

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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October 30, 2003

Re: Our File Number LR-03-191; Non-resident vendor shipments

Dear

This is in response to your request for a written ruling on the questions in your inquiry of September 29, 2003. The facts, scenario and questions raised in your letter have been set out below, followed by our responses and the related Oklahoma Tax Commission Rules and Oklahoma Statutes are referenced therein.

FACTS

The seller is registered to collect sales or use tax in your state.

The out-of-state purchaser has no nexus in your state and is not registered to collect your state's sales or use tax.

The third party is located in your state and is registered to collect your state's sales or use tax.

SCENARIO

The seller sells a product to the out-of-state purchaser who has the seller deliver the product to the purchaser's customer (third party) located in your state (drop ship). The seller bills the out-of-state purchaser who is not registered with your state to collect and remit sales tax

QUESTIONS

- 1) The seller accept a valid out-of-state exemption certificate from the purchaser? The exemption certificate provided by the purchaser is from the purchaser's home state.

Response: Yes, the exemption certificate should list the resale number issued by its home state as evidence that it is in the business of making purchases for resale. The seller should also obtain documentation from the purchaser stating that it is:

1. Not an Oklahoma resident
2. Engaged in the business of making sales of the items being purchased.
3. Purchasing the items in question for resale.

This documentation should be in writing and should be signed by a person authorized to bind the vendor.

- 2) Must the purchaser be registered with your state to issue your state's exemption certificate to the seller?

Response: Oklahoma cannot require a vendor who has no connection with Oklahoma, to collect the state and any municipal use tax. The tax is still due and it becomes the responsibility of the Oklahoma purchaser to pay the tax. If the Oklahoma purchaser who made the purchase from Buyer corporation for resale held an Oklahoma sales tax permit, then of course, no tax would be due on that purchase.

- 3) Can the seller accept the third party's valid exempt certificate? If so, must the certificate be addressed to the purchaser or the seller?

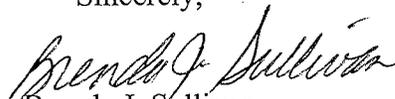
Response: The exemption status of the purchaser's customer, the Oklahoma buyer, would not determine the status of the seller's customer, the out-of-state purchaser. Therefore, the seller would need to obtain its customer's, the out-of-state purchaser's, valid exempt certificate and not the third party's certificate.

- 4) Can the seller accept any other form of documentation from the purchaser to exempt the purchaser from sales tax? Examples: copy of invoice between purchaser and third party, written statement from purchaser indicating they do not have nexus and are reselling the product, an affidavit from the third party that they will pay the tax directly to your state, etc.

Response: Yes, refer to the response to question 1 above. Please note that Oklahoma Tax Commission Rule 710:65-7-6, a copy of which is enclosed, relates to a vendor's relief from the liability to collect and remit sales tax, and describes in detail the documentation needed to be acquired and retained.

Find enclosed Commission Rules 710:65-15-1 and 710:65-7-6. If I can be of further assistance, please contact me.

Sincerely,



Brenda J. Sullivan
Tax Policy Analyst

Enclosure

cc: Bill Winters, AMD