OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

OFFICE OF THE GENERAL COUNSEL

PHONE
(405) 319-8550

PHYSICAL ADDRESS
First National Center
120 North Robinson, 20th Floor
Oklahoma City, OK

FACSIMILE
(405) 601-7144

MAILING ADDRESS
First National Center
120 North Robinson, Suite 2000W
Oklahoma City, Oklahoma 73102-7801

January 23, 2008

RE: Letter Ruling - , Inc.
; Case No. LR-07-008

Dear :

By letter dated March 24, 2007, you requested a Letter Ruling on behalf of your client, , Inc. d/b/a ("Limited Brands") inquiring as to whether your client is legally obligated to collect the locally imposed consumers' use tax.[2] A Letter Ruling from the Office of General Counsel, Oklahoma Tax Commission, ("OTC") is an "informal written statement of policy or treatment *of specific fact situations* under Oklahoma law."[3] (*emphasis added*). This Letter Ruling addresses the following specific **issue**:

> Whether must collect and remit to the State of Oklahoma the county or municipal consumers' use taxes imposed pursuant to the Oklahoma Use Tax Code, Okla. Stat. Ann. tit. 68 §1401 (2001) *et seq.*

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[1] Power of Attorney signed by , VP, , Inc. d/b/a (September 10, 2007).

[2] Letter from , CMI, , Inc. d/b/a , to , Office of Tax Policy, Oklahoma Tax Commission (March 24, 2007).

[3] Okla. Admin. Code 710:1-3.73(e)(2001).

You assert the following **facts** in your request for this Letter Ruling:[4]

1. is located at .

2. operates as a catalog /mail order/ call-in order/ internet order women's apparel company and makes sales to customers in Oklahoma.

3. is licensed to collect (Permit No.), and does in fact, collect and remit all state and local Oklahoma consumers' use tax.

4. In March 2007, a customer asserted that the company had no legal obligation to collect and remit the locally imposed consumers' use taxes to the OTC.

5. The customer requested a full refund based on the asserted "lack of statutory or regulatory authority requiring an out-of-state vendor to collect locally imposed taxes."

6. has "no intention of pursuing a consumers' use tax refund with the Oklahoma Tax Commission."

7. seeks "guidance from the Commission in order to establish a prospective position regarding locally imposed consumers' use taxes."

The following **analysis** relies on the facts you present.

Imposition of use tax in Oklahoma is governed by the Oklahoma Use Tax Code and the Oklahoma Administrative Code.[5] In pertinent part, Okla. Stat. Ann. tit. 68 §1402 (2001), provides that "[t]here is hereby levied and there shall be paid by every person storing, using or otherwise consuming within this state, tangible personal property purchased or brought into this state, an excise tax on the storage, use, or other consumption in this state of such property at the rate of four and one-half percent (4.5%) of the purchase price of such property."[6] In enacting the Oklahoma Use Tax Code, it was the intent of the Oklahoma Legislature "...that the purchase of tangible personal property outside this state be subject to payment of the use tax if such property would have been subject to the sales tax had it been purchased within the state."[7]

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[4] *See* Letter at n.2; *See also* letters from , CMI to , Assistant General Counsel, Oklahoma Tax Commission (June 25, 2007 and September 10, 2007).

[5] 68 O.S. § 1401 *et seq*; Okla. Admin. Code 710: 65-21.1(2001) *et seq.*

[6] 68 O.S. § 1402; ("Use" is defined as "the exercise of any right or power over tangible personal property incident to the ownership or possession of that property . . . .."), 68 O.S. §1401(8); ("Tangible personal property" is defined as "personal property that can be seen, weighed, measured, felt or touched or that is in any other manner perceptible to the senses."), Okla. Admin. Code 710: 65-1.2.

[7] *Harding v. Oklahoma Tax Commission*, 1954 OK 258, 275 P.2d 264, 267; *see also Phillips v. Oklahoma Tax Commission*, 1978 OK 34, 577 P.2d 1278, 1282.

