

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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December 9, 2005

Re: Our File Number LR-05-107; Sales Tax on the Provision of Various Types of Advertising Services

Dear

This is in response to your inquiry concerning the subject referenced above.

I have entered your Transaction types, their facts and the questions concerning each transaction type into this letter. Our responses follow each question.

I **Transaction A: Traditional Model**

A. Facts:

1. Company ABC'S employees visit dealers (i.e. customers) in your state and take photos of trucks and collect truck data on handheld computers. In some instances, it will take multiple photos and also move trucks to a location for taking the photos.
2. Company ABC exports the data and photos to any websites requested by the dealer.
3. Company ABC prints window labels and/or buyer's guides and applies them to the trucks if requested by the dealer.
4. Dealer has access to Company ABC's backend website (ABC.com) where the dealer can manage their inventory of trucks and internet leads (e.g. change prices of trucks, delete trucks, provide dealer one place to read and respond to inquiries, etc.)
5. Company ABC charges the dealer \$1,000 per month for these services.

B. Questions:

1. Is the charge by Company ABC to the dealer in Fact 5 subject to your state's sales or use tax?

Our Response: Yes, the charge by Company ABC is a charge for advertising and is subject to sales tax pursuant to the levy of sales tax found at 68 O.S. Section 1354(10).

2. In Fact 3, are Company ABC's purchases of paper on which the window labels and buyers guides are printed, exempt from your state's sales and use tax?

Our Response: If Company ABC holds an Oklahoma Sales Tax Permit, it may make purchases of the paper on which window labels and buyers guides are printed, exempt from sales or use tax, as a purchase for resale, since the paper is being resold as an advertising device when it is transferred to the dealer in connection with the charge being paid by the dealer.

3. If Company ABC's only transactions in your state are as described above for Transaction A, does Company ABC have nexus in your state for (1) sales and use taxes, and (2) income taxes?

Our Response: The physical connection with the State of Oklahoma of Company ABC as described in Transaction A is sufficient for establishing nexus for sales and use tax with Oklahoma. For a determination of whether Company ABC has nexus for income tax, please have them fill out the enclosed questionnaire and return it to:

Audit Division
Oklahoma Tax Commission
2501 N. Lincoln Blvd.
Oklahoma City OK 73194

II Transaction B: For Sale by Owner

A. Facts:

1. For \$30 an individual in your state can post a truck on Company ABC's website for the purpose of trying to sell the truck. The individual is responsible for furnishing a photo of the truck and other information about the truck to Company ABC.
2. Company ABC mails a kit of materials to the individual in your state. Company ABC's cost of the plastic bag for containing the materials and the paper on which the information is printed is purchase by Company ABC for \$1 to \$1.50. Mailing costs are about \$1.50.

B. Questions:

1. In fact 1, is the \$30 paid to Company ABC subject to your state's sales or use tax? Would the answer be the same if the kit of materials in Fact 2 was not furnished to the individual?

Our Response: Since the \$30 is a charge not only for advertising via the internet, but also for the transfer of the kit of materials, it is subject to sales

or use tax in Oklahoma. If Company ABC has any physical connection under any of the transactions into which it enters in Oklahoma, it has nexus with Oklahoma for all transactions and would be required to collect Oklahoma use tax even for those transactions which, by themselves, do not give rise to nexus. If the kit of materials was not given to Company ABC's customer, no sales or use tax would be due since the transaction would be the sale of advertising on the internet and sales of advertising on the internet were exempted from sales tax by an amendment to 68 O.S. Section 1357(4) which was contained in House Bill 1547 which was enacted during the legislative session that ended in May.

2. In Fact 2, are Company ABC's purchases of the plastic bags and paper subject to your states sales or use tax?

Response: Since the plastic bags and paper are transferred to the individuals for consideration, they are sold and sales tax is due on the consideration given. Therefore Company ABC can purchase the bags and paper, exempt from sales tax or use tax, if it holds an Oklahoma Sales Tax Permit. Please refer to Oklahoma Sales Tax Rule 710:65-13-200.

