

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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October 11, 2001

Re: Our File Number LR-01-156; Nexus questionnaire

Dear :

This is in response to your inquiry regarding your nexus study to determine if your client meets the definition of "doing business" and the tax responsibilities related to sales/use tax and/or corporate/franchise tax in Oklahoma. I have restated your questions below, followed by our response.

Please note the pertinent Oklahoma regulation and rules concerning nexus and the administration of sales/use tax and corporate/franchise tax in Oklahoma.

Sales/Use Tax:

Nexus for sales tax purposes is not specifically defined by Oklahoma Statute or Commission Rule, "maintaining a place of business in this state" is defined at Section 1352 (8) of Title 68 and further illustrated in Rule 710:65-1-8. Additionally, Commission Rule 710:65-15-1 pertains to sales related to interstate commerce. For use tax see Commission Rules 710:65-21-3 through 710:65-21-6 and Section 1401(10) of Title 68 and 1407 of the same title.

Please note the following comments regarding vendor's responsibilities for taxable sales transactions made 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 that occurs outside Oklahoma, i.e., 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. For sales shipped to Oklahoma residents which are solicited through advertisements and direct mailing or telephone orders, your client 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 your client have agents making sales from inventory within this state they would be required to collect Oklahoma sales tax, as might be the case if your client travels to shows, fairs or exhibitions, delivers and/or installs the products sold by their company. See Commission Rules 710:65-21-1, 710:65-21-2, 710:65-21-5, 710:65-21-6 and 710:65-21-7.

Corporate Income Tax:

Income Tax - Oklahoma Tax Commission Rule 710:50-17-3 and 710:50-17-4 sets out activities that create nexus for income tax purposes. Please fill out and return the enclosed questionnaire so we can answer your question correctly based on the entire range of business done by your client.

Franchise Tax:

Franchise Tax - Section 1201 of Title 68 provides that the Franchise Tax Code applies to every corporation qualified to do or doing business in Oklahoma in a corporate capacity, and specifically includes corporations organized under the law of a state other than Oklahoma. Section 1202 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." It is the opinion of the Office of the General Counsel that this definition is sufficiently broad to include out-of-state corporations with minimal contacts in Oklahoma. As such, a corporation receiving Oklahoma referrals and reporting sales subject to Oklahoma sales tax would be required to file franchise tax returns and pay the resulting taxes. It does apply also to corporations holding title to tangible personal property, which is physically located in Oklahoma.

1. Has nexus been established by an out of state (OOS) taxpayer when:

A) The OOS taxpayer delivers its product via a company vehicle to a customer within your state?

Response: Yes, for deliveries made in your client own company vehicle would establish a tax presence with Oklahoma.

B) The OOS taxpayer delivers its product via a common carrier to a customer within your state?

Response: No, if the vendor does not have a tax presence in Oklahoma. Please note the above criteria that would establish a tax presence with Oklahoma.

C) The OOS taxpayer's salesman travels within your state to solicit sales?

Response: Yes, note the above criteria regarding agents operating in the state.

D) The OOS taxpayer's salesman solicits sales calls by telephone?

Response: No, if your client does not have physical presence in Oklahoma. Please note the above criteria that would establish a tax presence with Oklahoma.

2. Once nexus is established, how long is the OOS taxpayer responsible to your state (i.e. 12 months after transaction, indefinitely)?

Response: The length of time for vendor's responsibility would be determined by current activity for tax obligations.

Copies of the statutes and rules referenced herein and Commission Rule 710:65-7-6, which deals with Vendors' relief from liability and duty to collect sales tax, are enclosed. To access the Oklahoma Tax Commission Home Page, our web address is www.oktax.state.ok.us.

If I can be of further assistance, please feel free to contact me.

This response applies only to the circumstances set out in your request of September 27, 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.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosures