OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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August 22, 2007

Re: Our File No. LR-07-67

Dear

I am writing in response to your request regarding whether the sale of certain music service packages and other enumerated services are subject to sales tax. A restatement of facts, the question posed and responses thereto are set forth as follows:

My client ("Taxpayer") is in the electronic jukebox and music service business. Simply, Taxpayer sells digital jukeboxes to its customers ("Operators") that contain a hard drive pre-loaded with thousands of songs available for play by customers upon inserting a coin into the jukebox. Additional songs can be downloaded via the Internet onto the hard drive. Charges by Taxpayer for the music on each jukebox, whether on the hard drive at the time of the sale of the jukebox, or downloaded at the request of the Operator or customer, are based on a variety of music service packages as noted below. Technical support service is included with the purchase of each jukebox at no charge to Operators. Charges for the purchase of a music service package are stated separately from those for the digital jukebox. Also the parties contract separately for the purchase of a music service package and a digital jukebox. The jukebox cannot be purchased without also purchasing one of the music service packages.

Music Service Packages:

A. Fixed Rate New Fixed Rate, Fixed Rate 2006 - Operators are charged a weekly base fee of $12.95 plus $ 0.04 each time a song is played ("per play"). Operators are entitled to a fixed number of free music downloads annually.

B. Ultra 16 – Operators are charged a weekly base fee of $12.95 plus 16% of revenue from the total coinage (intake). Operators are entitled to a fixed number of free music downloads annually.

C. Elite, New Elite, Fixed Percentage Program – There is no base fee on these plans. Operators are charged between 20% and 23% revenue on total coinage (intake), depending on the plan. Operators are entitled to a fixed number of free music downloads annually.

Separately Stated and Charged For Additional Services:

D. Additional Song Downloads - In each of the music service packages noted above, existing Operators are entitled to a fixed number of free music downloads annually. Should Operators exceed their free annual download allotment, they will incur a separately stated charge of $1.50 for each additional song downloaded onto the hard drive.

E. Per Play Fee (Tune Central) - Operators electing the Fixed Rate, Elite, Ultra 16, and/or Fixed Percentage music packages may incur a separately stated charge for each "per play fee." A per play fee is a charge incurred each time a song, accessed from Taxpayer's "Tune Central" database, is chosen and played by a customer. The fees differ whether Tune Central is leased or purchased. This charge is never passed on to the customer, but absorbed by the Operator.

F. Tune Central - Taxpayer's music access database allows a customer to access said database to search thousands of music titles by name, artist, or album. Customers perform the search, make their selection, and insert coins to have their song played. While the song is accessed from the database (entity within the jukebox body) it is never downloaded to the Operators hard drive. No copies (either hard or digital) are maintained by the Operator after the play has been completed. This is a one time play option and a separate charge or credit is used by the customer each time the customer searches, and chooses to play a song.

G. Tune Central (Gen III) – Taxpayer's on-line music access database allows a customer to access the main frame database (by the Internet) to search for music titles by name, artist, album, or genre. A selection is made, coins are inserted and a song is played. It is not downloaded onto the Operators hard drive, and no copies are maintained after the play has been completed. This is a one time play option and a separate charge or credit is used by the customer each time the customer searches, and chooses to play a song.

H. Background Music – Background music is a separately charged for service available with the Ultra 16, Elite, New Elite and Fixed Percentage Plan music packages. The charge is calculated on a graduated rate based on the percentage of total jukebox plays. This charge is never passed on to the customer, but absorbed by the operator.

I. Telephone Support – Telephone support services provide Operator twenty-four hour technical telephone support, an exchange of damaged or defective parts and/or applicable software upgrades (in both tangible and intangible format), and onsite field service technicians.

We understand that the sale and lease of the jukebox is subject to Oklahoma sales tax. Our question is, will Oklahoma require Taxpayer to collect and remit sales tax, or self assess use tax on the following music service packages and/or separately stated and charged for additional services, as described above:

Music Service Packages:

A. Fixed Rate, New Fixed Rate, Fixed Rate 2006

B. Ultra 16

C. Elite, New Elite, Fixed Percentage Program

The sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma sales tax code, is subject to the levy of sales tax. 68 O.S. §1354(A)(1). "Tangible personal property means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software." 68 O.S. §1352(23)

The music preloaded on the jukebox hard drive falls within the definition of tangible personal property for sales tax purposes and therefore the charges for the music service packages would be subject to sales tax.

Separately Stated and Charged For Additional Services

D. Additional Song Downloads

E. Per Play Fee

F. Tune Central

G. Tune Central Gen III

H. Background Music

The additional services referenced above as D, E, F, G, and H do not constitute the sale of tangible personal property nor do they fall within one of the other enumerated transactions subjected to the sales tax levy pursuant to Section 1354 of Title 68.

I. Telephone Support

The optional bundled telephone support which provides for software upgrades in tangible format is subject to sales tax.

This response applies only to the circumstances discussed in your request of April 18, 2007. 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

Christy J. Caesar

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Tax Policy Analyst