OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

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November 28, 2007

RE: Request for Letter Ruling dated September 20, 2007;
Our File No. LR-07-029.

Dear :

The referenced request for a letter ruling was forwarded to me for response. In the referenced letter you requested "a ruling for products to determine if our products are subject to sales tax in [Oklahoma]." You then list and describe approximately thirty-three products and attach "copies of literature and *Instructions for Use*" for those products.

A Letter Ruling from the Office of General Counsel, Oklahoma Tax Commission, is discretionary and defined as an "informal written statement of policy or treatment of specific fact situations under Oklahoma law." (OTC Rule No. 710:1-3-73(e)). Further, Letter Ruling requests from an individual taxpayer or groups of taxpayers will be honored by the Commission, at its discretion, and taking into consideration time and resources available to respond to such request. (OTC Rule 710:1-3-73(f)).

Because of the extensive number of requests for Letter Rulings and the limited resources of the General Counsel's Office, procedures were implemented to control the process by which Letter Rulings are issued. As a general rule, the Legal Division does not respond to Letter Ruling requests that do not describe specific fact situations involving and identifying the affected taxpayer(s) and other involved entities. Further, where the requesting entity is corporation or law firm, the General Counsel requires that a legal brief accompany the request for letter ruling. In this light, we must respectfully deny your request for a Letter Ruling at this time.

That said, the following comments are offered in an effort to assist you in determining the appropriate treatment of the sales of the products you describe. Oklahoma levies an excise tax "upon ***all sales***, ***not otherwise exempted*** in the Oklahoma Sales Tax Code", 68 O.S. § 1350 et seq. (68 O.S. § 1354(A)) (Emphasis added). The tax is levied on the gross proceeds or gross receipts of each sale of tangible personal property and services listed at 68 O.S. § 1354(A)(1) – (21). A "sale" is defined as "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions ... including but not limited to ... the furnishing or rendering of services taxable under the Oklahoma Sales Tax Code...." (68 O.S. § 1352(15)). "The statutory definition of the word sale is very 'comprehensive.'" *Magnolia Petroleum Co. v. Oklahoma Tax Commission*, (1958 OK 124, 326 P.2d 821, 824). "'Gross receipts' or gross proceeds' means the total amount of consideration for the sale of any tangible personal property or service taxable under the Oklahoma Sales Tax Code...." (68 O.S. § 1352(7). The phrase 'tangible personal property', as used in the Oklahoma Sales Tax Code, is all inclusive and cannot be limited except by specific exemption. *Magnolia Petroleum Co.*, 326 P.2d at 823. General exemptions from the levy of the Oklahoma sales tax are found at 68 O.S. § 1357. "For the purpose of proper administration of the provisions of the sales and use tax laws, it is presumed that all gross receipts are subject to tax until they are shown to be tax exempt." *OAC* 710:65-1-4(a). "The burden of proving that a sale of tangible personal property or enumerated service is an exempt sale is upon the vendor." *Id.*

For purposes of complying with the Oklahoma Sales Tax Code, 68 O.S. § 1350 et seq., the permanent rules of the Oklahoma Tax Commission, interpreting and applying Oklahoma tax statutes should be helpful. The rules of the Oklahoma Tax Commission are codified at Title 710 of the Oklahoma Administrative Code (*OAC*) and may be accessed at http://www.tax.ok.gov/rules/rules.html.

Respectfully,

OKLAHOMA TAX COMMISSION

Ernest H. Short
Assistant General Counsel

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