3. If Company ABC's only transactions in your state are as described above for Transaction B, does Company ABC have nexus in your state for (1) sales and use taxes, and (2) income taxes?

Response: If Company ABC's only physical connection with Oklahoma is that it mails a kit of material into Oklahoma from a location outside Oklahoma, it does not have sufficient physical connection with the State of Oklahoma to be required to register to remit sales and use taxes. For a determination of whether Company ABC has nexus for income tax, please have them fill out the enclosed questionnaire and return it to:

Audit Division
Oklahoma Tax Commission
2501 N. Lincoln Blvd.
Oklahoma City OK 73194

III. Transaction C: Do-it-Yourself (DIY):

A. Facts:

1. Company ABC charges dealers in your state \$500 per month per dealer location. If the dealer wants to use a handheld computer and camera of Company ABC, there is a charge of \$275 per month for these items, in which case the total charge would be \$775 per month.
2. Dealer gets access to ABC.com (website), inventory management, lead management, (e.g. all inquiries on the website go first to Company ABC who then directs them to the dealer for dealer to read and respond to

inquires, dealer can change prices, delete trucks, etc.), and the ability to print window labels and buyer's guides, which the dealer prints on its printer.

3. If dealer wants to purchase window labels or buyer guides from Company ABC, part of the labels and guides will be printed by Company ABC and mailed to the dealer. The dealer is billed an additional amount for these items. The dealer then prints the truck specifications on the label and buyer's guides

B. Questions:

1. In Fact 1, is the (1) \$500 payment, or (2) \$775 payment by the dealer to Company ABC subject to your state's sales or use tax?

Response: If the \$500 payment is stated separately from the additional payment of \$225 where the additional payment represents the transfer of possession of the computer and camera, only the \$225 additional payment is taxable. However, if the additional payment of \$225 is not stated separately from the \$500 payment, the entire payment of \$775 is subject to Oklahoma Sales Tax.

2. In Fact 1, are Company ABC's purchases of the handheld computer and cameras subject to your state's sales or use tax? (Note: When Company ABC purchases these handheld computers and cameras, it first obtains possession of these items in Wisconsin and they are then shipped to the dealer in your state if they wish to use them for the charge of \$275 per month)

Response: If Company ABC holds an Oklahoma Sales Tax Permit it may purchase the handheld computers and cameras exempt from sales tax as purchases for resale. Otherwise it would owe use tax on the cameras that it purchased in another state which it sends into Oklahoma for use in Oklahoma since a purchase in Oklahoma, for resale of goods to be sold in Oklahoma can only be made by a person that holds an Oklahoma Sales Tax Permit.

3. In Fact 3, is the charge by Company ABC to the dealer for the window labels and buyer guides subject to your state's sales or use tax.

Response: In Fact 3, the additional amount that Company ABC charges the dealer for the labels and buyer guides which are printed by Company ABC and mailed to the dealer is subject to sales tax in Oklahoma.

4. If Company ABC's only transactions in your state are as described above for Transaction C, does Company ABC have Nexus in your state for (1) sales and use taxes, and (2) income taxes?

Response Company ABC's ownership of tangible personal property in Oklahoma (the handheld computers and cameras) is sufficient physical connection with Oklahoma to require Company ABC to register for sales and use tax and charge, accrue and remit sales or use tax on all its taxable sales in Oklahoma. For a determination of whether Company ABC has nexus for income tax, please have them fill out the enclosed questionnaire and return it to:

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Oklahoma City OK 73194**

IV. Transaction D: Reseller:

A. Facts:

1. XYZ in your state can access Company ABC'S web site (which is private labeled for XYZ).
2. XYZ provides dealers with access to their inventory. XYZ has access to all of his customers (i.e. dealers)
3. XYZ bills the dealers for the services it provides to them.
4. XYZ pays Company ABC \$300 per dealer per month. For example if XYZ had 10 dealer customers, XYZ would pay Company ABC \$3,000 per month (10X\$300).

