

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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April 5, 2005

Re: Our File Number LR-05-027; Tax status of funeral services package

This is in response to your request for a ruling regarding what amount is sales tax calculated on for funeral merchandise paid with funds that are placed in a trust account or an insurance policy; the retail price when the original agreement is made or on the retail price when the merchandise is delivered at the time of death. I have scanned your fact scenario into this document followed by our response.

"I oversee several funeral homes in the Oklahoma City area and need to get a policy ruling for how we handle our pre-arranged funeral services. This question probably will pertain to most funeral homes in the state.

We have many individuals that come to us to prepay their funeral expenses for a variety of reasons. When this occurs the individual will typically choose the type of service they would like to have and the funeral merchandise they want used (casket, vault, etc.). The total of these charges is then paid for and the money is placed in a trust account or insurance policy to be available when the death occurs. Some funeral homes will place the money in a trust account at the bank and some will place the money with an insurance company, either is acceptable to the Oklahoma Insurance Commission. The policy or trust will then earn interest to offset any price increases the funeral home may have until the death takes place.

At this point no actual merchandise has been purchased. The person has only stipulated in their agreement with us that when the death occurs we will provide the merchandise specified in the policy.

When the death occurs we order the specified merchandise and we write up a statement of goods and services using the prices that were in use at the time the death occurred. An

example of this would be that when the casket was specified in the original policy it may have had a retail price of \$2000. At the time the death occurred (which can be several years later) the price had risen to \$3000. Our statement we write at the time of death would be for the \$3000.

Our question for the policy ruling is on what amount is the sales tax calculated on, is it the retail price when the original agreement is made or on the retail price when the merchandise is delivered at the time of death. Using the example above, would the sales tax be paid on the \$2000 or on the \$3000. My opinion is that it is paid on the \$3000 as that is the price of the merchandise when it is ordered and delivered to the consumer. Some other funeral homes contend that the sales tax should be paid on the original agreed to price (the \$2000 above) even though no merchandise was actually purchased at that time. The tax rate has not been a question. The current tax rate at the time of death is always used.”

Based on Commission Rule 710:65-19-114, a copy of which is enclosed, sales tax should be calculated based upon the prices listed by the embalmer or provider of funeral services or on the amount of the Statement of Funeral Goods and Services Selected and prepared by the embalmer or provider of funeral services which he prepares in conformity with the rules of the Federal Trade Commission that are in effect at the time the package is purchased, i.e. “statement we write at the time of death would be for the \$3000”. Additionally, the funds that are placed in a trust account or for an insurance policy do not constitute a purchase of a funeral service package, but rather represent funds held toward the purchase of a funeral service package at the time of death.

This response applies only to the circumstances set out in your request of February 16, 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,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure