OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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March 23, 2005

Re: Our File Number LR-04-075; Responsibility of an out-of-state company

Dear :

We are reissuing our letter dated May 20, 2004 per your request to reflect the letter is addressed to your business, ' . As you stated in your request of January 29, 2005, still does not have sufficient physical connection with Oklahoma." Therefore, the same letter is being reissued, as the facts have not changed per your request of April 29, 2004.

We submit the following in reply to your request for advice regarding your tax responsibility on exempt purchases from a manufacturer in Missouri for resale to a motorsports customer in Oklahoma.

Please be advised that 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.

Additionally, for sales shipped to Oklahoma residents which are solicited through advertisements and direct mailings, and telephone orders, an out-of-state vendor would be required to collect Oklahoma use tax if it has a physical connection with Oklahoma, such as agents, a business situs, inventory or other property, or affiliates operating in Oklahoma under its authority. If an out-of-state vendor should have agents making sales from inventory within this state, the out-of-state vendor would be required to collect Oklahoma sales tax, as might also be the case if the out-of-state vendor were to travel to shows, fairs or exhibitions, deliver and install equipment or machinery, etc., in Oklahoma.

Even though your company has merchandise drop shipped into Oklahoma by common carrier and delivery is made directly to the customer, Oklahoma use tax would normally be due if your company has physical connection. However, Oklahoma cannot require a vendor who has no connection with Oklahoma, to collect the state and any local sales or use taxes. As a result, Oklahoma will not be able to require payment from your company unless it had substantial physical presence with Oklahoma. Please see Oklahoma Tax Commission rules 710:65-1-8 and 710:65-21-6 which are enclosed.

The Oklahoma Tax Commission Rule relating to the sale for resale exemption is 710:65-13-200. It requires residents of Oklahoma to hold Oklahoma Sales Tax Permits if they are buying for resale. It does not require non-residents to hold Oklahoma Sales Tax Permits before they can make purchases, exempt from sales tax, for resale. Therefore, if your company does not have sufficient physical connection with Oklahoma to require it to register for sales or use tax purposes, the manufacturer in Missouri should accept your Arkansas Sales Tax and Use Permit.

Oklahoma will recognize the sale from the manufacturer in Missouri to your company for resale, as a sale for resale. The Missouri company should obtain a copy of your home state permit or the information contained thereon and also obtain written statements from your company that it is in the business of reselling, and that the items being purchased are being resold. A person authorized to bind the company should sign the statements.

This response applies only to the circumstances set out in your request of April 29, 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