OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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April 26, 2000

Re: Our File Number LR-00-37; Responsibility of an out-state company to register for business taxes

Dear

I apologize for the delay my response may have caused you.

This is in response to your request for a determination as to whether , is subject to Oklahoma's Franchise Tax.

It is my understanding, based on your letter and the information you relayed in our telephone conversation, that your business primarily involves the sale of cable wire and equipment to cable system companies. You also stated that your company does not advertise in the state, takes telephone orders, has a few customers, and ships by common carrier.

Based on this scenario, it appears that is subject to Oklahoma's Franchise Tax Code. The Franchise Tax Code applies to every corporation qualified to do business or doing business in the State of Oklahoma in a corporate capacity and specifically includes a corporation organized under the laws of a state other than Oklahoma.

The Franchise Tax Code[1] defines "doing business" 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, as are enumerated in the preceding section".

This definition of doing business is sufficiently broad to include out-of-state corporations, which may have even minimal contacts in Oklahoma. From the facts that sells cable wire and equipment in Oklahoma and has acquired a sales tax permit to do so, it appears that the company is doing business for the purposes of the Franchise Tax Code.

[1] 68 O.S. §1202 et seq.

The facts that does not have employees located in the State of Oklahoma, takes telephone orders, 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 is subject to Oklahoma's Franchise Tax Code.

Regarding the registration requirement for Oklahoma sales/use tax. Oklahoma **sales tax** is levied on transactions that occur within Oklahoma. **Use tax** is levied on a transfer of title or possession of tangible personal property purchased out of state and subsequently brought into Oklahoma for storage, use or consumption pursuant to Title 68, Section 1402 of the Oklahoma Statutes.

Additionally, for sales shipped to Oklahoma residents which are solicited through advertisements and direct mailings, and telephone orders, an out-of-state vendor would be required to collect Oklahoma **use tax** if it has a physical connection with Oklahoma, such as agents, a business situs, inventory or other property, or affiliates operating in Oklahoma under its authority. If an out-of-state vendor should have agents making sales from inventory within this state, the out-of-state vendor would be required to collect Oklahoma **sales tax**, as might also be the case if the out-of-state vendor were to travel to shows, fairs or exhibitions, deliver and install equipment or machinery, etc., in Oklahoma.

Based on all the factors presented for your business activities in Oklahoma, your company lacks sufficient physical connection with Oklahoma. Even though your company ships merchandise into Oklahoma by common carrier and delivery is made directly to the customer, Oklahoma use tax would normally be due if your company has physical connection. However, Oklahoma cannot require a vendor who has no connection with Oklahoma, to collect the state and any local sales or use taxes. As a result, Oklahoma will not be able to require payment from your company unless it had substantial physical presence with Oklahoma.

Even if you are not required to collect sales or use tax, you may maintain your registration. In this case you would need to switch to a use tax permit which is issued free of charge to an out-of-state vendor on a voluntary basis. Please find enclosed copies of Commission Rules 710:65-21-2, 710:65-21-3, 710:65-21-4, 710:65-21-5, 710:65-21-6 and 710:65-21-7, and Title 68 Section 1402. If I can be of further assistance, please contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosures