OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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February 25, 2008

Re: LR-07-156

Dear

I apologize for any inconvenience my delay in responding may have caused you. This is in response to your request for a letter ruling regarding the questions presented in your correspondence. I have scanned your questions into this letter, followed by our response.

"The two primary questions, with related secondary questions, for which my company requests a general information letter are:

I. Is tax due on "shipping and handling" charges under the circumstances described in the factual background above? (I.e., that the company cannot calculate the actual shipping cost at the time an order is placed by a distributor, much less when a distributor takes an order from a consumer.)

a. It appears that 710:65-19-214(c) is straightforward that the "shipping & handling" charges described above are not subject to sales or use tax. Is that the Commission's view as well?

Our Response: As stated in Commission Rule 710:65-19-214(c), "Shipping and handling charges that result from the shipment of multi-level sales merchandise to the distributor or the distributor's customers are not subject to sales tax, if separately stated". Therefore, regardless of your method of figuring shipping and handling charges are not taxable if there are separately stated on the invoice.

b. If the company could demonstrate that no profit is made on shipping fees charged to customers (that overall shipping costs are equal to or greater than overall shipping and handling revenue for a certain time period), then would shipping and handling charges not be subject to sales tax?

Our Response: Response is same as (a) in the above. Shipping and handling charges in regards to Multi-level sales are not subject to sales tax if they are separately stated.

2. Is sales or use tax due on incentive-based free and/or discounted product as described above, and if so, on what value or base?"

Our Response: Yes, sales tax is due on the retail value of the products, see subsection (a) of the same rule and Commission Rule 710:65-1-7 (2) which states in part "The business withdrawing tangible personal property from inventory should include the "sales value" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

This response applies only to the circumstances set out in your request of September 14,2007. 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 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

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst