

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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June 25, 2001

Re: Our File Number LR-01-49; Questionnaire

Dear

Please find attached the questionnaire you submitted. Also, find enclosed the Statutory Sections and Commission Rules that were referenced in the questionnaire. If I can be of further assistance, please contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

State Tax Questionnaire

1. Company A located in CT buys product from Company B, located in another state, but registered to collect sales tax in your state. The product is purchased from Company B for resale by Company A. Company A requests the product be shipped directly to their customer, Company C located in your state.

In this case, is Company A required to register in your state in order to obtain exemption status for sales tax, since the product was purchased for resale?

Response to Question 1: Given that Buyer (Company A) has no nexus with Oklahoma, Oklahoma cannot require a vendor who has no connection with Oklahoma, to register to collect the state and any local sales or use taxes. However, Oklahoma will recognize the sale from Seller (Company B) to Buyer (Company A) for resale, as a sale for resale. The Seller (Company B) would need to obtain its customer's, the Buyer (Company A) valid exempt certificate. The exemption certificate should list the resale number issued by its home state as evidence it is in the business of making purchases for resale. The seller should also obtain written documentation from the purchaser and signed by a person authorized to bind the vendor stating that it is:

1. Not an Oklahoma resident.
2. Engaged in the business of making sales of the items being purchased.
3. Purchasing the items in question for resale.

Please note the additional requirements of Commission Rule 710:65-7-6, a copy of which is enclosed.

2. Same scenario as above: Company A located in CT buys product from Company B, located in another state, but registered to collect sales tax in your state. The product is purchased from Company B for resale by Company A. Company A requests the product be shipped directly to their customer, Company C located in your state.

The difference here is that the Company A receives payment from company C headquarters located in an entirely different state than the state the product shipped to. Even though product was shipped into your state, the sale or monetary transaction takes place in a different state.

Is this considered a taxable sale in your state or the state that is paying for the transaction?

Response to Question 2: The sale transaction would be considered taxable in Oklahoma. 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, a copy of which is enclosed.

3. Once registered for sales tax in your state, is it a requirement that a business, in our case a partnership, LLC, file income taxes in your state?

Response to Question 3: No, a sales tax registration does not automatically constitute an income tax obligation. The nexus criteria for income tax are different for sales tax. Please see Commission Rule 710:50-17-3, which relates to nexus for income tax purposes. Also, find enclosed a nexus questionnaire for your information.

4. Once registered for sales tax in your state, is it a requirement that the partners file individual income tax in your state? **See response to question 3.**
5. Once registered for sales tax in your state, is it possible that both the partners and the LLC would have to make estimated income tax payments? **See response to question 3.**
6. Company A located out of state purchases a maintenance or service contract for resale to a subsidiary of Company B, located in your state, but headquartered in yet another state. Are the services provided to the subsidiary taxable in your state?

Response to Question 6: Taxability of the services depends on the type of contract, please see Commission Rules 710:65-19-52 subsection (d) and 710:65-19-365 and 710:65-19-371.

If the maintenance contract is the type that is taxable in Oklahoma, and if the seller has not established nexus either in connection with the original sale of computer network components or in connection with the sale of the maintenance services, as set out in responses to question number 1 and 2 above, it would not have nexus with Oklahoma.

However, if the seller has agents or persons who perform installations and/or service the products sold by the company, a physical presence would be established and thusly, create nexus in Oklahoma and the company would be required to collect Oklahoma sales tax. Please see Commission Rules 710:65-1-8 and 710:50-17-3.

This response applies only to the circumstances set out in your request of April 23, 2001. 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