OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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February 19, 2004

RE: Our File Number LR-03-261.1;Beverage Vending/Fountain Equipment Transactions

Please let this letter serve as an addendum to our letter dated February 12, 2004 to clarify our response to question b. in the category for "Full-Service Vending Equipment & Parts (Purchase Transactions)". As stated in that letter, machines and parts that are located on tax exempt entity/organization premises are subject to sales tax. However, if the coin-operated vending devices are owned by and located on premises of the exempt entity then it would not be taxable.

Further, Commission Rule 710:25-1-16 provides an exemption for devices installed on federal military bases. In that the vending equipment merely has to be installed on federal military bases for the exemption to apply, machines and parts for full-service vending that are installed on federal military bases would be exempt.

This response applies only to the circumstances set out in your request of November 22, 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. Enclosed find Commission Rule 710:25-1-16. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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February 12, 2004

RE: Our File Number LR-03-261;Beverage Vending/Fountain Equipment Transactions

This is in response to your inquiry for assistance in updating your taxability guidelines for beverage vending/fountain equipment transactions. I have scanned your fact pattern and transactions into this letter, followed by our response.

"Fact Pattern:

Company A is a manufacturer and distributor of non-alcoholic beverage products. Company A also has vending and fountain operations as follow:

1. Full-Service Vending - Company A owns and operates the vending machine at various premises. Company A stocks the machines and collects the gross receipts. The premise owner receives a commission on the sales.

2. Vending Equipment Rentals - Company A rents vending machines to customers for a monthly rental fee. The customer is responsible for stocking the machine and retains any gross receipts derived.

3. Vending Equipment Loaner - Company A loans (no charge) machines to customers who agree to only stock Company A products in their machines. The customer is responsible for stocking the machine. The customer retains all vending receipts.

4. Fountain Equipment - Company A loans (no charge) fountain equipment to restaurants and schools who agree to only serve Company A's products through the equipment. Fountain equipment is equipment which mixes and produces a carbonated soft drink (not canned product). C02 is combined with water and syrup to produce the beverage product served.

Questions:

Full-Service Vending Sales (Gross Receipts)

a. Are the gross receipts subject to sales tax? If yes, how is the tax calculated? (i.e. can the tax be backed out since it is included in the vending price? Is there a reduction allowed for the commission amount paid to the premise owner?)

Our Response: Sales and or rental of tangible personal property that are made through vending machines, which are considered "Coin-operated vending devices" as defined at Section 1501(4) of Title 68 O.S., are exempt from sales tax but the machine must bear a decal. The annual fee for the decal, which is in lieu of sales tax, is found at Section 1503. Please refer to Section 1504 for application and issuance of decal and display of such.

b. Are there any special food tax rates or exemption for beverage vending transactions?

Our Response: No.

c. Are "fruit juices" subject to tax? If no, are there special requirements as to the amount of real fruit juice in the drink?

Our Response: Yes. However, the sale of tangible personal property such as "fruit juices" that is made through "coin-operated vending " and "coin-operated bulk vending" devices are considered sales for resale. The operator of the vending machine will be able to purchase "fruit juices" or other items that will go into "coin-operated vending machines" held for resale exempt from sales tax, provided they hold a valid Oklahoma sales tax permit. A registration form needs to be completed in order to obtain a sales tax permit. You may contact the Taxpayer Assistance Division at (405) 521-3279 for an application. Monthly sales tax reporting forms will be automatically sent after the permit has been issued.

d. At what location rate is "local" sales tax calculated?

Our Response: Non applicable.

e. Are there any exemptions from sales tax if the vending machines are located on the premise of an exempt organization?

Our Response: Yes, please see Section 1503.1 of Title 68 O. S.

f. Are there any special exemptions for vending receipts?

Our Response: Non applicable.

Full-Service Vending Equipment & Parts (Purchase Transactions)

a. Is the purchase of vending equipment, parts or special devices (i.e. coin attachments, etc.) subject to tax?

Our Response: Yes. Section 1354(1)(A) of Title 68 specifically levies a sales tax on the sale of tangible personal property except newspapers and periodicals.

b. Are machines and parts that are located on tax exempt entity/organization premises subject to sales tax?

Our Response: Yes, if the coin-operated vending devices are owned by and located on premises of the exempt entity.

c. Are there any special exemptions available for vending equipment, parts or devices?

Our Response: No.

Vending Equipment Rentals (Rental Receipts)

a. Are the receipts received from vending equipment rentals subject to sales tax? If yes, at what location rate is the "local" sales tax calculated?

Our Response: Yes, see Commission Rule 710:65-1-11 for taxability and 710:65-18-4 for the tax rate location.

b. Are the receipts received from vending equipment rentals to exempt organizations subject to sales tax?

Our Response: No, the exemption under Section 1503.1 would apply as long as the equipment is located on the property and operated by the exempt entity.

Rental Vending Equipment & Parts (Purchase Transactions)

a. Is the purchase of vending equipment, parts or special devices (i.e. coin attachments, etc.) subject to tax?

Our Response: No, see Commission Rule 710:65-1-11 subsection (g).

c. Are machines and parts that are located on tax exempt entity/organization premises subject to sales tax?

Our Response: No, the same exemption would apply.

d. Are there any special exemptions available for vending equipment, parts or devices?

Our Response: Yes, see subsection (h) of the above rule.

Loaner Vending Equipment & Parts (Purchase Transactions)

a. Is the purchase of vending equipment, parts or special devices (i.e. coin attachments, etc.) subject to tax?

Our Response: Yes, the response is the same as the category for Full Service Vending (Purchase)

e. Are machines and parts that are located on tax exempt entity/organization premises subject to sales tax?

Our Response: No, as long as the machines are located and operated by the exempt entity.

f. Are there any special exemptions available for vending equipment, parts or devices?

Our Response: No.

Fountain Equipment (Purchase Transactions)

a. Does fountain equipment and parts qualify for a manufacturing exemption in your state? If no,

Our Response: No.

a. Is the purchase of fountain equipment, parts and devices subject to tax?

Our Response: Yes.

c. Is equipment that is located on tax exempt premises (i.e. school cafeterias, government cafeterias, etc.) subject to tax?

Our Response: No.

d. Are there any special exemptions for fountain equipment?

Our Response: No.

This response applies only to the circumstances set out in your request of November 22, 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. Enclosed find the Statutory Reference and Commission Rules noted. If I can be of further assistance, please contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

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