OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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February 12, 2004

RE: Our File Number LR-03-262;Request for Written Opinion Promotional(/Incentive/Resale Items)

This is in response to your inquiry for assistance in updating your taxability guidelines for your beverage clients in regard to promotional and incentive items. 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 is in a very competitive market. In an effort to attract new accounts and retain existing accounts, Company A must often provide customers with promotional, incentive and resale items. Examples as follow:

a. **Restaurant Account** - Company A provides restaurant accounts with an incentive amount to purchase various event/holiday items (i.e. hanging items, table tents, calendars, coasters, signs, etc.). The customer is given a incentive account (example $100 for every 1000 cases sold). The customer can use these funds to purchase various event/holiday items of their choice. The customer cannot redeem the incentive amount for cash. Company A factors an overhead charge in the cost of their products to cover incentive programs.

b. **School Account** - Company A enters into contracts with various school districts. The contracts require that the school district sell a required quantity of Company A products for a period of time in exchange for various items (i.e. scoreboards, clocks, computers, etc.). The schools receive their items as they reach designated sales totals. Company A factors an overhead charge in the cost of their products to cover the school programs.

c. **Giveaways** - on occasion, Company A provides promotional items to accounts with no purchase requirement restrictions.

Questions:

1. Do the items purchased by Company A for fulfillment of (a) and (b) above qualify for the "resale" exemption since they are transferring the items to a customer for consideration?

Our Response: Yes, since consideration is given to the retailer by the consumer for the promotional material. Sales tax would need to be collected on the items as sales for resale on taxable sales transactions; "restaurant account". See Commission Rule 710:65-1-2 **"Sales value".** Persons claiming an exemption such as schools (school account) should issue to the vendor their copy of the card or letter from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases. Please see the enclosed copy of Oklahoma Tax Commission Rule 710:65-7-15.

Additionally, for your fact pattern b., where the school district serves as a sales representative for Company A, it is similar to a multi-level sale. The school district would be required to collect the applicable sales tax when making the sale on behalf of Company A. See Commission Rule 710:65-19-214.

2. Are there any special exemptions in your state for promotional items that contain Company A's name and/or logo?

Our Response: No.

3. Are there any exemptions in your state for items transferred (per b. above) or items given.-away (per c. above) to tax exempt organizations or government?

Our Response: Yes, see the response to number 1.

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 Rules noted. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst

Enclosure