OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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July 21, 2005

Re: Sales tax exemption/documentation; Our File No. LR-05-121

Dear

I am writing in response to your inquiry regarding sales tax exemption/documentation. The questions posed therein along with responses thereto are set forth below:

1. Can we as a seller accept a resale exemption certificate from another state?

Oklahoma resident businesses are required to hold an Oklahoma sales tax permit to purchase items exempt for resale. However, non-resident businesses are not required to hold an Oklahoma sales tax permit before they can make purchases, exempt from sales tax for resale. See 68 O.S. §1357(3) and OAC 710:65-13-200. Therefore if the purchaser business does not have sufficient physical connection with Oklahoma to require it to register for sales and use tax purposes, a seller may accept an exemption certificate issued by the purchaser's home state. The exemption certificate should list the resale number issued by the purchaser's home state as evidence that it is in the business of making purchases for resale. The seller should also obtain documentation from the purchaser stating that it is:

A. Not an Oklahoma resident
B. Engaged in the business of making sales of the items being purchased
C. Purchasing the items in question for resale.

This documentation should be in writing and should be signed by a person authorized to bind the purchaser.

2. Will you email a form BT107 Certification of sales/use tax exemption. Is this provided on your website?

As previously discussed, Form BT107, entitled Uniform Sales & Use Tax Certificate – Multi-jurisdiction is available on the Oklahoma Tax Commission website,

www.oktax.state.ok.us, and is contained in Packet D, Sales Tax Vendor Liability Notice, Rules and Forms, at pages 12-14.

3. For customer exports, if a customer in Oklahoma orders goods that are then shipped through a freight forwarder, therefore the customer would not take possession of the goods, would the transaction be tax exempt? If so, what documentation would we need as the seller?

The sale of tangible personal property exported outside the United States is exempt from sales tax, provided the vendor simultaneously with the sale issues an export bill of lading, the delivery point is outside the United States and the Vendor retains a copy of the export bill of lading or other documentation verifying the property was exported. OAC 710:65-13-90.

4. What documentation do we need as the seller for sales to federal governments and state/local governments? What is the SmartCard for a federal government?

Pursuant to Section 1361.1 of Title 68 a vendor shall be relieved of liability for the sales tax or the duty to collect the sales tax imposed by Section 1361 of Title 68, if the vendor, in good faith, timely accepts from a consumer properly completed documentation certified by the Oklahoma Tax Commission that the consumer is exempt from sales tax. See OAC 710:65-7-6. The specific documentation for sales to federal and state governmental entities, which must be obtained by the vendor are set forth in 710:65-7-15 as follows:

(1) A copy of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and

(2) A signed statement that the purchase is authorized by, and being made by, the exempt entity, with funds of the exempt entity, and not by the individual.

However, OAC 710:65-7-15 provides that "in the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction. The GSA SmartCard or GSA SmartPay® is the credit card program utilized by the federal government. For sales to federal employees, if the charge is paid with the special government SmartPay® cards, the transaction would be exempt from sales tax since the charges are billed directly to the United States Government. The cards bear the seal of the United States, the designation "United States Government", the trademark of the SmartPay® program next to the letters "GSA" and an indication of the types of purchases for which the card is valid.

5. In 710:65-7-13 for contractors performing jobs for a nonprofit entity, it states that one of the items of documentation that we need as the seller from our customer is certification on the face of the invoice that lists the name of the nonprofit entity and that the product is necessary to complete a contract. Can this be done in a letter or does it have to be done on the face of the invoice?

Please note that contractors may not generally purchase items exempt when performing jobs for a nonprofit entity as alluded to in the above inquiry. Contractors may make purchases based on the exempt status of another entity only in the statutorily-limited circumstances described in OAC 710:65-7-13(b). For sales to a contractor claiming exemption pursuant to (b)(1) of OAC 710:65-7-13 [Section 1356(10) of Title 68] the vendor must obtain in addition to the other items enumerated in subsection (c) of OAC 710:65-7-13 "certification, on the face of

each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract." A letter would not be sufficient to meet the requirements mandated by statute and administrative rule. See 68 O.S. §§ 1356(10)

6. If we call the Taxpayer Assistance Division to verify a permit number for sales tax, is a verification # provided? If so, do we need to note that verification # in our records for audit purposes? Do we have to call for every transaction with that customer? Can the number be verified on the Oklahoma Tax Commission website?

A verification number is not provided to a person seeking to verify a sales tax permit number. OAC 710:65-7-8 seems to indicate that once the validity of the purchaser's sales tax permit has been verified with the Commission, it would not have to be verified again until the expiration date of that permit. Currently, sales tax permit numbers cannot be verified on the OTC website. Please note that a sales tax permit list may be obtained from the Tax Commission on a subscription basis. See OAC 710:65-9-6.

Copies of the referenced statutory provisions and administrative rules are included for your information.

This response applies only to the circumstances discussed in your request of June 29, 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

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