OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

January 6, 2004

Re: Our File Number LR-03-268; Taxability of promotional materials

This is in response to your request for guidance on the taxability for the above subject. I have scanned your question into this letter, followed by our response.

"We are seeking guidance on the taxability of promotional materials. Our specific product taxability questions are detailed below. It would be helpful to us if you indicate any statutes or authorities you use.

Questions:

A retailer purchases tangible personal property to be given away free of charge to customers. It does not include a "two for one" special or "buy one, get one free." There is no consideration given to the retailer by the customer for the promotional material.

Are promotional materials subject to sales or use tax in Oklahoma in the scenario outlined?"

Our Response: Yes, the origin of the transaction impacts the determination as to whether sales or use tax is applicable. 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 purchased out of state and subsequently brought into Oklahoma for storage, use or consumption pursuant to Title 68, Section 1402 of the Oklahoma Statutes. The sales value would be the taxable basis. Refer to Commission Rule 710:65-1-2(E) and 710:65-1-7 (2).

This response applies only to the circumstances set out in your request of November 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