OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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December 15, 2005

RE: Our File Number LR-05-126; Tax status of various items

Dear

This is in response to your request for clarification on the taxability of the items listed in your correspondence. I have scanned your question into this letter followed by our response.

"I would like to request clarification on the taxability of the following items:

1. *ROAD HAZARD WARRANTIES*
The warranty is optional and is charged separately on the tire ticket. This warranty would begin 90 days after the sale and in addition to the manufacturer's warranty. It only covers road hazards such as running over a nail or a piece of glass and has nothing to do with defects in the materials. When a customer comes in with a road hazard claim, the fee would be prorated for the remaining percentage of tread left on the old tire, times the cost of replacing the tire. If the tire can be repaired it would be repaired without cost to the customer. In this instance would the road hazard warranty be subject to sales tax?

Our Response: As set out in the Commission Rule 710:65-19-365, the charge for a voluntarily agreed to maintenance agreement or extended warranty, which is separately stated on the invoice is not subject to sales tax. If "Road Hazard Warranties" are optional and separately stated on the invoice, they are not subject to sales tax. However, a "Manufacturer's original product warranty" is subject to sales tax. See Commission Rule 710:65-19-371.

2. *STATE IMPOSED TIRE RECYCLING/WASTE FEE/TAX*
In states were a fee/tax is charged for the sales of tires, is the state imposed fee/tax subject to sales tax? If a tire is returned and a proration given as described in #1 above, should the state imposed fee be charged?

Our Response: The waste tire recycling fee is not part of the base price of the tire subject to sales tax, if the fee is shown separately from the price of the tire. See Commission Rule 710:95-5-10. There is no provision that allows for the prorating of the waste tire recycling fee on tire returns or replacements. The fee applies to each tire sold. However, see Commission Rule 710:95-5-8 subsections (b), (c) and (d) regarding used and/or recapped tires.

3. COMPANY IMPOSED TIRE DISPOSAL FEE

The fee will be a separately stated charge on the sales invoice. The tire fee will be in addition to any applicable state tire-recycling fee. We will only charge our customers who purchase tires from us and leave their old tires for disposal. The fee will be optional. If the customer wants to take their old tires with them, the fee will not be charged. What we are actually doing is recouping our costs to dispose of the Hazardous Materials. In these instances would the company imposed tire disposal fee be subject to sales tax?

Our Response: Pursuant to Section 2-11-406 subsection (B) (2) (b) of Title 27A "No tire dealer shall charge any customer any additional fee for the management, recycling, or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Commission." Therefore, your company is prohibited from charging an additional waste tire disposal fee. Additionally, subsection (c) of the same statute reference states that "For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Tax Commission, the tire dealer shall issue a receipt which will entitle the customer to deliver the waste tire to the dealer at a later date."

4. *CORE CHARGES*

When a customer comes in and purchases either a starter or battery and does not give us their old starter or battery, we would charge them a core charge. If the customer comes back with the old part within a reasonable time period, we will refund the core charge to them. Would the core charge be subject to sales tax at the time the starter or battery is purchased? If the core charge is subject to sales tax, do we refund the sales tax along with the core charge when the customer comes back in for a refund? Are there any differences between different types of parts (i.e. New or remanufactured, batteries vs. parts)?

Our Response: Commission Rule 710:65-19-72 **Deposits, core charges and trade-ins,** states in part "No deduction from the gross proceeds of a sale is permitted for any credit allowed by the seller for the value of a core charge, deposit or a trade-in in exchange or part payment and the tax applies to the full selling price." Additionally, sales tax would not be refunded along with the core charge. The core charge was taxable when charged and the fact it may be refunded does not make the original charge non-taxable. See Commission Rules 710:65-1-9 and 710:65-19-72 enclosed.

5. *STORE AND MANUFACTURER COUPONS*

What is the taxability of store and manufacturer's coupons? The store coupon is a reduction of the selling price. We do not offer double coupon sales. We receive a refund from the manufacturer on the manufacturer coupons.

Our Response: Please see Commission Rule 710:65-1-9 subsection (5) (A) and (B). For store coupons, the reduced price is subject to tax and the original price is subject to tax for manufacturer coupons.

6. *LABOR, REPAIRS, AND INSTALLATION*

We are in the business of repairing automobiles and installation of auto parts and accessories. Are these labor, repair, and installation charges subject to sales tax?

Our Response: Labor charges for installation or other special services are not taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice. See Commission Rules 710:65-19-158 and 710:65-19-159.

7. *FREIGHT/SHIPPING AND HANDLING*

Are charges for freight and/or shipping and handling taxable?

Our Response: The sales tax treatment of transportation and delivery charges, i.e. freight and shipping and handling is governed by Oklahoma Tax Commission Rule 710:65-19-70. Charges that result from shipping merchandise to vendor's customers, i.e. the costs of transportation from the vendor's inventory to the customer, are not subject to sales or use tax, if they are separately stated.

