

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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March 19, 2004

Re: Our file Number LR-04-025; Third-Party Drop Shipment Survey

Dear _____

This is in response to your inquiry concerning an update to the Third-Party Drop Shipment Survey that was last published by your organization in 2002.

I have below listed the question number of your current questions, followed by our updated answers which are based on your current fact situations. Please note that certain of our responses are based on certain pending Oklahoma Tax Commission Rule amendments. The amended language has been adopted by the Oklahoma Tax Commission and has been submitted for the required legislative and gubernatorial review and is expected to become effective on June 15, 2004 after publication in the Oklahoma Register.

Our responses are:

1. Oklahoma will recognize that the sale from Seller Corporation to Buyer Corporation is an **exempt** sale for resale so long as the physical possession of the products sold is not transferred by Seller Corporation to either Buyer Corporation or Other Corporation in this state. The applicable rule specifies that possession is taken inside Oklahoma if:
 - physical delivery is made by the seller to the buyer in this state, or
 - delivery is made in this state by delivery in the seller's own vehicles, or
 - the tangible personal property is installed in this state by the seller or the seller's agent.

Physical delivery is not made by Buyer Corporation in this state if the goods are placed in the possession of a common carrier at a location outside this state. If physical delivery is made in this state, while the sale would still be a sale for

resale, it would not qualify as being exempt unless Buyer Corporation held an Oklahoma Sales Tax Permit.

This response is based on Oklahoma Tax Commission Rules 710:65-13-200; 710:65-15-1; 710:65-18-1; and 710:65-18-3.

2. As noted above, if Seller Corporation delivers in its own equipment, since the goods would be transferred inside Oklahoma, Buyer Corporation would have to obtain an Oklahoma sales tax permit in order to make the purchase in Oklahoma exempt from sales tax as an exempt purchase for resale.

This response is based on the rules noted in the response immediately above.

3. In so far as the FOB terms indicate that Seller Corporation is required to deliver the goods to a common carrier for delivery from a point outside this state to a point in this state, the terms matter, in that they indicate that physical delivery was not made by Seller Corporation to either Buyer Corporation or Other Corporation in this state.

This response is based on rule 710:65-15-1.

4. If Seller Corporation ships from an inventory pool in this state as opposed to an inventory pool in another state, Buyer Corporation must hold an Oklahoma Sales Tax Permit in order to be eligible to make an exempt purchase for resale.

This response is based on Oklahoma Tax Commission Rules 710:65-13-200 and 710:65-15-1.

5. As noted in the rules referenced above, Buyer Corporation must be in the business of reselling the goods purchased from Seller Corporation and if the goods are delivered in Oklahoma it must hold an Oklahoma Sales Tax Permit. If the goods are not delivered in Oklahoma, it is not required to hold a permit. Whether Buyer Corporation holds another state's Direct Payment Permit is therefore irrelevant to whether the exemption is allowable.

This response is based on Oklahoma Tax Commission Rules 710:65-13-200 and 710:65-15-1.

6. If Other Corporation is a consumer, the execution of an affidavit as set out in the fact situation would not relieve Seller Corporation of further responsibility for Oklahoma sales tax on the transaction. Please see our response to question number nine.

This response is based on Oklahoma Tax Commission Rule 710:65-7-6 and 710:65-7-8.

7. The taxability of a sale between Seller Corporation and Buyer Corporation is not determined by whether the sale between Buyer Corporation and Other Corporation is or is not potentially exempt. It does not matter that Other Corporation is an exempt or immune entity or is purchasing for an exempt purpose other than for resale.

This response is based on Oklahoma Tax Commission Rule 710:65-7-2.

8. If Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in Oklahoma, the responsibility of Seller Corporation would be unchanged. Please note that the only contractors that can make purchases exempt from sales tax for the purpose of improving real property is where the contract is with the fourteen specific entities or types of entities that are enumerated in 68 O. S. 1356, paragraphs (10) and (11).

This response is based on Rules 710:65-13-130; 710:65-13-131 and 710:65-19-56

9. If Seller Corporation is required to collect and remit sales tax, it is required to collect and remit based on the terms of the sale to its customer, Buyer Corporation.

This response is based on Oklahoma Tax Commission Rule 710:65-7-2.

10. The rule(s) on which each answer is based is set out after each response. Please note that there may be other exemptions which apply to sales of certain goods and to certain fact situations which are not specified in your fact situations.

This response applies only to the circumstances set out in your request of January 23, 2004, and may not be relied upon by any entity other than the addressee. In the event of any change in the facts surrounding the transaction described, this letter ruling would no longer be applicable. You are further advised that subsequent statutory or administrative rule changes or judicial construction of the statutes or rules upon which this advice is based may yield a different result from that which is expressed here

Sincerely,
OKLAHOMA TAX COMMISSION



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