OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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May 10, 2001

Re: Our File Number 01-52; Taxability of nutritional, vitamins and dietary supplements products

Dear

The Oklahoma Sales Tax code contains no exemption of food or nutritional supplements, etc. from the levy of sales tax unless the food or food product is purchased with foods stamps. Therefore, the products listed on the labels that were submitted as photocopies with your correspondence are subject to Oklahoma sales or use tax pursuant to Section 1354 (1)(A) and Section 1402 of Title 68.

Please be advised that 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 that occurs outside Oklahoma, i.e. sales or purchases from an out-of-state vendor.

For tangible personal property shipped to Oklahoma residents which are solicited through advertisements and direct mailings, your company 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. Should you have agents making sales from inventory within this state you would be required to collect Oklahoma Sales Tax, as might be the case if you travel to shows, fairs or exhibitions.

If you are a multilevel company, which ships its merchandise from out-of-state, directly to consultants or distributors, who distribute the products to their customers, the sales are subject to Sales Tax and the shipping and handling charge if separately stated on the invoice, would not be subject to tax. See Oklahoma Tax Rules 710:65-19-70(b). Also see Oklahoma Tax Rules 710: 65-19-214 and 710:65-21-1 through 710:65-21-5 and Sections 1401 and 1402 of Title 68.

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 actual point of sale is the determining factor in computing the sales tax rate in Oklahoma. If you take orders by telephone or by mail, accept payment by check or credit card, and then send the items to your customer, the point of sale is the place of delivery and the combination of state, city and county tax at that location is what you would collect and remit. (See Oklahoma Tax Commission Rule 710:65-17-1 and the list of city and county tax rates for sales and use tax.)

Copies of the statues and rules referenced herein, a registration packet and city and county tax rate are enclosed. If I can be of further assistance, please contact me at (405) 521-3133.

This response applies only to the circumstances set out in your request of April 26, 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