

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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January 9, 2001

Re: Our File Number LR- 00- 254; Inquiry of direct sales company related transactions

Dear _____

This is in response to your inquiry, wherein you asked for Oklahoma policy of collecting and remitting sales and use tax on the various transactions listed in your correspondence. I have set out below the transactions enumerated on the list, followed by our response as to their taxability.

#1 If a product is given free to a distributor in the state for promotional purposes, at what price is it taxed? At the Company's cost? At the distributor's cost? Or at the retail cost?

Our response: The taxable basis of the promotional product is the sales value. Please see Commission Rule 710:65-1-2 for "Sales value".

#2 If the Company runs a promotion which involves giving a product free when a certain number of products are bought, is the free product taxable? If so, at what price?

Our response: The free product is taxable at the sales value.

#3 If the Company allows a customer in the state to trade in an older model product for a new model product and charges a nominal fee for the exchange, is it liable for sales or use tax on the exchange? If so, at what price?

Our response: Yes, sales tax is due on the sales value of the new model product. There are no allowances for trade-ins. Please see Commission Rule 710:65-1-9 and 710:65-19-72.

#4 If the company allows a customer in the state to trade in an older model product for a new model product but does not charge for the exchange, is it taxable? If so, at what price?

Our response: Yes, same response as #3.

#5 Is tax due on repair charges for a product owned by a person in the state when the product is repaired in the state of New York?

Our response: Generally, labor charges for installation, repairs or other special services are not taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice. See Commission Rules 710:65-19-158 and 710:65-19-159. However, there is one exception to this general rule. Section 1354(4) of Title 68 levies a sales tax on “all local telecommunications service and rental charges including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image.”

#6 Are brochures given free by the Company to its distributors in the state, a taxable event for the Company? If so, at what price?

Our response: When property is brought into Oklahoma from out-of-state for storage, use or other consumption, the taxable basis is the “sales value” of the property at the time it was withdrawn from stock for use and/or consumption by a vendor or a manufacturer. However, a credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State, but such credit must be computed by applying the rate of sales or use tax paid to another state to the “sales value” of the property at the time it enters Oklahoma. Please note that Section 1401 (c) of Title 68, a copy of which is enclosed, 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.

Therefore, the brochures given free by your Company to its distributors are subject to Oklahoma use tax. Oklahoma use taxes to be collected consist of a combination of the state tax at a rate of four and one-half percent (4 ½%), plus any applicable city or county tax. (See the list of city and county tax rates for sales and use taxes.)

Copies of statutes and Commission Rules referenced are enclosed for your information. If I can be of further assistance, you may write or call me at the above listed phone number.

This response applies only to the circumstances set out in your request of December 12, 2000. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure