OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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January 13, 2009

Re: Our File Number LR-08-083

Dear :

I apologize for any inconvenience our delay in responding may have caused you. This is in response to your inquiry for a letter ruling to determine whether the sale of custom designed and fabricated devices to orthodontists and dentists for use by their individual patients is subject to sales and use tax in Oklahoma. I have scanned the pertinent parts of your facts and issues below, followed by our responses.

The Company's unique system has two principle components: the custom design service and fabrication of the custom designed sets of . The service is an internet based application that allows the custom device design facility in San Jose, Costa Rica to interact with the prescribing orthodontist or dentist to simulate malocclusion correction in three dimensions by modeling two-week stages of tooth movement. are thin, clear plastic, dental devices that are removable by the patient. The Aligners are custom manufactured, in Mexico, in sets, for a progressive series of devices to correspond to each two-week stage of the simulation for malocclusion correction. The Aligners cover a patient's teeth and are nearly invisible when worn. The Aligners are commonly worn as pairs, over the upper and lower teeth. The patient may remove the Aligners for meals, brushing or flossing. Each pair of Aligners is worn for approximately two weeks, when the patient begins using the next pair in the progressive malocclusion correction set of Aligners. There are periodic visits to the dentist to check the progress of the malocclusion correction.

The system of malocclusion correction by the custom design service and the fabrication of the sets of custom Aligner devices, which are used by the individual patient, is readily distinguishable from traditional braces used to correct malocclusion, which are installed and periodically adjusted by orthodontists.

Fulfillment Products

, Inc. also sells fulfillment products such as Invisalign plastic bag, preformed metal trays to doctors.

. Operations in Oklahoma

. is registered with the state of Oklahoma as Use Tax Vendor to collect Oklahoma Use Tax and began filing sales or use tax returns March, 2006. , Inc. has no physical place of business in Oklahoma, no inventory in Oklahoma and one employee in Oklahoma.

Issues

1. Does meet the definition of a Dental Laboratory or Dental Supply House as found in Oklahoma Sales and Use Tax Regulation 710:65-19-71 for the products described above.

   Our Response: Based on the description of your product , Oklahoma Statutes Title 59 Section 328.3, defines "Dental laboratory technology" as "using materials and mechanical devices for the construction, reproduction or repair of dental restorations, appliances or other devices to be worn in a human mouth" which would classify as a Dental Laboratory.

2. Is the sale of custom designed and fabricated to orthodontists and general practitioner dentists for their individual patients, subject to Oklahoma sales or use tax?

   Our Response: No, based on subsection (c) of Commission Rule 710:65-19-71. Dental laboratories pay sales tax as a consumer user on material used to produce their product and do not charge tax to the dentist on their purchases of the finished products when transferred to the dentist.

3. Is the sale of Fulfillment Products, as described above, to orthodontists and general practitioner dentists for use in providing treatment to their individual patients for correcting malocclusion subject to Oklahoma sales or use tax?

   Our Response: Yes, the fulfillment products would be subject to sales tax based on subsection (d) of the above rule.

4. To the extent that , is defined to be a Dental Laboratory, as found in Oklahoma Sales and Use Tax Regulation 710:65-19-71, what materials, if any, are subject to Oklahoma use tax? As noted above, are designed in San Jose, Costa Rica, and manufactured in Mexico and subsequently shipped to the prescribing Orthodontist or dentist for their individual patients. Our shipping term is FOB.

   Our Response: The Fulfillment Products are the only taxable products.

This response applies only to the circumstances set out in your request of July 1, 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 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