

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

May 17, 2001

Re: Our file Number LR-01-057; Sales Tax Due on Third Party Drop Shipment Sales.

Dear Sir or Madam:

This is in response to your inquiry concerning the subject referenced above. I have scanned into this letter, your fact situation. It is followed by our response.

Fact Scenario

"We have a client, a manufacturer, who sells to a distributor, both of whom are located outside the state of Oklahoma; the manufacturer is registered to collect Oklahoma sales and use tax and the distributor is neither registered nor required to collect Oklahoma sales or use taxes; and the manufacturer has nexus in Oklahoma, but the distributor does not. The distributor's customer is located in Oklahoma and at the direction of the distributor the manufacturer drop ships its products directly to the distributor's customer in Oklahoma.

Since the distributor does not have nexus in Oklahoma and is, therefore, not registered to collect sales or use tax in Oklahoma, the distributor cannot provide the manufacturer with an Oklahoma exemption/ resale certificate. Based on a review of your state's published pronouncements, we were unable to determine if an exemption/ resale certificate issued by the distributor's customer directly to the manufacturer or issued to the distributor and then forwarded to the manufacturer or whether some other method of proving a resale exemption would be sufficient to satisfy the state's requirements for proof of exemption and relieve the manufacturer from the responsibility for sales or use tax collection in Oklahoma.

If the distributor is unable to provide the manufacturer with its exemption/ resale certificate, for the reasons discussed above, and your state will not accept an exemption/ resale certificate from the distributor's state, will your state accept, as sufficient proof to satisfy your state's requirements for exemption and, therefore, relieve the manufacturer from the responsibility of sales or use tax collection in Oklahoma, either an exemption /resale certificate issued by the distributor's customer directly to the manufacturer or one issued to the distributor and then forwarded to the manufacturer or some other proof of resale exemption?

If you will not permit the manufacturer to accept a certificate from the distributor's customer as proof of exemption for both the distributor and the distributor's customer or will not accept some other method of proving exemption, how should the manufacturer calculate the tax base upon which to base the tax, e.g., its sales price to the distributor, that price plus a specific mark-up, etc.?"

Response

Oklahoma will recognize that the sale from the manufacturer to the distributor is an **exempt** sale for resale so long as the physical delivery of the products is not transferred by the manufacturer to either the distributor or to the distributor's customer in this state. The applicable rule specifies that possession is taken inside Oklahoma if:

- physical delivery is made by the seller to the buyer in this state, or
- delivery is made in this state by delivery in the seller's own vehicles, or
- the tangible personal property is installed in this state by the seller or the seller's agent.

If delivery is made in this state, while the sale would still be a sale for resale, it would not qualify as being exempt unless the distributor held an Oklahoma Sales Tax Permit.

To substantiate that the distributor is engaged in the business of selling the articles being purchased, it should give the manufacturer an exemption certificate based on its home state registration as a vendor.

This response is based on Oklahoma Tax Commission Rules 710:65-13-200 and 710:65-15-1. Copies are enclosed.

This response applies only to the circumstances set out in your request of May 2, 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,
OKLAHOMA TAX COMMISSION



Michael G. Pillow
Tax Policy Analyst