OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

October 11, 2004

Re: Our File Number LR-04-197; Property collection of sales tax on fundraising sales

Dear

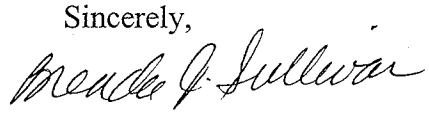
Please let this letter serve as an addendum to our letter dated September 30, 2004 regarding the proper collection of sales tax on fundraising sales in reference to parent-teacher organizations. As stated in that letter, parent-teacher organizations and booster clubs, etc. are not exempt on their purchases of tangible personal property and that Section 1356 (13) (a) (6) of Title 68 exempts sales of tangible personal property made by parent-teacher organizations. However, in that same Section, subsection (13) (b), exempts the "sales of tangible personal property made by or to nonprofit parent-teacher associations or organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501 (c)(3)".

For parent-teacher organizations who receive recognition as non-profit pursuant to Section 501(c) (3) from the Internal Revenue Service, upon request, the Tax Commission will issue those organizations a sales tax exemption permit confirming their statutory exemption. See Commission Rule 710:65-13-210 subsection (k) and (l). Please note Oklahoma Tax Commission Rule OAC 710:65-7-6 "Vendor's relief from liability and duty to collect sales tax" which contains the requirements to establish "properly completed documentation certified by the Tax Commission". Also, note Commission Rule 710:65-7-8 "Vendors' responsibility - sales for resale" and Rule 710:65-7-15 "Vendors' responsibility - sales to entities with other specific statutory exemptions." Copies are enclosed.

This response applies only to the circumstances set out in your request of September 9, 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

cc: Jerry Webb, Deputy Director, Taxpayer Assistance Division
Enclosure

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-04-197; Proper collection of sales tax on fundraising sales

Dear :

We submit the following in reply to your request for guidance on the proper collection of sales tax on fundraising sales in Oklahoma.

Please be advised that an organization is not exempt from paying sales tax on its purchases of tangible personal property unless specifically exempt under the Oklahoma Sales Tax Code. Examples of organizations which are specifically exempt are Churches, Schools, the Federal and State Government, the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts U.S.A., and the Campfire Boys and Girls. See 68 O.S. 1356 and Oklahoma Tax Commission Rules 710:65-13-130, 710:65-13-40, 710:65-13-41 and 710:65-19-44.

Sales or services to governmental entities are exempt from sales tax only if the sales or services are billed to and paid by that entity. Although sales to schools are exempt, purchases made with funds of members, students, faculty sponsors and sponsoring organizations are not exempt, even if those members, students, faculty members, etc. are to be reimbursed for their expenses at a later date by the school. In other words, purchases made with other than public funds or by a school are subject to sales tax. Likewise, charges for goods and taxable services billed to and paid by a church are exempt unless incurred "in the course of business for profit or savings."[See 68 O.S. 1356(7)].

The Sales Tax Code does not appear to exempt parent-teacher organizations, booster clubs, athletic clubs and service clubs, etc. on their purchases of tangible personal property. On the other hand, Section 1356 (13) of Title 68, a copy of which is enclosed, exempts from the levy of sales tax sales of tangible personal property made by public and

private school student organizations and parent-teacher organizations. Band boosters and athletic clubs and service clubs are not considered to be parent-teacher organizations for the purpose of the exemption.

Non-profit and 501(c) organizations are subject to sales tax on their purchases of tangible personal property or taxable services unless specifically exempted under the Oklahoma Sales Tax Code.

Organizations not exempted under the Oklahoma Sales Tax Code are required to pay the four and one-half (4 ½%) state and any applicable city and county sales tax on any taxable purchase. However, if the organization is regularly engaged in the business of making sales, it must have a sales tax permit. The sales tax permit would allow the organization to purchase items it is going to sell exempt from sales tax. In turn the organization would be required to collect and remit sales tax on those taxable sales made in Oklahoma. Without a sales tax permit the organization would not only have to pay sales tax when the items were purchased, it would have to charge sales tax when the items were sold.

Therefore, non-profit and 501 (c)(3) organizations and parent-teacher organizations, etc. may make purchases for resale exempt from sales tax providing they hold an Oklahoma sales tax permit. Without a sales tax permit the organizations would have to pay sales tax when purchasing items for sell.

Documentation obtained from your customer validating its exempt status should be retained. All sales transactions should be included in the amount entered on line one, identified as total gross receipts on the sales tax report, and the appropriate deduction for exempt sales should be taken on line four of the report.

To help you make a correct determination of the exempt status of an organization, I have enclosed a copy of a booklet entitled "Sales Tax Vendor Liability Notice, Rules, and Forms" and also enclosed are copies of the rules referenced above.

This response applies only to the circumstances set out in your request of September 9, 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

Brenda J. Sullivan
Tax Policy Analyst
Oklahoma Tax Commission

cc: Jerry Webb, Deputy Director, Taxpayer Assistance Division