OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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

July 7, 2009

Re: Taxability of digital photographs delivered electronically; Our File No. LR-09-066

Dear

I am writing in response to a request for a ruling on whether digital photographs, delivered electronically, are subject to Oklahoma sales and use tax. Set forth verbatim are the facts presented along with the issues posed and the responses thereto.

FACTS

Taxpayer sells photographs delivered electronically to a customer's computer, personal digital assistant or other electronic device. To purchase the product, the customer connects to a Website, selects the product and pays for the product. A digital file is then delivered electronically to the customer's electronic device. The customer does not receive a compact disc or other type of physical or hard copy of the digital file upon purchase; the only item the customer receives is the digital file. No additional software is needed to use the product once it is delivered electronically.

ISSUES

A. Is the sale of a digital photograph delivered electronically tangible personal property?
B. Is the sale of a digital photograph delivered electronically subject to Oklahoma sales and use tax?

RESPONSE

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other transactions as specified in Section 1354 of Title 68 of the Oklahoma Sales Tax Code. Use tax is levied on the purchase price of all tangible personal property, not otherwise exempted, which is brought into Oklahoma for storage, use or other consumption within Oklahoma. 68 O.S. § 1402. Tangible personal property is defined to mean "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses . . . [and] includes electricity, water, gas, steam and prewritten computer software". Digital photographs delivered electronically do not constitute tangible personal

property. Moreover, transfers of digital photographs delivered electronically do not fall within one of the enumerated transactions subject to sales tax under the Sales Tax Code. Therefore, the sale of digital photographs delivered electronically is not subject to sales or use tax in Oklahoma.

This response applies only to the circumstances discussed in your request of March 26, 2009. Pursuant to Oklahoma Administrative Code 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