OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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October 7, 2010

Re: LR-10-136

Dear

This is in response to your correspondence of July 29, 2010. Set forth verbatim are the facts presented along with the questions posed and responses thereto.

FACTS:

My company is a distributor and servicer of batteries and other related power supply products. As a distributor, we sell to both end users as well as retailer or our battery products. A component of our selling is e-commerce for which we sell to end users in the State of Oklahoma via internet transactions. The legal entity for which the e-commerce is transacted does not have a physical present through payroll, property, inventory, vehicles or real estate. The legal entity does belong to a group of corporations (affiliated) which has members who do have nexus in the State of Oklahoma.

Questions

1) Does this legal entity fall under an "Affiliated Nexus Provision" in the State of Oklahoma?

Based on the facts presented a definitive response to your request cannot be given. However, the facts indicate that the e-commerce entity would fall within the affiliate nexus provisions encompassed in the definition of retailer for purposes of Oklahoma use tax collection and remittance. 68 O.S. § 1402. As a retailer, the e-commerce entity should register to obtain an Oklahoma vendor use tax permit and collect state and any applicable local use taxes due on Oklahoma sales of tangible personal property. There is no fee for this permit. Application may be made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, OK 73194, a completed Packet A available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

Dawn Cash, Director
Tax Policy & Research Division

2) Under the current HB 2359, Law or present standards related to this provision that have evolved, would this legal entity have the option of maintaining its position as a "non-collecting retailer" and provide notice via e-mail confirmation or other to its end-user customer in Oklahoma of its status and their obligation to report the use tax? Would this legal entity have to register for sales and use tax?

No, if determined to be a retailer for purposes of Oklahoma sales and use tax collection, the referenced legal entity could not maintain a position as a "non-collecting retailer" As previously stated, the entity would be required to register with the State of Oklahoma to collected and remit Oklahoma use tax on Oklahoma sales of tangible personal property.

3) Under the definition of "De Minimis Retailer" applicable in the State of Oklahoma whereby a non-collecting retailer that made total gross sales in the prior year of less than $100,000 does the calculation and/or definition of the "total gross sales" include just the activity of the e-commerce legal entity in terms of sales into Oklahoma via internet or does the calculation and/or definition take into account the sales activity in the prior year pertaining to the group of corporation (affiliated) for which the e-commerce legal entity belongs to some of which has established nexus in the State of Oklahoma?

In accordance with the facts presented and the responses set forth above, the definition of "De Minimis Retailer' is not applicable to the referenced legal entity since it does not appear to be a "non-collecting retailer".

This response applies only to the circumstances discussed in your written request of July 29, 2010. 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

Marc Morrison

Marc Morrison
Tax Policy Analyst