OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

July 6, 2000

Re: Our File Number LR 00-34; Ruling request for franchise tax status of

Dear

This letter is in response to your request for advise on the analysis you presented in your letter of June 20, 2000 pertaining to and Oklahoma Statutes, Section 1201 of Title 68, which levies franchise tax on certain entities and which also provides an exclusion from the levy for limited liability companies, as defined by Section 2001 of Title 18 of the Oklahoma Statutes.

Section 2001 of the Oklahoma Limited Liability Company Act provides the definition for "foreign limited liability company" as used under the Code. This Section expressly defines a "foreign limited liability company" as "an unincorporated association, organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country, organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and not required to be registered or organized under any statute of this state other than this act." The language used within Section 2001 is clear and unambiguous. "Foreign limited liability companies" are exempt from franchise tax in Oklahoma.

The subject company, as explained in your letter dated June 20, 2000, as a limited liability company in the State of is exempt from the Franchise Tax Code requirements.

This response applies only to the circumstances set out in your request of June 20, 2000 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,

Brenda J. Sullivan
Tax Policy Analyst

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

May 3, 2000

Re: Our File Number LR 00-34; Responsibilities of an out-of-state printer to register for business taxes

Dear

This is in response to your request for an opinion on the issues described in your letter dated January 26, 2000. In view of the facts concerning the operations of the following rulings have been determined for each item requested. I have set out below the transactions enumerated on the list, followed by our answers as to the tax consequences of the fact scenario set out in your letter.

1. Is the presence of a home office, as described above, sufficient connection to the state of Oklahoma to impose sales or use tax on the activities described?

Response: Yes, it appears your client has connection with Oklahoma, pursuant to Title 68 Section 1401 (10), a copy of which is enclosed, "maintaining a place within the state" of Oklahoma. Further it is immaterial if the employees are authorized to do business within Oklahoma as stated in the same section.

2. We note that printing in general is subject to sales or use tax. No other component of services appears to be taxable at this time. Assuming the existence of sufficient "nexus", please advise which components of the above described goods and services would be taxable in Oklahoma. Are the printing or other components of the direct mail advertising mailed into Oklahoma subject to use tax? If so, which components are subject to tax?

Response: The cost of the printing which may be attributed to the direct mail advertising which will be distributed in Oklahoma will be subject to sales tax in Oklahoma. The purchase price would be taxable and it would not include the cost of

design and layout services or the mailing services unless these services were performed by the printer.

3. In researching Oklahoma law we note that services provided by advertising agencies are exempt from sales and use tax, although the materials they purchase are subject to sales tax. See Rule 710:65-19-2. Does the service provided by as described above, qualify as exempt advertising agency services? If so, does this exemption also exempt the cost of printing for the materials mailed by

Response: 's advertising services, i.e. "set up", or design is exempt advertising services as provided in part (a) of the above rule. However, part (b) of the same rule specifies that "advertising agencies which sell letterhead, business cards, etc. shall be subject to the rules pertaining to printers for said sales. Rule 710:65-19-265 part (a) states that "a printer may not deduct from the selling price of such tangible personal property charges for the labor or service of performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold. The service of printing on stock provided by the customer is also subject to sales tax."

Therefore, the cost of printing the materials mailed by is not exempt. would be required to charge and collect use tax on all sales that it makes that are intended for distribution in Oklahoma.

Consequently, your client is subject to Oklahoma's Franchise Tax Code based on the factors you submitted regarding your client's business activity in Oklahoma. Oklahoma's Franchise Tax Code, Title 68 O.S. Section 1201 et seq. states that it "applies to every corporation qualified to do business or doing business in the State of Oklahoma in a corporate capacity and specifically included a corporation organized under the laws of a state other than Oklahoma."

The Oklahoma Franchise Tax is levied on corporations "doing business in Oklahoma" which is defined in the Oklahoma Statutes at 68 O.S. Section 1202, as "each and every act, power or privilege exercised or enjoyed in this State, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations." It does apply to corporations holding title to tangible personal property, which is physically located in Oklahoma.

The facts that your client does not have independent contractors or employee salespersons to solicit products on behalf of the company, lacks a physical location in Oklahoma, and ships by common carrier do not change this position with respect to Oklahoma 's Franchise Tax Code. That is because Oklahoma has a franchise tax that is not based on gross income. Therefore, the activities you described, which are commonly addressed under an analysis of Public Law 86-272, do not prohibit a finding that your client ("company") is subject to Oklahoma's Franchise Tax Code.

Additionally, if the computers are purchased out-of-state and subsequently brought into Oklahoma for storage, use or consumption, use tax is due pursuant to Title 68, Section 1402 of the Oklahoma Statutes. However, a credit is allowed for taxes paid to another state on the purchase of tangible property purchased outside this State and brought into Oklahoma for storage, use, or consumption. Please note that Section 1401(c) of Title 68 specifically states that "no credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in Oklahoma". Further the credit allowed may be up to the state use tax rate of four and one half percent (4 ½%), depending on the other state's rate. However, a credit against city or county tax is not allowed even if use tax has been paid to cities or counties outside Oklahoma.

Further, your client may owe Ad Valorem tax to counties on the computers if they are not leased; if leased, the leasing company owes Ad Valorem tax and should be charging sales tax since the "company" is not exempt from sales tax.

Please find enclosed Commission rule 710:65-19-265. A registration form needs to be completed in order to obtain a use tax permit. You may contact the Taxpayer Assistance Division at (405) 521-3279 for a registration form. Monthly use tax reporting forms will be automatically sent after the permit has been approved.

> Note: Oklahoma sales tax is a combination of the State rate of four and one-half percent (4 ½%) and any applicable city and county sales tax. The use tax is the same as the sales tax rate.

This response applies only to the circumstances set out in your request of January 26, 2000 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.

If I can be of further assistance, you may write or contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure