OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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September 1, 2005

Re: Our File Number LR-05-104; Tax responsibility of direct marketing company

Dear

This is in response to your inquiry for a determination of the questions raised in your correspondence. I have scanned your fact situation and questions into this letter followed by our response.

has been retained by a firm in to manage its sales and use tax liabilities. The company operations are outlined in the following letter. The company would like direction on how to collect/remit sales and use tax in Oklahoma. The company would prefer a written opinion including citations where applicable, and at minimum the best interpretation of the laws and regulations of the state. The company wishes to comply with all laws and regulations of the state in order to be a good corporate citizen and to keep tax revenue within the state.

The company is a Limited Liability Company pursuant to the laws of the State of The corporate offices are located in the State of and all property owned or leased is located within the State of The company is a direct seller of nutritional products. The company product is a nutritional supplement in gel form, packaged in individual packets, with 30 packets to a box, currently sold for $60. The company charges a $35 enrollment fee for individuals to become independent contractors for the company. The company began sales in the state on May 02, 2005. The company is in the process of registering for the proper sales and use tax permit/license in the state.

The enrollment fee includes a company starter kit. The starter kit consists of marketing and recruiting materials and a box of company product. The marketing and recruiting materials consist of a CD about the company and printed brochures. These items are used to explain the company compensation plan and other company benefits for potential and prospective recruits. These items will be available for purchase separate

from the company products in the future, but are currently bundled at this time with the company products as a "Buzz Pac".

The company sells a "Business Builder Pac" for $200 which includes 4 boxes of product and a starter kit; a "Leadership Pac" for $600 which includes 10 boxes of product, a "Buzz Pac", and a starter kit; an "Executive Pac" which includes 16 boxes of product, a "Buzz Pac" and a starter kit.

Shipping and handling is charged as a flat fee, based on the package shipped. Packages are shipped by common carrier."

Please be advised that Multi-level sales, i.e. direct marketing sales are governed by Tax Commission Rule 710:65-19-214 and reference thereof will be made in answer to your questions.

1. What is the taxability of the nutritional product?

Our response: Nutritional products are subject to sales tax. See subsection (a) of the above rule.

2. What is the taxability of the transaction when it consists only of boxes of company product?

Our Response: Same as #1 and also See 1354 (1) (A) and Section 1402 of Title 68.

3. What is the taxability of the transaction when it consists of bundled product and marketing materials?

Our Response: Sales tax would be due on the bundled product including the marketing materials if it is sold as a "Pac" as stated in your scenario. See Commission Rule 710:65-1-2 "Gross receipts", "gross proceeds", or "sales price" and "Sales value".

4. What will be the taxability of the transaction when it consists solely of marketing materials?

Our Response: Since the marketing material is separate from the company products, use tax is due. Use tax is levied on a transfer of title or possession of tangible personal property purchased out of state and subsequently brought into Oklahoma for storage, use or consumption pursuant to Title 68, Section 1402 of the Oklahoma Statutes. Use tax would be due on the sales value of the material. See Commission Rule 710:65:65-1-2 "Gross receipts", "gross proceeds", or "sales price" and "Sales value" and 710:65-1-7(2).

5. Is the shipping and handling charge taxable?

Our Response: See subsection (c) of Commission Rule 710:65-19-214.

The company may ship promotional items used as incentives when independent contractors meet specific company goals. These items may be company product and/or other tangible personal property. These items may also include vouchers for free admission to the company's annual convention or other company sponsored events throughout the country. These events may also include the admission of the general public. Currently, the company provides incentives such as travel vouchers, gift certificates, and other items purchased in Utah for use within Utah.

1. Does the company have a use tax liability for these incentive items? If not, does the independent contractor have a use tax liability?

Our Response: Use tax is levied on a transfer of title or possession of tangible personal property that occurs outside Oklahoma. Use tax would be due on the cost of acquiring the printed material, i.e. travel vouchers and gift certificates. For Oklahoma use tax, a credit may be taken against sales taxes paid in another state when the item is brought into Oklahoma. See 68 O.S. Sections 1404 and 1411. Additionally, the purchase price or sales value of the items that are sent to the independent contractors in exchange for the gift certificates would be subject to use tax also.

2. If the company sponsors events in your state is the admission to these events taxable?

Our Response: Pursuant to 68 O.S. Section 1354 (12), sales tax would be due if the admission to the events falls into any of the categories listed.

The company projects that 99% of all independent contractors will purchase company product for their own use. The remaining 1 % will purchase company product in order to resell the product. The company allows inventory to be carried by independent contractors but only in quantities that can reasonably be sold. Independent contractors are not allowed to carry excess inventory.

1. Is the company liable to collect and remit sales and use taxes collected by the independent contractors who resell the product? If not, how should the company handle these transactions?

Our Response: Please see subsection (a) of Commission 710:65-19-214

2. Is an agreement required in your state for direct sellers to collect sales and use tax on behalf of its independent contractors?

Our Response: No, the direct seller company is required to obtain a sales tax permit as a vendor in this state. See 68 O.S. Sections1363 and 1364.

The last issue that the company faces is the Streamlined Sales Tax Project.

Considering the fact that the company is a direct seller of nutritional products, the impact of the SSTP complicates the current and future collection/remittance of sales and use tax.

The company would like to reduce the impact of these changes as much as possible.

1. Has your state opted to participate in the SSTP? What is the impact to the company? Can the company expect to change the way it collects and remits sales and use tax, differently than the current laws and regulations?

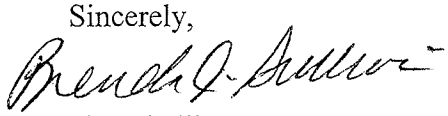
Our Response: Yes, Oklahoma is a participant in the SSTP. The Okalahoma Statutes are presently in agreement with SSTP and the answers given in this letter are based on those statutes.

2. If the SSTP takes effect at some time in the future, what is the impact to the company? Can the company opt to collect and remit sales and use tax as if the SSTP were in effect now?

Our Response: See the above response.

This response applies only to the circumstances set out in your request of June 20, 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,



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Enclosure