

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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September 21, 2004

Re: Our File Number LR-04-094; Whether Sales Tax Should be Charged by a Church Bookstore.

Dear

This is in response to your inquiry concerning whether sales tax should be charged on sales made at a church bookstore.

Oklahoma Tax Commission Rule 710:65-13-40 states that for churches, "Sales are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments". That same rule sets out tests for determining when sales are noncompetitive.

I have copied each of the first four tests and both of the two further considerations contained in that rule into this letter. I have also compared the facts that you have given in your letter to each test and consideration:

- (1) The following are tests for determining that such selling is noncompetitive:
  - (A) The transactions are conducted by members of the church and not by any franchisee or licensee. *(Although you state that an employee manages the bookstore, it is not apparent that this test is not met.)*
  - (B) All of the proceeds must go to the church organization. *(Since you state all proceeds are used for the benefit of the church, this test is met.)*
  - (C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission. *(You state that the bookstore is open over 40 hours a week and is open additional hours on Sundays and Wednesday nights. Therefore this test is not met.)*
  - (D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being

merely incidental and secondary to the dominant purpose of making a gift to the church.

*(Based on the fact, as stated in your letter, that the store sells bibles, study aids, gift items and candy, it does not appear that the dominant motive of most purchasers is to make a gift to the church and therefore this test is not met.)*

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

*(Based on the sale of items such as bibles, study aids and gifts, which would arguably be purchased at another store if they were not purchased at this church's store, the test is not met.)*

(B) The character of the particular sale, and the real practical effect upon putative competition

*(As noted above, the character of the particular sales indicate that the store is in competition with some 20 religious bookstores in the Tulsa area if not the other 33 bookstores listed in the Yellow Pages. It is also in competition with the numerous gift shops in the Tulsa area and any store that sells candy.)*

Based on the above analysis, the sales at the bookstore are competitive and sales tax is due on the sales that are made at the bookstore.

This response applies only to the circumstances set out in your request of May 24, 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,

OKLAHOMA TAX COMMISSION



Michael G. Pillow  
Tax Policy Analyst