OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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July 19, 2005

Re: Our File Number LR-05-022; Sales tax on third-party drop shipments

This is in response to your inquiry concerning the subject referenced above. I have copied your fact situation and your questions into this letter and each is followed by our response.

Your Facts

In my third party drop shipment hypothetical, 3 parties are involved - an out-of-state, unregistered seller (R); an Oklahoma manufacturer (M); and an Oklahoma customer (C). M sells goods to R for $100. R re-sells the same goods to C for $150 (C pays no sales tax since R is out of state and unregistered). Since M and C are both in Oklahoma, R asks M to drop ship the goods to C. As I understand Oklahoma law, in order for M to have made a valid sale for resale to R, R must have presented M with an Oklahoma Sales Tax Permit or an Oklahoma Sales Tax Permit Number (in conjunction with an Oklahoma Exemption Certificate or MTC Certificate). If this valid information is provided and a sale for resale occurred, there would be no obligation for M to collect and remit tax, correct?

Our Response: Yes. Please see Oklahoma Tax Commission Rules 710:65-7-6; 710:65-7-8; and 710:65-13-200.

My question stems from Question # 9 of the IPT survey: If M is required to remit or collect and remit the tax, is the tax measured by the price paid by R or by the price paid by C? Your response was that if M is required to collect and remit sales tax, it is based on the sale to R ($100), not C. If R did not have an Oklahoma Sales Tax Permit or Number, is it correct that M would be required to collect and remit tax on the sale of goods from M to R? (That would be tax on $100).

Our Response: Yes, the tax that "M" is required to charge "R" is, in your example, the tax on "$100". Please see sub-section (19) of 68 O.S. Section 1354.

As I mentioned before, R re-sold the same goods to C for $150. When M drop ships the goods to C, is C responsible for remitting use tax on $150 which was the purchase price from R? Or, since tax was already collected on $100, Does C only owe use tax on $50?

<u>Our Response</u>: Since the goods are not coming into Oklahoma from outside Oklahoma, use tax is not due. Instead since title and possession to the goods pass in Oklahoma, sales tax is due. Sales tax is due on the selling price between "R" and "C" of "$150". "R" would be responsible for collecting the sales tax on the total gross receipts of its sale to "C", without regard to any taxes it has previously paid on the goods.

I am trying to determine if there is some sort of "credit for tax paid" mechanism that operates in Oklahoma based on this drop-shipment hypothetical and Oklahoma law; As well as, for sales tax purposes, if Oklahoma views the sale of the goods from M to R as a separate taxable transaction; and the total use tax obligation of C is also independent from the tax already collected by M.

<u>Our Response</u>: There is no "credit for sales tax paid previously" by a vendor who has made a business decision not to obtain an Oklahoma sales tax permit which would have allowed them to make purchases, exempt for resale. Oklahoma views each sale as separate transactions and the taxability of each and the amount of tax due, if any, from each is determined independently.

This response applies only to the circumstances set out in your request of February 14, 2005. 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

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