OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

October 31, 2000

Re: Our file Number LR-00-026

Dear

This is in response both to your inquiry of January 12, 2000 and to your addendums of July 11 and September 18, 2000. Our original responses dated August 7, 2000 and September 25, 2000 are withdrawn and should be disregarded. As requested, we are providing a written response to your letters. Our responses, given below following our preliminary comments to your "Requested Rulings" must be read in conjunction with the facts described in those letters.

Our Preliminary Comments

Which if any of the business segments consist of entities that are florists?

The Oklahoma Sales Tax Code, 68 O. S. Section 1350 et. seq., at Section 1354, levies the tax on sales of floral items sold by persons engaged in the florist or nursery business **in this state** (emphasis added). While the words florist or nursery business are not defined in the sales tax code, the word nursery is defined in the Oklahoma Agricultural Code at 2 O. S. Section 3-11 as a place where nursery or floral stock is "grown, propagated or sold". The word "florist" in Merriam Webster's Collegiate Dictionary is defined as "one who sells or grows for sale, flowers and ornamental plants". Based on the information you have presented, none of the entities listed appear to be florists in Oklahoma. Furthermore, only the locations of appear to be "florists" in other states.

Which if any of the entities have physical presence in Oklahoma?

According to the information provided, it appears that only the Call Center Segment has an "established place of business in Oklahoma" as that phrase is defined in the sales and use tax codes. Further, only that same segment has a "place of business" as also defined in the codes. Since each segment is a separate entity and does not refer business to each other or act as agents for each other, the location of the call center in Oklahoma does not lead to the establishment of sufficient connection with Oklahoma for the other entities to be required to register and collect Oklahoma sales or use taxes. This lack of nexus also extends to the overflow orders taken by the Tulsa call center for the retail outlets of the retail segment

which are faxed to the outlets. This position is based on the US Supreme Court's findings in Complete Auto Transit, Inc. v Brady 430 U.S. 274 (1977).

Our Conclusions

- holds inventory and operates as a florist. should apply the "Florist Rule" to all sales generated through the Retail Segment

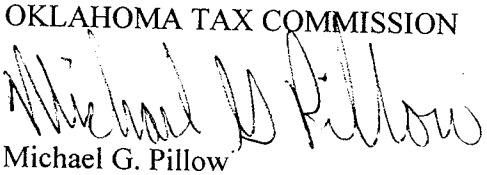
- The Internet, Catalog and Call Center Segments do not operate as florists and therefore they should not apply the Florist Rule to their sales. These segments are required to collect sales tax at the point of destination in those circumstances in which they have nexus, consistent with Oklahoma Tax Commission Rule 710:65-15-1(c).

- While the call centers advertisement in local yellow pages of a 1-800 toll-free number does not create sales tax nexus in Oklahoma for entities not otherwise present in the state, as noted above, the sale of goods by these entities from inventories located in Oklahoma to consumers in Oklahoma may give rise to a requirement to register, collect and remit sales tax.

- With the exception of magazines, which are presumably periodicals, each of the products listed in your letter is subject to sales tax in Oklahoma when sold to taxable consumer/users.

This response applies only to the circumstances set out in your requests, and may not be relied upon by any entity other than the addressee. In the event of any change in the facts surrounding the transaction described, this letter ruling would no longer be applicable. You are further advised that subsequent statutory or administrative rule changes or judicial construction of the statutes or rules upon which this advice is based may yield a different result from that which is expressed here

Sincerely,
OKLAHOMA TAX COMMISSION



Michael G. Pillow
Tax Policy Analyst