OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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July 31, 2008

RE: LR-08-096
State & Tax inquiry

I am writing in response to your inquiries regarding your client's nexus status as well as other Oklahoma nexus inquiries.

Facts

You have stated that your client has no physical connection, passive investment, and has no employees in the state of Oklahoma. All orders are solicited through telephone, email, and through the company's website with all deliveries made by common carrier.

Question #1

Is your client required to collect sales or use tax in Oklahoma?

Our Response:

Based on the information you provide, your client has no sales tax nexus with the state of Oklahoma and is not required to collect sales or use tax.

Question #2

Is it possible for an entity without an Oklahoma nexus for sales and use tax to establish a nexus in one of the other state taxes? If so, which tax is involved and which activities establish a nexus?

Our Response:

Yes, it is possible for a company that does not have Oklahoma sales or use tax nexus to establish an Oklahoma Income Tax nexus or a Franchise Tax nexus. The activities that can justify a nexus for the income taxes (as well as a franchise tax nexus for corporations only) can be found in Oklahoma Tax Commission Rule 710:50-17-3, (I have enclosed a copy for your convenience.)

Question #3

If an entity is not required to collect sales or use tax, can that entity volunteer to collect sales or use tax without exposing it to associated liability for not collecting the correct amount of tax?

Our Response:

An entity may volunteer to collect Oklahoma Use Tax as a vendor, but by doing so, does not excuse them from any associated liabilities for not collecting the correct amount of tax. I have enclosed Oklahoma Tax Commission Rules 710:65-21-3 through 710:65-21-6 regarding Oklahoma Use Tax requirements.

Question #4

Assuming the business activities of our client changes, would the solicitation or acceptance of sales within the state by a traveling salesperson establish a nexus? If so, is the determination affected by the number of visits or time that a salesperson spends in the state? If so, what is the cutoff for determining nexus?

Our Response:

A traveling salesperson inside the state of Oklahoma would constitute a sales tax nexus, regardless of the number of visits.

Question #5

Assuming the business activities of our client changes, would the mailing of marketing materials to customers within the state establish a nexus? If so, is the determination affected by the quantity of marketing materials shipped or the number of times materials are shipped into the state? If so, what is the cutoff for determining nexus? If so, does it make a difference that marketing materials are only shipped to existing customers and not in connection with a mass mailing solicitation?

Our Response:

This would not constitute a nexus.

Question #6

Assuming the business activities of our client changes, would the rental of T.P.P. within the state under an operating lease establish a nexus? If so, is the determination affected by the term of the lease? If so, what is the cutoff for determining nexus?

Our Response:

Yes, the rental of tangible personal property in the state of Oklahoma would constitute a nexus regardless of the terms of the lease.

Question #7

Assuming the business activities of our client changes, would the rental of T.P.P. within the state under a capital lease (purchase lease) establish a nexus? If so, is the determination affected by the term of the lease? If so, what is the cutoff for determining nexus?

Our Response:

See question # 6.

This response applies only to the circumstances discussed in your written request of April 29, 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,

Marc Morrison

Oklahoma Tax Commission
Marc Morrison
Tax Policy & Research Division