Just as the Oklahoma Legislature authorizes the state to levy and collect taxes, title 68 O.S. Supp. 2007, § 2701(A) authorizes municipalities to assess and collect taxes for municipal government. Specifically, "[a]ny incorporated city or town in this state is hereby authorized to assess, levy, and collect taxes for general and special purposes of municipal government as the Legislature may levy and collect for purposes of state government,. . .." *Id.* Further, with regard to the Oklahoma Use Tax Code[8], title 68 O.S. § 1411 states: "The board of county commissioners of a county levying a county sales tax or the governing body of a municipality levying a municipality sales tax may levy an additional excise tax . . . on the storage, use or other consumption of tangible personal property. . .."[9] This tax is in addition to the state use tax levied under Section 1402. *Id.*

The authority for the Oklahoma Tax Commission to enter into contractual agreements to collect taxes and assess and enforce penalties on behalf of local governments is found at 68 O.S. Supp. 2007, § 2702. The pertinent provisions follow:

> The governing body of any incorporated city or town and the Oklahoma Tax Commission are authorized and empowered to enter into contractual agreements whereby the Oklahoma Tax Commission shall have authority to assess, to collect and to enforce ***any taxes*** or, penalties or interest thereon, levied by such incorporated city or town, and remit the same to such municipality. Said assessment, collection, and enforcement authority ***shall apply to any taxes***, penalty or interest liability existing at the time of contracting. Upon contracting, the Oklahoma Tax Commission shall have all the powers of enforcement in regard to such taxes, penalties and interest as are granted to or vested in the contracting municipality. *Such agreement shall provide for the assessment, collection, enforcement, and prosecution of such municipal tax, penalties and interest, in the same manner as and in accordance with the administration, collection, enforcement, and prosecution by the Oklahoma Tax Commission* ***of any similar state tax*** *except as provided by agreement.* The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in the agreement. ***
>
> The Oklahoma Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of this section *and all* ***use*** *taxes*, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of Section 1411 of this title in the Sales Tax Remitting Account as provided in Section 1373 of this title.

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[8] 68 O.S. § 1401 *et seq.*

[9] 68 O.S. § 1411 ("The board of county commissioners of a county levying a county sales tax or the governing body of a municipality levying a municipal sales tax may levy an additional excise tax, at a rate that does not exceed the county or municipal sales tax rate of such county or municipality, whichever is applicable, on the storage, use or other consumption of tangible personal property used, stored or consumed within the county or municipality. This authorization to levy and impose a county or municipal use tax shall be in addition to the tax levied by Section 1402 of this title.").

68 O.S. Supp. 2007 § 2702 (*emphasis added*); *see also City of Tulsa v. Oklahoma Tax Comm'n*, 2001 OK 23, 20 P.3d 144, 148 (Okla., 2001). All municipalities in Oklahoma that levy sales and use taxes have contracted with the Oklahoma Tax Commission for the collection and enforcement of those taxes pursuant to 68 O.S. Supp. 2007, § 2702.

Upon application, the Tax Commission may authorize collection of the use tax by a retailer or vendor that does not maintain a place of business in this state.[10] Such retailer or vendor shall be issued a permit to collect the use taxes, ***in such manner and subject to such regulations and agreements as the Tax Commission shall prescribe.*** *Id.* When so authorized, it is the ***duty*** of the retailer or vendor ***to collect the tax*** upon all tangible personal property sold to his knowledge for use in this state. *Id.* (*emphasis added*).

In summary, Oklahoma counties and municipalities have the statutory authority to levy and collect an excise tax on the storage, use or other consumption of tangible personal property equal to the locally imposed sales tax. The Oklahoma Tax Commission has statutory and contractual authority to collect and enforce the use taxes levied by these local governments. The Oklahoma Tax Commission has authorized to collect the taxes upon all tangible personal property sold for use in Oklahoma. The application of pertinent provisions of Title 68 Section 2700 *et seq*, the Oklahoma Use Tax Code[11] and the rules of the Oklahoma Administrative Code,[12] obligate to collect and remit it's consumers' local use taxes to the Oklahoma Tax Commission.

This letter ruling generally may be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and there has been no change in applicable law.[13]

Respectfully submitted,

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Assistant General Counsel

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[10] 68 O.S. § 1407.

[11] 68 O.S. § 1400 *et seq.*

[12] *See* Okla. Admin. Code 710: 65-21.3

[13] Okla. Admin. Code 710: 1-3.73(e).

APPROVED IN CONFERENCE:

General Counsel

Assistant General Counsel
Opinion Conference Coordinator