OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

September 30, 2004

Re: Our File Number LR-04-106; Sales tax on certain lease transactions

Dear

This is in response to your inquiry requesting a private letter ruling on the sales tax implications of certain of your client's lease transactions. I have set out the information you have provided, your fact scenario, and your ruling request below. They are followed by our response.

Your General Information:

1. This letter ruling is requested to determine the sales tax consequences of anticipated business practices of the companies
2. The Companies are not currently under audit or engaged in litigation with the Department with regard to this issue.
3. The Companies are not aware of any authority contrary to the information referred to and cited below.

Your Statement of Material Fact

Company Background

manufactures, sells and leases equipment and related supplies (which are necessary to operate the equipment) to its ultimate customers. also provides maintenance services on behalf of the equipment that it sells and leases to its customers. Due to the competitive pricing within the industry, it is the common practice to bundle as a single charge, the lease payment, maintenance fee and supplies. and its customers also desire a composite invoice for the above-mentioned charges in order to limit transactions between the parties. This invoicing procedure simplifies accounting and record-keeping requirements for both and its customers.

When customers choose to lease rather than purchase the equipment, wholly-owned single member LLC Subsidiary is involved in the following two steps:

(1) sells the equipment to Subsidiary under a sales and service agreement, then
(2) and Subsidiary enter into a leasing contract with the customer.

The terms of the two contracts mentioned above result in:

(1) invoicing the customer for the lease payments;
(2) collecting lease payments from the customer;
(3) forwarding the lease payments to Subsidiary;
(4) Customer being responsible for any sales and use tax assessed on the leased equipment during the lease period; and
(5) Customer making its lease payments with applicable sales tax to the

For legal purposes, in order to perfect the sale under the Uniform Commercial Code provisions, the is required to conduct its leasing activities through its Subsidiary.

Customers who choose to lease the equipment from Subsidiary rather than purchase the equipment from usually purchase the related supplies and maintenance services from . performs all invoice processing for its own sales transactions and also Subsidiary's lease transactions. sends the customer an invoice that includes all charges for lease payments, furnished supplies and maintenance services plus applicable sales tax, in a single bundled amount.

Current Filing Methodology

is registered and collects tax on sales to its Oklahoma customers. Subsidiary anticipates providing with a resale certificate and leasing the equipment to its customers in Oklahoma. Subsidiary wishes to be in compliance with Oklahoma law on taxable transactions within Oklahoma.

Your Ruling Request:

The Companies respectfully request a nonbinding letter ruling confirming that Parent's and Subsidiary's anticipated filing methodology, which would involve submitting sales tax returns under FEIN as an agent filer for Subsidiary, is permissible under Oklahoma law and regulations. Further, if the agency filing request is granted, Companies respectfully request that Subsidiary not be required to register as a business with Oklahoma, thus not requiring Subsidiary to file zero returns.

Alternatively, the Companies respectfully request a nonbinding letter ruling permitting (1) to collect and remit all sales tax on behalf of Subsidiary for the above mentioned lease payments under FEIN number, (2) Subsidiary to register with Oklahoma and file zero returns and (3) agreement that if Oklahoma selects either or Subsidiary for audit, both and Subsidiary would be audited and that each would have the right to offset taxes

owed and/or paid between each other.

Our Response:

In as much as both and subsidiary are making sales of tangible personal property in Oklahoma, both must hold Oklahoma Sales Tax Permits (68 O.S. Section 1364) and report and remit any tax due on any sales made pursuant to each permit (68 O.S. Sections 1363 and 1365). Oklahoma statutes and rules do not allow one entity to assume the sales tax reporting and remitting responsibilities of another entity.

For the subsidiary to make purchases, exempt from sales tax, of goods purchased for resale from the parent, it must hold an Oklahoma sales tax permit (Oklahoma Tax Commission Rule 710:65-13-200 and 68 O.S. Section 1357).

If the is making sales of maintenance services to its customers, if it separately states the maintenance services from the related sale or lease of any tangible personal property that it makes, sales tax would not be due on such separately stated charges for the maintenance services (Oklahoma Tax Commission Rule 710:65-19-365).

This response applies only to the circumstances set out in your request of June 3, 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

cc: Larry Shropshire