OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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March 3, 2003

Re: File Number LR-03-023; Questionnaire (signage, installation, freight, etc.)

This is in response to your inquiry concerning your company's sale of custom made signage in Oklahoma. I have scanned your fact scenario and questions into this document, followed by our responses. Our responses are based on the fact situation set out in your letter.

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.

The determination as to which city or county tax is due depends on the physical location of the transfer or the point of sale of the items subject to sales tax. "Point of Sale" is defined at Section 1352 (13) of Title 68 and Commission Rule 710:65-17-1. Note: 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 use tax is the same as the sales tax rate. Also see the chart for sales and use tax rates.

"We are doing our annual update of our tax files to be sure that we are aware of any new sales/use tax issues that would affect our company. We are a company that sells custom made signage into your state where we are currently registered. The signage is either attached to a building or a pole that is concreted into the ground. We contract with an independent contractor to install the signs. The installation charges are separately stated

on the billing and include charges for surveys, permits, engineering and repairs. We also contract with an independent freight carrier to deliver the sign to the site for installation. All freight charges are separately stated on the billing. Both the installation and the freight are charged to the customer at a rate higher than our companies cost.

Our questions based on the above circumstances are as follows.

- At the point of sale should we as the seller be charging the customer sales tax or is this a case where we would pay use tax?

Our Response: Sales tax would be due since you make deliveries using an independent freight carrier and have an independent contractor to perform the installation.

- If this is a case of use tax, how is the use tax calculated?

Our Response: Please see the above comments noting sales and use tax rates.

- Should tax be charged on the freight?

Our Response: The sales tax treatment of transportation and delivery charges, i.e. freight is governed by Oklahoma Tax Commission Rule 710:65-19-70 and Title 68 Oklahoma Statutes Section 1354 (1) (C). Charges that result from shipping merchandise to vendor's customers, i.e. the costs of transportation from the vendor's inventory to the customer, are not subject to sales or use tax, if they are separately stated. This exemption applies to all sales, taxable and non taxable.

Additionally, handling charges associated with the sale of tangible personal property, if they represent an element of cost to a seller, should be included in "gross receipts" or "gross proceeds", the total amount of consideration for the sale of any tangible personal property or services.

- Should tax be charged on all components of the installation?

Our Response: Since July 1, 1997, services related to the sale of signs have not been subject to sales tax in Oklahoma. Therefore, only the charge, separately stated from the services about which you inquire, for the sign itself is subject to sales tax. Separately stated charges for installation, surveys, freight, engineering and repairs and city permits are not subject to sales tax. Please refer to Oklahoma Tax Commission Rule 710:65-19-311.

- If tax is charged on the freight and installation, do we charge on the selling price or only on the element of profit?

Our Response: Sales tax is due on the "gross receipts" or "gross proceeds" of the sale of the sign. See 68 O.S. Section 1352 (7).

- Are we obligated to collect local taxes in your state?

Our Response: Yes.

- If we are obligated to collect the local tax should those taxes be remitted to the state or the locality?

Our Response: All applicable state, city and county sales tax are remitted to the state for appropriate disbursements to city and county governments.

- Do you have any special rules or exemptions that apply to your state relating to our situation?

Our Response: If you separately state the charges for any repair parts used in the repair of the sign in your invoice to your customer, you should charge sales tax on the repair parts. Conversely, you may claim an exemption for resale on the repair parts, using your Oklahoma sales tax permit, when the person who is actually providing the repair invoices you. Please refer to Commission Rule 710:65-13-200.

- Please provide any applicable code sections that would apply to signage, installation and freight for our future reference.

Our Response: Please refer to the rules referenced above also see Commission Rules 710:65-19-158 and 710:65-19-159, relating to installation charges.

Enclosed find Statutory and Commission Rules referenced herein. If I can be of further assistance please contact me.

Sincerely,

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst

Enclosures