

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063



December 17, 2008

Re: LR-08-073, Sales Tax Inquiry

Dear I

I am writing in response to your request regarding whether the tax treatment of a sale by certain subsidiaries of _____ (collectively _____ of a number of Oklahoma-based funeral homes, cemeteries, and related assets (the "Oklahoma Business Assets") to _____, who in turn sold them to _____ was consistent with OAC 710:65-1-6. Set forth verbatim, without exhibit references, are the facts presented along with a response to your request.

_____ and _____ entered into an Asset Purchase Agreement for the sale of the Oklahoma Business Assets (as well as properties and related assets located in several other states) on October 3, 2000;

_____ and _____ entered into an Asset Purchase Agreement for the sale of the same Oklahoma Business Assets on October 17, 2000;

_____ ; and _____ : entered into the Second Amendment to Asset Purchase Agreement on December 18, 2000 wherein _____ requested and _____ agreed to transfer the assets purchased and sold pursuant to the October 3, 2000 Asset Purchase Agreement directly to certain designees of _____ ;

_____ and _____ closed their sale transaction on the Oklahoma Business Assets on December 22, 2000;

At _____ request, _____ transferred the Oklahoma Business Assets directly to designees;

_____ and _____ closed on their Asset Purchase Agreement contemporaneously with the closing of the Asset Purchase Agreement between _____ and _____

_____ had no contractual obligation to _____, only to _____ ;

Assume that _____ does not fall within the exemption set forth in Okla. Admin. Code § 710:65-13-200; and

Assume that _____ and its designees do fall within the exemption set forth in Okla. Admin. Code § 710:65-13-200.

The sale of tangible personal property in Oklahoma, 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). Pursuant to Section 1361.1 of Title 68 a vendor shall be relieved of liability for the sales tax or the duty to collect the sales tax imposed by Section 1361 of Title 68, if the vendor, in good faith, timely accepts from a consumer properly completed documentation certified by the Oklahoma Tax Commission that the consumer is exempt from sales tax. See OAC 710:65-7-6.

OAC 710:65-13-200 adopted to administer the sale for resale exemption in Section 1357(3) of Title 68 states in pertinent part:

The gross proceeds derived from sales of goods, wares, merchandise, and telecommunications services by vendors, for resale, to persons having a valid sales tax permit who are regularly engaged in reselling the articles or services purchased are exempt from sales tax. If the purchaser is an Oklahoma resident, he must provide the vendor with his Oklahoma sales tax permit number if the sale is made in Oklahoma. In addition to furnishing his sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that said purchaser is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify, with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Commission may cause the purchaser's sales tax permit to be canceled. The seller will be held liable for sales tax due on any sales where an exemption certificate is found to be invalid, for whatever reason.

In accordance with the assumption that _____ was not eligible to claim the sale for resale exemption, sales tax was due on any transfer in Oklahoma of tangible personal property from _____ to _____.

Likewise, in accordance with the assumption that _____ and its designees fall within the resale exemption set forth in OAC 710:65-13-200, _____ would be relieved from liability to collect sales tax on any transfers to _____ and its designees of tangible personal property in Oklahoma, if the properly completed documentation outlined in OAC 710:65-7-8 was obtained at the time of purchase.

This response applies only to the circumstances discussed in your request of June 17, 2008. 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
Tax Policy Analyst