

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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March 27, 2003

This is in response to your inquiry concerning various aspects of the administration of sales and use tax. Your scenarios and questions and our responses are set out below.

1. Situs Determination for Inventory Removals:

A company has multiple locations within the state. Location A removes a product from inventory and sends it to Location B for internal use. The product will not be used in an exempt manner. My questions are as follows:

- a) What is the situs location of the inventory removal? Location A, where the product is removed from inventory or Location B, the location where the product will be used or consumed?
- b) Is the withdrawal from inventory considered an exercise of any right or power of the product? If so, does this mean that the situs is determined to be the location where the product is first removed?

Response to question 1:

In Oklahoma, the taxable event for the imposition of local sales taxes is the location of where the product is first removed from an inventory that was being held in Oklahoma, for resale or for use in manufacturing.

2. Taxable Basis for Inventory Removals:

After the situs of the Inventory Removal has been determined then the taxable basis for Consumers Use Tax purposes must be determined. My questions are as follows:

- a) What is the taxable basis for Manufacturers? Should the tax be calculated on the total manufactured cost, which includes materials, labor, and overhead, the material cost only, the wholesale cost, the retail cost, the original purchase price, or the sale price? If basis is the sale price, what is the definition of sales price? Is it the original cost or what the user would charge for the item on a sale?

Response to question 2a:

The taxable basis for the manufacturer that withdraws an article from its inventory of manufactured goods is "...the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing;..." [Oklahoma Tax Commission Rule 710:65-1-1]

- b) What is the taxable basis for Resellers? If the product was originally purchased for resale, should the tax be calculated on the total cost, which includes original purchase price, labor, and overhead; the wholesale cost; the retail cost; the original purchase price only; or the sale price? If basis is the sale price, what is the definition of sale price? Is it the original cost or what the user would charge for the item on a sale?

Response to question 2b:

It is the "sales value" as defined in Oklahoma Tax Commission Rule 710:65-1-1, as required by Rule 710:65-1-9 and Rule 710:65-3-4. It is the larger of the cost of the goods when purchased or the price at which they would be sold to the vendor's best customer.

- c) What is the taxable basis if the item is a product sample that is given away free of charge? In this instance there is no retail-selling price because the sample is not manufactured with the intent of being resold.

Response to question 2c

If the good is given away by the manufacturer, the price is the "sales value" to a manufacturer as noted in the response to question 2a. If the good is given away by a retailer, since it was never purchased by the retailer with the intention of being resold, the retailer owes sales or use tax on the purchase price when it was purchased.

3. Taxable Basis for Fixed Assets:

A company has multiple locations. These locations are both in-state and out-of-state. The company transfers a fixed asset from Location A to Location B for use at the new location. My questions are as follows:

- a) What is the taxable basis of fixed assets that are transferred into the state after having been used in another state? Should the taxable basis be the net book value, the original cost, the fair market value, the use tax basis for tangible personal property provided in statute if the law does not address asset movements, or another value?

Response to question 3a:

The tax is due on the fair market value at the time of importation. Please see Oklahoma Tax Commission Rule 710:65-19-76.

- b) Will the taxable basis differ for fixed assets that are transferred from one local jurisdiction to another local jurisdiction within the same state?

Response to question 3b:

No additional use tax is due upon the transfer of a fixed asset from a location in one local jurisdiction in Oklahoma to another local jurisdiction in Oklahoma. Please see 68 O.S. Section 1411.

4. Direct Pay Permits:

A company has been granted a Direct Pay Permit and, therefore, does not pay tax on any of its purchases. However, the company self accrues use tax instead. My questions are as follows:

- a) How should intrastate purchases be handled? Should these transactions be taxed under the Sales Tax laws as they would be if the vendor were to collect the tax, or are they subject to the Use Tax Laws? This question becomes extremely pertinent in instances where localities have enacted a sales tax but not a use tax.
- b) Do Direct Pay Permits cover both in-state and out-of-state purchases?

Response to question 4:

Direct Payment Permits are to be used to make both intrastate and interstate purchases, exempt from the applicable sales or use taxes. The holder of the Direct Payment Permit is responsible for reporting and remitting sales tax on intrastate purchases and use tax on interstate purchases. In the same manner, local sales and use taxes would be due based on whether the original purchase would have been subject to sales tax or to use tax. Please see Oklahoma Tax Commission Rule 710:65-9-10.

5. Reciprocity:

A company has multiple locations. These locations are both in-state and out-of-state. The company transfer's a fixed asset from Location A to Location B for use at the new location. If the item were originally purchased out-of-state, the Sales Tax would have been paid. My questions are as follows:

- a) Does your state have reciprocal agreements with other states?
- b) If your state has reciprocal agreements with other states, can you please provide us with a list of those states?
- c) For those states where a reciprocal agreement exists, with your state, how are taxes paid to these states applied when assets are moved from an out-of-state location? Should state tax paid in another state be credited against the current state use tax due, the county tax paid in another state be credited against the county use tax due, and the city tax paid in another state be credited against the city use tax due, etc? Or should the total combined sales tax paid be applied against the current combined use tax due?

Response to question 5, parts a, b ,and c:

We have no reciprocal agreements with other states, instead, the Use Tax Code allows for a credit in the amount of sales and use tax paid another state, if the other state's rate is lower than Oklahoma's rate and up to the amount of tax due in Oklahoma if the rate in the other state is greater than or equal to the rate in Oklahoma. The county use tax paid in another state may be similarly credited against the county use tax due and any municipal use tax paid in another state may be similarity credited against the city use tax due.

- d) Does your state have reciprocal agreements at the local level (for state administered local taxes) when a fixed asset is moved from one in-state location to another in-state location?
- e) If reciprocal agreements exists at the local level can you please provide us with a list of those cities, counties, etc. that have reciprocal agreements?
- f) For those localities were a reciprocal agreement exists, within your state, then how are taxes paid to these local jurisdictions applied when assets are moved from one in-state location to another in-state location? Should the county sales tax paid be credited against the county use tax due, and the city sales tax paid be credited against the city use tax due, etc? Or should the total combined local sales tax paid be applied against the current combined use tax due?

Response to question 5, parts d, e, and f:

There are no reciprocal agreements at the local level for when assets are moved from one in-state location to another. The tax would have been due at the time of first use and further transfers in Oklahoma will not cause additional tax payment or reporting responsibilities.

6. Credit:

If the item were originally purchased out-of-state, the Seller's Use tax would have been paid. If the out-of-state vendor were not registered to collect in the original state, a Consumers Use tax would have been self-assessed. My questions are as follows:

- a) Is credit given for Use Tax Paid in another state?
- b) Are all taxes previously paid on a transferred item of tangible personal property allowed as credit, or are there limitations?

Response to question 6:

Please see our response to question 5, parts a, b, and c.

This response applies only to the circumstances set out in your request of January 31, 2003. 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



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