OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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

November 18, 2009

Re: LR-09-101; Sales Tax Inquiry

Dear

This is in response to your request for a ruling regarding the sales tax treatment of business transactions of your client. The facts presented in your request have been set forth verbatim (footnotes omitted) along with the transactions at issue and corresponding responses

FACTS

is a wholesale company whose core business is to provide its customers carbon dioxide (both in liquid and gaseous form) ("CO_2') for use in beverage carbonation systems, commonly known as soda fountains. customers include restaurants, convenience stores, movie theaters, theme parks and sports venues.

I. BULK CO2 TANK/HIGH PRESSURE CYLINDER RENTAL AND BULK LIQUID/GAS CO2 SALES

delivers liquid CO_2 to customers that is stored in a stainless steel cryogenic tank installed at the customer's premises ('Bulk CO_2 Tank") while gas CO_2 is delivered to customers in portable cast iron steel containers ("High Pressure Cylinder"). The customer connects the Bulk CO_2 Tank or the High Pressure Cylinder to its beverage carbonation machine (a soda fountain) where the liquid or gas CO_2 is mixed with water and soda syrup (obtained by the customer from a third party vendor) to produce a fountain soda customers sell fountain sodas to their patrons, each of whom pays sales tax, as appropriate, on his or her purchase of the fountain soda. When the liquid CO_2 in a Bulk CO_2 Tank or gas CO_2 in a High Pressure Cylinder runs out, refills it and continues to do so until the relationship terminates. Upon termination, the customer is obligated to return the Bulk CO_2 Tank or High Pressure Cylinder t

therefore engages in two transactions with its customers. First, it rents the Bulk CO_2 Tanks and High Pressure Cylinders and second, it sells liquid and gas CO_2. We request a letter ruling that details Oklahoma's sales tax treatment of the following:

TRANSACTION

1) Rental of the Bulk CO_2 Tanks and High Pressure Cylinders (which hold liquid and gas CO_2. respectively) to ustomers;

RESPONSE

The sale of tangible personal property, 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). A sale includes but is not limited to "the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property." 68 O.S. §1352(22)(a). Therefore, is required to obtain an Oklahoma sales tax permit and collect and remit state and any applicable local sales tax on the rental payments as they become due. See OAC 710:65-1-11.

TRANSACTION

2) Sale of the liquid or gas CO_2 to customers;

RESPONSE

In accordance with Section 1354(A)(1) your client's sales of CO_2 would be subject to sales tax in Oklahoma. customers, possessing an Oklahoma sales tax permit, who are in the business of reselling fountain sodas may purchase the CO_2 exempt for resale pursuant to Section 1357(3) of Title 68.[1] Oklahoma Administrative Code 710:65-7-8 sets forth the properly completed documentation that must be accepted from a purchaser claiming a sales tax exemption for resale and retained by the vendor in order for the vendor to be relieved of any liability for the sales tax and the duty to collect imposed by 68 O.S. § 1361 of Title 68. See also, OAC 710:65-7-6 and OAC 710:65-13-200.

TRANSACTION

3) Whether the total invoiced amount is subject to Oklahoma sales tax if the invoice does not separately state the rental charge and the sales charge for the CO_2.

RESPONSE

In order for permitted customers to purchase CO2 sales tax exempt for resale, the amount charged for the CO2 must be segregated from the rental charge. Otherwise, the total invoiced amount would be subject to Oklahoma sales tax.

This response applies only to the circumstances discussed in your request of June 3, 2009. Pursuant to Oklahoma Administrative Code 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

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst

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[1] 68 Section 1357(3) exempts from sales tax, "sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in Section 1350 et seq. of this title."