OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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March 19, 2003

Re: Our File Number LR-03-037; Refund of Sales Tax on Sales for Resale

This is in response to your inquiry concerning the possibility of your client being eligible for a refund of sales or use tax paid on repair parts that were incorporated into motor vehicles that your client leased to another entity. Your statement of facts is set out below, followed by your statement of the issues and our response.

Your Statement of Facts

The Company is a lessor of over-the-road transportation equipment, primarily tractors and trailers. The Company is headquartered outside of Oklahoma and manages its daily affairs from the out of state headquarters. However, the Company operates a repair and maintenance facility in Oklahoma to service its leased vehicle inventory.

The Company purchases the tractors and trailers for the express purpose of leasing the equipment, in the same form as acquired, to interstate motor carriers operating throughout the United States. The transportation equipment *is transferred to* the *lessees* at points throughout the United States and is exclusively used in the lessees interstate operations. The vehicles are registered in the name of the lessees for interstate operations under the International Registration Plan ("IRP").

The leases are structured as operating leases with initial terms equal to or greater than one year. The leases do not contain nominal or less than fair market purchase options and are considered true leases for accounting purposes. All lease contracts are with one or more interstate motor carriers who have claimed exemption from the sales or use tax imposed by those taxing authorities which have jurisdiction over the lease transactions. The lessee(s) are related parties, but are separate legal entities.

The lessor warrants that all underlying equipment will be in working order and the lessor will, at its option, repair or replace the equipment as needed. However, any damage or excess wear caused by the lessee will be the responsibility of the lessee. In order to ensure the equipment remains in working order, the lessor operates repair and maintenance facilities throughout the United States. The lessor will inspect and make any necessary repairs or replacements of the leased equipment. All costs associated with these repairs and replacements are the responsibility of the lessor under the general understanding that the lease price includes both the use of the equipment and the aforementioned warranty. In certain situations, the lessor may have recourse against the original equipment manufacturer ("OEM") for components repaired or replaced that are covered under the OEM's warranty. When this occurs, the lessor will withdraw a part from its inventory and will receive a reimbursement payment based on a predetermined price schedule. Under this indemnity program, the amount received by the lessor may be higher or lower than its actual costs.

The Company is registered for sales and use tax in The Company acquires all vehicles for resale and accepts the lessees' interstate common carrier exemption in lieu of sales and use tax where applicable. Noting that the vehicles are subject to the Oklahoma Motor Vehicle Excise Tax and not the sales tax, the Company has never considered itself to be a retailer in Oklahoma and, therefore, never registered for sales and use tax purposes in Oklahoma. Internal analysis determined that the Company had erroneously concluded that its purchases of repair and maintenance parts for incorporation into the underlying transportation equipment were subject to sales or use tax. Thus, sales tax was paid on these purchases. The Company is in the process of submitting an application for an Oklahoma sales tax permit.

Although, the availability of the resale exemption is clear and well established, the Company failed to issue a resale certificate to its vendors under the belief that tax was applicable to these purchases.

Your Statement of Issues

1. May the Company seek refunds of the sales tax erroneously paid to vendors on purchases of repair and maintenance parts that qualify for resale?

2. Considering the fact that the Company did not act as a retailer within Oklahoma and did not possess an Oklahoma sales tax permit at the time of purchase, may it claim a refund for sales taxes paid prior to the issuance of an Oklahoma sales tax permit, or, may it claim a resale exemption based on its reseller's number which was issued prior to the date of the noted purchases?

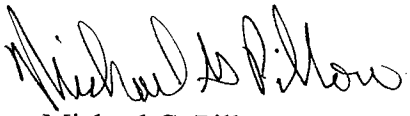
Our Response

Under the Oklahoma Sales Tax Code and Oklahoma Tax Commission Rule 710:65-13-200, the sale for resale exemption is available, if the vendor is an Oklahoma resident, only if an Oklahoma Sales Tax Permit has been issued to the vendor claiming the exemption. The sales for resale exemption is not available to an entity which is a resident of Oklahoma but which has not been issued an Oklahoma Sales Tax Permit.

This response applies only to the circumstances set out in your request of February 6, 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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