October 15, 2004

Re: Our File Number LR-04-186; Sales tax on drop shipments

Dear

This is in response to your inquiry concerning the sales tax collection responsibilities for the four scenarios set out in your letter. I have set out your scenarios below and each is followed by our response. For each, the transactions involve a retailer, a supplier and a customer. All goods sold are delivered via common carrier from supplier to customer. Following our responses to your scenarios, I have set out your two questions and our answers to them. The rules relating to the scenarios or questions are noted and are available at our website:

www.oktax.state.ok.us

Scenario A

- Supplier and customer are located in Oklahoma. Supplier is registered for sales and use tax purposes.
- Retailer located outside the state and not registered for sales and use tax purposes.

Response: Since the goods are located in Oklahoma when they are sold and are delivered to the customer in Oklahoma, Oklahoma Sales tax applies. In order for Retailer to make purchases of goods located in Oklahoma, exempt from sales tax for resale, the Retailer must hold an Oklahoma Sales Tax Permit. Supplier should get a copy of the Oklahoma Sales Tax Permit from Retailer in order to be able to sell the goods exempt from sales tax to the Retailer as a sale for resale. If Retailer does not hold an Oklahoma Sales Tax Permit, Retailer may not make purchases, in Oklahoma, exempt from sales tax.

Scenario B

- Customer is located in Oklahoma.
- Supplier and Retailer are located in another state and not registered for sales and use tax purposes.

Response: Since neither Supplier nor Retailer is registered for sales and use tax purposes in Oklahoma, if they have no physical connection with Oklahoma and the goods are not delivered in vehicles owned or leased by them, nor are the goods installed in Oklahoma by employees or agents of either of them, and if the origination point of the goods which are shipped to Customer was a location outside Oklahoma, then neither Supplier nor Retailer can be required to charge and remit Oklahoma Use Tax. The responsibility for remitting use tax therefore becomes the responsibility of Customer. This response is based on the goods sold not being rented or leased to Customer but instead being sold so that both title and possession transfer. If instead, Customer is renting or leasing the goods, since title will remain with either Supplier or Retailer, the act of holding of title to the goods will result in a physical connection between either Supplier or Retailer, or both, with Oklahoma. The act of holding title to the goods located in Oklahoma will require the registration by either Supplier or Retailer, or both, and it will require Retailer to collect sales tax from Customer. If Retailer is leasing or renting the goods to Customer, and if Retailer holds an Oklahoma Sales Tax Permit, Retailer may make the purchase or lease or rental of the goods from Supplier, exempt from sales tax as a purchase for resale.

Scenario C

- Retailer is registered for sales and use tax purposes and Customer is in Oklahoma.
- Supplier is located outside the state and is not registered for sale and use tax purposes

Response: Retailer has no responsibility to pay sales or use tax on the goods being purchased from outside Oklahoma for resale to Customer since it holds an Oklahoma Sales Tax Permit which allows it to make purchases, exempt from sales or use tax for resale. Retailer should charge Customer sales tax, unless the sale to Customer is otherwise exempt.

Scenario D

- All parties are located in Oklahoma. Supplier and Retailer are registered for sales and use tax purposes.

Response: Retailer should give Supplier a copy of its Oklahoma Sales Tax Permit and a statement that it is making the purchases for resale. Supplier should keep the documentation in its file until the expiration date of the permit when it should request an updated permit. Retailer should charge sales tax on its sales to Customer unless the sale is otherwise exempt. In which case it should obtain the documentation required by rule to allow it to be relieved from the liability to collect sales tax from customer.

Question 1: Would the tax implications change if the customer contacts the supplier directly? In this situation, the retailer would still recognize the sale and invoice.

Response: No, provided the Supplier invoices the Retailer and the Retailer invoices the Customer.

Question 2: Would the tax implications change if the retailer and supplier are related entities but with different federal ID numbers?

Response: If Retailer and Supplier are separate legal entities, the implications would not change.

These responses are based on the following Oklahoma Tax Commission Rules:

710:65-1-11 710:65-7-6 710:65-7-8 710:65-13-200 710:65-13-201

710:65-15-1 710:65-18-2 710:65-18-3 710:65-18-4

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,
OKLAHOMA TAX COMMISSION

Michael G. Pillow
Tax Policy Analyst

cc: Taxpayer Assistance Division