

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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June 17, 2004

Re: Our File Number LR-04-056; Sales tax policy on food; tips and services charges

Dear

This is in response to your request for a ruling regarding the sales tax policy concerning a wedding reception cancellation and service charge (gratuity).

Please be advised that sale of food and services for a wedding reception would fall in the category of Commission Rule 710:65-19-40 which governs Caterers. Subsection (b) of Rule 710:65-19-40 specifically states, "Sales tax must be collected and remitted on all charges made by caterer for serving meals, food, and drinks, inclusive of charges for food...and for the labor of serving the meals..."

Based on the information that you provided, a sale transaction has occurred since the cancellation was within the specified time frame obligating you to pay a portion of the "anticipated revenue". Similarly, Commission Rule 710:65-19-143, which relates to Hotels, motels, apartments, etc., states in subsection (b) "...revenue which is derived from a guaranteed room is subject to sales tax, even if the guest did not occupy the room." In the case of a sales transaction, a sale, as defined pursuant to Title 68 Section 1352 (21), is "the transfer of either title or possession of tangible personal property for a valuable consideration..." Sales tax would be due on the "gross receipts" or gross proceeds" which means "the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost..." See 68 O.S. Section 1352 (11) and Commission Rule 710:65-1-2 and 710:65-1-9.

Therefore, should charge, collect, and remit sales tax on the total costs billed, including the service charge (gratuity) that is deemed to be "anticipated revenue" from cancellation of the wedding reception.

Also, see Commission Rule 710:65-19-111 which relates to Food; tips and service charges. In that "the levy of sales tax on service charges and/or gratuities is not mandated by statute to be distributed to servers, nor is the levy of sales tax contingent upon the perception of the customer as to whether servers receive such, the service charges are merely subject to the tax if they are not paid over in whole to the employee who provided the service as set out under Tax Commission Rule 710:65-19-111."

This response applies only to the circumstances set out in your request of March 31, 2004. 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

Enclosure