8. *STORAGE CHARGES*

Sometimes automobiles will be left at our service area for *long* periods of time due to different reasons (e.g. Customer does not have the money to pay for the repairs). In these instances, we would charge a per diem storage charge. *Would* these charges be subject to sales tax?

Our Response: Yes. Refer to O.S. 68 § 1354 (7).

9. *STATE INSPECTION AND EMISSION LABOR AND STICKERS*

Is the labor to perform state and emission inspections taxable? If so, if we charge the customer separately for the sticker, is the sticker taxable?

Our Response: The State Of Oklahoma no longer requires state and emission inspections.

10. *BATTERY PROTECTION/WARRANTY SERVICE*

When a customer purchases a battery, they have the option of purchasing a battery protection service for an additional fee. This service is originally performed when the new battery is installed. If in the future, the customer needs this service performed again, it will be done at no charge. The service consists of cleaning the battery terminals and posts, spraying the battery terminals to avoid corrosion and other protective services to increase the life of the battery and to keep it from corroding. Is this service taxable?

Our Response: Refer to response number 6.

11. WARRANTIES

There are three types of warranties that we sell-labor/service only, parts only, and parts and labor/service. What is the taxability of the sale of the warranty under each one of these scenarios? Also, what is the taxability of the work performed under the warranty?

Our Response: The taxability of warranties is dependent on if they are optional or included in the price paid for equipment. Please refer to Commission Rule 710:65-19-365 subsection (c).

12. AUTOMOTIVE REPAIRS INVOLVING EXTENDED WARRANTIES AND SERVICE CONTRACTS

a. When a vehicle owner obtains repairs under an Extended Warranty or Service Contract, is the repair work being paid for by the extended warranty or service contract administrator taxable?

Our Response: Taxability is dependent upon the agreement. Generally, any tangible personal property used in connection with the labor services performed under the contract which are not covered under the contract and which are billed/sold to the customer are subject to sales tax. However, labor charges, separately stated, are not subject to sales tax. See subsection (b) of Commission Rule 710:65-19-365.

b. If the vehicle owner/contract holder has a deductible or pays for a portion of the repairs themselves, are those charges taxable?

Our Response: Neither the deductible or repair charges are subject to sales tax if they are separately stated from the sale of tangible personal property.

13. AUTOMOTIVE REPAIRS AND SERVICES ON LEASED VEHICLE'S

a. We have customers who come in for service and repairs on vehicles that they lease from a commercial fleet leasing company. Automotive repairs and services are included in the lease and the lessor is paying for the services. Are these repairs and services covered under the agreement that is being paid for by the leasing company, taxable?

Our Response: No, please refer to Commission Rule 710:65-1-11 (h).

b. There are situations in which an entity or nonprofit organization (e.g. American Red Cross or The Salvation Army) that has sales tax exemption status is leasing a vehicle from a commercial fleet leasing company, and the lease does not include repairs and services. The fleet leasing company is not responsible for the repairs and service, but is providing a central/consolidated billing service for their client, the vehicle lessee. Therefore we are sending the invoice to the fleet lessor, who in turn is remitting payment to us, and re-invoicing and collecting the funds from their client/lessee. Is the sales tax exemption held by the nonprofit entity valid in this scenario?

Our Response: In order for the exemption to apply, the sales or services must be billed to and paid by the exempt entity. However, if the billing for the repairs and

services were to the leasing company, it would be exempt according to Commission Rule 710:65-1-11 (h).

14. *RESTOCKING FEE*
If a customer returns a special order item, sometimes charges a restocking fee equal to a percent of the original cost of the item. Is this fee taxable?

Our Response: Please refer to Commission Rule 710:65-19-89 (b).

15. *CLOTHING*
Is clothing taxable? If so, is it taxed at a special rate or is there a dollar amount limitation?

Our Response: Clothing is taxable at the same rate as all tangible personal property subject to the sales tax levy. Oklahoma sales tax is a combination of the state rate of four and one-half percent (4 ½%) and any applicable city and county sales tax.

16. *FOOD*
Are prepackaged snacks such as nuts, cookies, and candies, which are ready to eat and are sold off the shelf taxable? If so, are there any special tax rates or rules associated with the sale of food?

Our Response: Food is taxable at the same rate as all tangible personal property subject to the sales tax levy.

17. *SODA/FRUIT JUICE/BOTTLED WATER*
Are sodas, fruit juices, and bottled water from a small refrigerator near a register subject to sales tax? If so, are there any special tax rates or rules associated with these products?"

Our Response: Same response as number 15 and 16.

This response applies only to the circumstances set out in your request of July 21, 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