OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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

July 19, 2010

RE: LR-10-084 (Sales Tax Inquiry)

Dear ,

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

Facts

> We have been doing business with since of and never have we been charged for Oklahoma Sales Taxes except for the first invoiced received numbered and the last shipment received on . is a pool remodeling business that offers their services to General Contractors and does not sell the product received to the public. places their orders to by phone and the product is delivered to our warehouse located in TX by
>
> We will gladly pay any taxes owed to the State of Oklahoma; however we think it is unreasonable for to make us pay for their error. We have tried to arranged and settle with them, however they do not cooperate. I have attached all the invoices received from Including the invoice where they are back charging us for Oklahoma sales taxes. And in this matter , is not liable and may not be responsible for Oklahoma State taxes.

Our Response

The location where a sale is sourced determines the taxes that are to be charged. Retail sales are sourced in accordance with 68 O.S. § 1354.27(A) which provides in pertinent part as follows:

> A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this subsection shall not apply to florists until January 1, 2011. Prior to that date, all sales by florists shall be sourced to its business location;

* * *

The sourcing statute is a provision that defaults to the next paragraph if the prior paragraph is inapplicable to the transaction at issue. The application of paragraphs 1 and 2 of subsection A of Section 1354.27 is dependent upon where the purchaser or the purchaser's donee receives or takes receipt of the item purchased. Receive and receipt is defined in Section 1354.27(E) of Title 68 as:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital goods, whichever comes first.

Receive and receipt does not include possession by a shipping company on behalf of the purchaser. 68 O.S. § 1354.27(E)

Although it is unclear from the documentation submitted where received or took receipt of the items purchased from , if received or took receipt of said items in Texas, the purchase of the referenced items would not be subject to sales tax in Oklahoma.

This response applies only to the circumstances discussed in your written request of May 13, 2010. 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 Analyst