OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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August 18, 2010

RE: LR-10-037
Sales Tax Inquiry

Dear

I am writing this letter in response to your sales tax inquiry. Set forth verbatim are the facts presented along with the responses thereto.

Facts

I attended the OTC's new business tax workshop today, filled out the registration packet, and received a sales tax permit. I left with a few questions that I would like an official ruling on, however, as I received contradictory advice during the workshop and when I took the packet to the OTC Tulsa office. At the workshop, after I explained my business, I was told that I would not need a sales tax permit, but when I got to the office, I was informed that I would in fact need one.

makes websites. One of our web sites is a game. It is free to play, but users can buy in-game items with real money. Nothing physical is ever shipped and purchases are made from people worldwide. I believe that this does not count as "tangible personal property," and thus does not necessitate a sales tax license. Is this accurate?

Secondly, we are moving toward making mobile applications. We will not be selling these applications directly. They will be sold through a third party, namely and I was informed that purchases made out of state are not subject to sales tax, and I was told different things regarding if software sales are taxable when there is no physical product. There is no way for me to know where the purchaser is located, as I will not be collecting a mailing address. I do not interact with the customer directly at all – it is all handled through the third party

store. I have consulted the OTC Rules and I was not able to come up with an answer on how to handle this situation.

Finally, if neither of these situations requires us to pay sales tax, do I need the permit? I was advised to fill in the Oklahoma Sales Tax Report with the total sales and list the same amount on line 3 from 3a if all sales were through the

Response:

The sale of in-game items does not constitute the sale of tangible personal property nor does it fall within one of the other enumerated transactions subject to sales tax pursuant to Section 1354 of Title 68. Likewise, sales of prewritten computer software that is delivered electronically, by other than tangible storage media, are not subject to sales or use tax. 68 O.S. § 1357(32). Since does not make sales subject to the sales tax levied by Sections 1350 et seq. of Title 68 of the Oklahoma Statutes, it is not required to hold an Oklahoma sales tax permit. 68 O.S. §§ 1363 and 1364. Therefore, the sales tax permit issued should be returned to the Tax payer Assistance Division, P.O. Box 26850, Oklahoma City, Oklahoma, 73126-0850 for cancellation. Please explain the reason for such request, that is not making sales subject to sales tax, in the space provided on the back of the permit and it would also be advisable to check the "out of business" notification when you electronically file your next sales tax report.

This response applies only to the circumstances discussed in your written request of February 23, 2010. Pursuant to Oklahoma Tax Commission 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 Analyst