OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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August 01, 2008

RE: LR-08-094
Sales Tax Inquiry

I am writing this response to your inquiry regarding fuel service charges and charges that are subject to sales tax.

Facts:

Your inquiry stated that if you charge $5,000 for a load of sheetrock and a separate fuel charge that ranges from $25.00 to $75.00, would sales tax be charged on the fuel surcharge? If not, what if a competitor charges $3,000 for the same sheetrock with a $2,000 stocking and delivery fee (though extreme) in order to reduce the tax liability? How do you control the subjectivity of determining whether someone is actually trying to avoid or reduce the taxable part of the transaction and how do you determine if the charge is reasonable or customary?

Our Response:

In order for a sales price between a seller and a purchaser to be agreed to or "considered", the sales price should include all costs that the seller has incurred in obtaining the property for sale with no deductions. In other words, any costs, fees (including labor and other fees), alteration, delivery, or other services performed in obtaining property to be placed in the seller's inventory, should be included in the selling price that the seller charges to the purchaser. For example, if a seller acquires his property at a cost of $5,000 and was charged delivery fees, fuel surcharges, and other service fees totaling $75.00, then the value of that property obtained by the seller has increased.

If the seller and buyer agree upon a price and the seller sells property to a customer at the agreed upon price and then charges a fee or other type of charge to his customer in order to recover his cost from the delivery fees that he was charged, then these fees are

taxable even if they are separately stated. If a seller must charge his own delivery fee or service charge in order to deliver the property to his customer, then the delivery fee is not subject to sales tax so long as it is stated separately. The reason; the delivery fee is a necessity for the transfer of ownership of the property not an element of cost to the seller in obtaining property to be acquired. See Oklahoma Tax Commission rule 710:65-1-2 (I have enclosed a copy for your convenience).

However, there are costs that are not to be included in gross receipts, they can be found in Oklahoma Tax Commission rule **710:65-1-9 (e)** (I have enclosed a copy for your convenience).

In short, fuel surcharges that are charged by you in order to transfer property to a customer are considered to be delivery charges and are not subject to sales taxes so long as they are separately stated on an invoice as described in Oklahoma Tax Commission rule 710:65-19-70. However, any fuel charges that you may have encountered in obtaining property for your inventory that you have passed-on to your customers would be part of gross receipts and therefore subject to sales tax even if they are separately stated.

This response applies only to the circumstances discussed in your email request of July 16, 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
Marc Morrison
Tax Policy & Research Division