

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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April 9, 2003

RE: Our File Number LR-03-045; Tax treatment of mail order gift transactions/shipped to a recipient

This is in response to your request for a ruling on the transactions described in your correspondence pertaining to your client's mail order gift business operations as to their sales or use tax collection responsibility in Oklahoma.

Please note the pertinent Oklahoma regulations concerning the administration of sales tax in Oklahoma Tax Commission

Oklahoma Statutes clearly place the burden on the seller to collect and remit sales tax on the sale of taxable personal property and services, as the statute requires the consumer or user to pay sales tax to the seller to be held in trust for the state. "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed." (710:65-1-7). "For consumer use tax purposes, it is presumed that tangible personal property sold, leased or rented by any person for delivery in this state is sold, leased or rented for storage, use or other consumption in this state. The burden of proving the contrary is on the purchaser." (710:65-1-4 (b) and 68 O. S. § 1365). A sale as defined pursuant to Title 68 Section 1352 (15), is "the transfer of either title or possession of tangible personal property for a valuable consideration..." "Consideration" means and includes, but is not limited to the price arrived at between the purchaser and vendor..." (710:65-1-2).

Consequently, the purchaser of a mail order gift is the consumer to whom a taxable sale is made. The tax consequence is upon the purchaser rather than the recipient of the mail order gift. Although, the recipient receives the gift, the purchaser benefits from the purchase because of the consideration given. The responsible parties to a mail

order gift transaction are the Vendor, the seller of the tangible personal property and the Vendee, the purchaser of the mail order gift. Further, the sale transaction of a mail order gift is consummated when the transfer of either title or possession of tangible personal property occurs.

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.

A vendor selling into Oklahoma, from an inventory of goods located outside Oklahoma, with delivery made via a common carrier, does not have nexus for either sales or use tax in Oklahoma solely as a result of such sale. Provided, however, if the vendor has a physical connection with Oklahoma as a result of other activities, the nexus created by those activities would require, at the least, the vendor to register as a use tax vendor and charge, report and remit Oklahoma state and any local use tax in effect at the point in Oklahoma at which the goods are to be used. Please refer to Oklahoma Tax Commission rule 710:65-15-1 titled Sales related to interstate commerce.

Your request for a ruling of the following specific issues is being based upon the facts that you submitted under item 1 of your correspondence and Oklahoma Statutory and Commission Rules referenced above. The subsections noted below in our responses are in reference to Commission Rule 710:65-15-1.

1.) Does Company have a Oklahoma sales or use tax collection responsibility for the transactions described in the following scenarios:

a. Purchaser, Recipient and Warehouse all located within Oklahoma.

**Our Response:** Yes, see subsection (b).

b. Purchaser and Warehouse are located within Oklahoma, Recipient is not.

**Our Response:** No, see subsection (b)(2)(B).

c. Purchaser and Recipient are located within Oklahoma, Warehouse is not.

**Our Response:** Potential for use tax. Use tax attaches to items brought into the state. See subsection (c)(1)(A) and 68 O.S. § 1402.

d. Purchaser is located within Oklahoma, Recipient and Warehouse are not.

**Our Response:** No, see subsection (b)(2)(B).

e. Purchaser is located outside of Oklahoma, Recipient and Warehouse are within Oklahoma.

**Our Response:** Yes, see subsection (b)(1).

f. Purchaser and Warehouse are located outside of Oklahoma, Recipient is within Oklahoma.

**Our Response:** Potential for use tax, same as (c) above.

2. If, under any of the scenarios posed above, Company does not have a sales or use tax collection responsibility because of the "gift" nature of the transaction, does the fact that the Purchaser and the Recipient are different people at different addresses, coupled with the gift nature of Company's business, provide sufficient evidence that the transaction is a gift?

**Our Response:** Under Oklahoma law, it is irrelevant that the Purchaser and the Recipient are different people or that the purchase is a gift. As stated above, the purchaser of a mail order gift is the consumer to whom a taxable sale is made. The tax consequence is upon the purchaser rather than the recipient of the mail order gift. Although, the recipient receives the gift, the purchaser benefits from the purchase because of the consideration given. As previously stated, the responsible parties to a mail order gift transaction are the Vendor, the seller of the tangible personal property and the Vendee, the purchaser of the mail order gift.

Please find enclosed Statutes and Commission rules referenced above. If I can be of further assistance please contact me.

This response applies only to the circumstances set out in your request of February 14, 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,

  
Brenda J. Sullivan  
Tax Policy Analyst

Enclosures