

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133  
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May 16, 2002

Re: Our File Number LR-02-054; Tax basis of free merchandise

Please let this letter serve as confirmation of your understanding that tangible personal property purchased out of state and shipped into Oklahoma for use or consumption is subject to use tax pursuant to Title 68, Section 1402 of the Oklahoma Statutes. The taxable basis is the "sales value" of the property at the time it was withdrawn from stock for use and/or consumption by a vendor or a manufacturer. See Commission Rule 710:65-1-2 relating to "sales value". However, a credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State, but such credit must be computed by applying the rate of sales or use tax paid to another state to the "sales value" of the property at the time it enters Oklahoma. Please note that Section 1404 of Title 68, specifically states that "no credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in Oklahoma". Further, the credit allowed may be up to the state use tax rate of four and one half percent (4 ½%), depending on the other state's rate.

Therefore, the "free merchandise" given to a host or hostess of a sales solicitation party is subject to Oklahoma use tax. The company that is giving the free merchandise away should remit use tax based on the "sales value" of the products. Oklahoma use tax is a combination of the state rate of four and one-half percent (4 ½%) and any applicable city or county tax. If I can be of further assistance, you may contact me at (405) 521-3133.

Sincerely,

Brenda J. Sullivan  
Tax Policy Analyst