any part of the tax or that he will relieve the purchaser from the payment of all or any part of the tax." OKLA. ADMIN. CODE § 710:65-7-2(b).

Since the term "sale" is defined in the Sales Tax Code as "the transfer of either title or possession of tangible personal property," the taxable event occurs when a purchaser acquires either title or possession of tangible personal property within Oklahoma. *See* 68 O.S. 2011, § 1352(22); *see also Int'l Bus. Machines Corp. v. Okla. Tax Comm'n*, 853 P.2d 770, 773 (Okla. 1993). As used in the Sales Tax Code, the term "possession" means having actual physical control of a thing. *Int'l Bus. Machines Corp.*, 853 P.2d at 773.

The Oklahoma Sales Tax Code does not provide for a credit when property on which sales tax has been paid is removed from the state. Therefore, Taxpayer is not entitled to a credit for Oklahoma sales tax paid on tangible personal property purchased for its own use from an in-state vendor, which is stored in Oklahoma and later removed from Oklahoma for use outside the state.

Use Tax

The Oklahoma Use Tax Code ("Use Tax Code") imposes an excise tax on tangible personal property purchased outside of Oklahoma if a purchaser intends on storing, using, or otherwise consuming such property within Oklahoma, and a transaction would have been subject to the sales tax had it occurred in Oklahoma. 68 O.S. 2011, § 1402; *Harding v. Okla. Tax Comm'n*, 275 P.2d 264, 267 (Okla. 1954). "[I]t is presumed that tangible personal property sold, leased or rented by any person for delivery in this state is sold, leased or rented for storage, use or other consumption in this state. The burden of proving the contrary is on the purchaser." *See* OKLA. ADMIN. CODE § 710:65-1-4(b).

The use tax **shall not be levied** on "tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to such other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service." 68 O.S. 2011, § 1402. In cases where property is purchased from an out-of-state vendor, stored in Oklahoma, either as a completed unit or for the purpose of servicing or alteration, the Use Tax Code mandates that the tax "shall be paid at the time of importation or storage of the property within the state" and allows for a subsequent credit to "be taken by the taxpayer for the amount so paid upon removal of the property from the state." *Id.*

Based on the information contained in your letter, Taxpayer would be entitled to a credit for Oklahoma use tax on tangible personal property purchased for its own use from an out-of-

state vendor and shipped to Oklahoma for storage, servicing or alteration when such property is removed from the state, regardless of whether Taxpayer knew where the property would be ultimately used at the time of importation.

This letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law. *See* OKLA. ADMIN. CODE § 710:1-3-73(e). Furthermore, this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. 2011, § 206. The Commission also reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. 2011, § 221.

Respectfully,
OKLAHOMA TAX COMMISSION

Valeriia Hatami
Assistant General Counsel

APPROVED.

Marjorie Welch
Interim General Counsel