OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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July 11, 2011

Re: LR-10-161 (Sales Tax Inquiry)

Dr.

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

Facts:

A. An end-user company purchased various items of equipment and paid Oklahoma sales tax on the equipment purchase. This company (the "Lessee") then enters into a sale and leaseback transaction with a leasing company ("Original Lessor"). Our understanding is that the sale and leaseback transaction is exempt from Oklahoma sales tax per Oklahoma sales and use tax code 710:65-1-2 Definitions (i.e., the transaction was exempt because the definition of a "sale" does not include sale and leaseback).

B. A new leasing company ("New Lessor") now intends to purchase the lease and equipment subject to the lease from Original Lessor while the leased equipment remains on lease to the Lessee. New Lessor will continue to lease the equipment to that same Lessee.

Questions:

1. Is the original sale and leaseback transaction correctly exempted from Oklahoma sales tax as the sale and leaseback is not included in the definition of a "sale" and therefore not a taxable event?

Response:

The original transaction described in "A" would be considered a sale and leaseback transaction that is not subject to Oklahoma Sales Tax. OAC 710:65-1-2.

2. Is there any exemption that New Lessor can claim given as to the sale from the Original Lessor to New Lessor given the fact that the sales tax has already been paid upfront by the lessee under the original purchase and that the Lessee is not paying a use tax?

Our Response:

If the New Lessor possesses an Oklahoma sales tax permit, the sale would be exempt as a sale for resale/lease. However, the New Lessor would be required to charge and collect Oklahoma Sales Tax from the Lessee, if the equipment is being leased in Oklahoma.

This response applies only to the circumstances discussed in your written request of December 02, 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
Tax Policy Analyst