B. Questions:

1. In fact 4, is the payment by XYZ to Company ABC subject to your state's sales or use tax?

Response: No, the charge for providing a customer access to a vendor's website is not subject to sales or use tax in Oklahoma. Please refer to Oklahoma Tax Commission Rule 710:65-19-156.

2. If Company ABC's only transactions in your state are as described above for Transaction D, does Company ABC have nexus in your state for (1) sales and use taxes, and (2) income taxes?

Response: Company ABC's nexus for sales tax is dependent on it having a physical connection with the state. It cannot be determined from your facts, whether or not Company ABC has a physical connection with Oklahoma and therefore it cannot be determined whether or not Company ABC has sales and use tax nexus with Oklahoma. For a determination of whether Company ABC has nexus for income tax, please have them fill out the enclosed questionnaire and return it to:

**Audit Division
Oklahoma Tax Commission
2501 N. Lincoln Blvd.**

Oklahoma City OK 73194

V. Transaction E: Reseller/Web/Equipment:

A. Facts:

1. Individuals (who are not employees of Company ABC) contact dealers in your state to sell the services of Company ABC.
2. Interested dealers will contact Company ABC regarding the services.
3. Company ABC offers two types of services: (1) access to company ABC's Website, (with no equipment furnished to the dealer), and (2) access to Company ABC's website and the use of Company ABC's handheld computer and camera.
4. For each dealer who purchases one of Company ABC's services as a result of the contact of the individual in Fact 1, Company ABC will pay the individual a fee.
5. A dealer who receives access to the website, with no use of Company ABC's handheld computer and camera, will be charged a fee by Company ABC.
6. A dealer who receives access to the website and the use of Company ABC's handheld computer and camera, will be charged a higher fee by Company ABC.

C. Questions:

1. In Fact 4, is the fee paid by Company ABC to the individual subject to your states sales or use tax?

Response: No.

2. In Fact 5, is the amount paid by the dealer to Company ABC subject to your state's sales or use tax?

Response: No.

3. In Fact 6, is the all or part of the amount paid by the dealer to Company ABC subject to your state's sales or use tax? If only part is taxable, what part is taxable?

Response: All of the charge of Company ABC to a customer who is being billed one lump sum for access to a website and also for the right to possess tangible personal property belonging to Company ABC is subject to sales tax in Oklahoma.

4. In Fact 6, are the purchases of the handheld computer and camera by Company ABC subject to your state's sales and use tax?

Response: While the purchases of the handheld computer and camera are subject to sales tax in Oklahoma, if Company ABC holds an Oklahoma Sales Tax

Permit, it may purchase them exempt from sales tax as purchases for resale since Company ABC will later give possession of the computers and the cameras to their customers, for valuable consideration on which sales tax or use tax will be due.

5. If Company ABC's only transactions in your state are as described above for Transaction E, does Company ABC have nexus in your state for (1) sales and use taxes, and (2) income taxes.

Response: The physical connection with Oklahoma that results from Company ABC having an agent soliciting business in Oklahoma and also of its ownership of cameras and computers in Oklahoma, means that Company ABC has nexus with Oklahoma for sales and use tax purposes. Once nexus for sales or use tax is established under any transaction, nexus is established for all Oklahoma sales taxable sales or for use taxable sales where property is shipped into Oklahoma that arise under any of the transactions that Company ABC enters into with its customers. For a determination of whether Company ABC has nexus for income tax, please have them fill out the enclosed questionnaire and return it to:

**Audit Division
Oklahoma Tax Commission
2501 N. Lincoln Blvd.
Oklahoma City OK 73194**

This response applies only to the circumstances set out in your request of June 25, 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