OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

June 14, 2005

Re: Our File Number LR-05-088; Sourcing of sales of aggregate material

Dear

This is in response to your inquiry concerning the sourcing of the sale of aggregate material. You ask "where is the sales tax for aggregate material levied to the customer?"

Oklahoma Tax Commission Rule 710:65-18-3, in a direct quote of the statute, states that for sales that are not the sale of mobile telecommunications and are not the lease or rental of tangible personal property, the sale is sourced in the following manner:

"(1) *When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;*
(2) *When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this [paragraph] shall not apply to florists until January 1, 2006. Prior to that date, all sales by florists shall be sourced to its business location;*
(3) *When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*
(4) *When the provisions of paragraphs (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and,*
(5) *When none of the previous rules of paragraphs (1), (2), (3) or (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered*

electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. [68 O.S.Supp.2003, Section 1354.27(A)]"

Oklahoma Tax Commission Rule 710:65-18-2 defines the word "receive" to "*not include possession by a shipping company on behalf of the purchaser.* [68 O.S.Supp.2003, Section 1354.27(E)]"

Therefore, when your company makes a sale where it transfers possession of the tangible personal property it has sold, to a shipping company, on behalf of a purchaser, the purchaser has not "received" the tangible personal property as defined in Rule 710:65-18-2, and therefore subsection (1) of Rule 710:65-18-3 does not apply. It is then necessary to go through each following subsection to determine the point to which the sale is sourced and apply the tax rate in effect at that point.

Pursuant to subsection (2) of Rule 710:65-18-3, if your company knows the location at which the shipping company will transfer possession of the goods to the purchaser, the location at which the shipping company makes such a transfer is the location at which the sale is sourced and sales tax should be collected based on the taxes in effect at that location..

This response applies only to the circumstances set out in your request that was hand-delivered to our office on May 27, 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

Michael G. Pillow
Tax Policy Analyst