OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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September 20, 2004

Our File Number LR-04-183; Tax status of e-mail advertising services and third party e-mail advertisements

Dear

This is in response to your inquiry regarding the tax status referenced above. I have scanned your fact scenario and questions into this letter followed by our response.

"Company X ("X") is a business services company incorporated in Florida. It will, for a fee, begin e-mailing third party advertisements (which will provide product or service information and, in substance, will state "please contact company ABCD if you are interested in their product or service") to individuals throughout the nation. The e-mail advertisements, which will not violate any spam laws, will be sent either from a computer located in New York or from a computer located in Florida. It has not yet been determined which computer will serve as the off-site back-up and which will serve as the primary operational computer. My questions are as follows:"

1. If X performs e-mail advertising services for a business located in your state, are there any sales, use, or excise taxes required to be collected/paid to your state? Are there any income or other taxes required to be paid to your state?

   Our Response: Pursuant to Commission Rule 710:65-13-1, "gross proceeds from the sale of advertising through the internet and the broadcast media, including radio, television and cable television, are exempt from sales tax." As to any income tax requirements, your inquiry does not provide enough information to determine Company X's activities in Oklahoma. Please refer to Commission Rule 710:50-17-3 and 710:50-17-4 which set out activities that create nexus for income tax purposes.

2. If X e-mails advertisements to residents in your state on behalf of a business located outside of your state, are there any sales, use, or excise taxes required to be collected/paid to your state? Are there any income or other taxes required to be paid to your state?

Our Response: Same as the above.

3. Would the answers to "1" and/or "2" above change if the e-mailing service is provided without charge (as a free trial offer) to potential X customers?

OurResponse: N/A.

4. Would the choice of computer (Florida or New York) used to send the advertisements impact the tax consequences?

Our Response: No.

This response applies only to the circumstances set out in your request of August 30, 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