

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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December 27, 2001

Re: Our File No.LR-01-194-Catered Mixed Beverages

Dear

Pursuant to your Memorandum, dated December 19, 2001, you requested a ruling on behalf of the (hereinafter "University") in determining the correct method for collecting and reporting taxes on catered mixed beverage sales. The facts as stated in your Memorandum are as follows:

"Our Auxiliary has Conference and Events. We contract with a caterer to supply all food and drinks for events. They recently obtained an alcohol license to serve mixed drinks at functions. I am thinking that all alcohol sales are taxable. This is the situation. The caterer collects funds for the cash bar at the time of the event. There is a three hundred dollar minimum for a cash bar. Ex (sic) The caterer collects two hundred seventy dollars during the event. The college turns around and bills the customer thirty dollars. The difference between the minimum and the amount collected."

You stated further that, "The caterer considers the college to be their customer and since the college is tax exempt, they do not collect or remit sales taxes for items 'sold' to the college. The college in turn bills the customer."

The questions raised in your Memorandum and our responses follow:

Question 1: Should the amount we are charging up to the minimum price be taxable since no beverages were sold for that amount?

Answer: In the facts provided, the caterer is said to have "recently obtained an alcohol license". Pursuant to Title 37 Oklahoma Statutes Section 576, it is the licensee who is responsible for collecting, reporting and remitting taxes on sales of alcoholic beverages. You are correct when you state that you are "thinking that all alcohol sales are taxable." Article 28, Section 8 of the Constitution of the State of Oklahoma, however, prohibits the "State of Oklahoma, or any political subdivision thereof, or any board, commission or agency thereof, from engaging in any phase of the alcoholic beverage business." Therefore, the University cannot engage in any phase of the alcoholic beverage business and thus has no authority or responsibility to collect, report or remit tax on sales of alcoholic beverages. The caterer as the holder of the license to sell alcoholic beverages is the liable entity and pursuant to Section 576, mixed beverage gross receipts tax is due on the "total gross receipts" of the holder of the license.

Question 2: Should we be charging the customer the tax for the amount of alcohol sold (or the minimum price for cash bar) when the caterer was collecting the funds up front?

Answer: See answer to Question 1, above.

Question 3: Should the caterer be collecting and remitting tax on the portion that they collect?

Answer: Yes, both, mixed beverage gross receipts tax and sales tax. See, also, answer to Question 1, above.

In addition to the facts as stated in your Memorandum, our office requested a copy of the contract used by the University for such catered events. We reviewed the contract provided, however, it did not contain any reference to the cash bar nor the guaranteed minimum to the caterer on the cash bar sales which is the subject of your request. The only reference to alcoholic beverages in the contract is, "Any customers requesting alcohol for any event must read and sign the Guidelines and Policy Statement for Services of Alcoholic Beverages and receive approval by the _____". After reviewing your Memorandum and the Contract, along with the relevant statutes involved, it is the ruling of this office that the University can best avoid the appearance that it is "engaging in any phase of the alcoholic beverage business" by requiring the caterer and the 'external' customer to negotiate a separate contract regarding the cash bar. Since your current Contract does not include reference to dollar amounts, the cash bar or the minimum guarantee on the cash bar, a separate contract should not create an unnecessary burden for the University or its caterer.

This response applies only to the circumstances set out in your request of December 19, 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 we can be of further assistance, please feel free to contact Brenda Sullivan or me.

Sincerely,
OKLAHOMA TAX COMMISSION



Evelyn B. Phyffer
Tax Policy Analyst
Enclosures (2)