OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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June 13, 2011

Re: LR-11-046

Dear

This is in response to your request for a ruling to confirm the sales tax treatment of the issues described in your correspondence regarding (the "Auctioneer") is required to collect and remit tax on the administrative fees the Auctioneer charges buyers of tangible personal property at the Auctioneer's public auctions. Set forth verbatim are the facts and issues presented in your correspondence of March 10, 2011 along with our response thereto.

FACTS

Auctioneer is in the business of selling both new and used tangible personal property through unreserved public auctions. Auctioneer regularly sells industrial equipment, motor vehicles, agricultural equipment, and other tangible personal property The auctions take place throughout the year at a location within the state. The owner of the tangible personal property (hereinafter "the Consignor") consigns the tangible personal property to Auctioneer for the auction process while retaining the title to the tangible personal property. Auctioneer acts as a selling agent for the Consignor and acquires a power of attorney for the limited purpose of executing all documents required for a title transfer and registration, without any further action of the Consignor. In addition to selling property that is owned by a Consignor, Auctioneer also purchases tangible personal property in its own name to auction.

All sales made at the auction are final and sold "as is". Auctioneer does not deliver or arrange for delivery of any purchases. All buyers must remove the property from the location of the auction.

Auctioneer charges all buyers sales tax on the selling price of the auctioned tangible personal property and remits the sales tax to the State unless the buyer produces the applicable resale certificate, exemption certificate, or other acceptable documentation.

Potential buyers may bid on items at the auction in person, bid by submitting a proxy, or bid for the items over the internet through the Auctioneers website. Buyers could be resident of the state of the auction, resident of a different state, or resident of a different country.

The Auctioneer is considering a new fee structure where all buyers will be charged an administrative fee equal to 10% of the selling price for items selling for $2,500 or less; and 2.5% of the selling price for items selling for greater than $2,500, up to a maximum of $950 per item purchased. The administrative fee will be separately stated on the buyers invoice. The only exception to this fee will be on-site buyers purchasing equipment from an auction conducted on a farm. These buyers will not be charged the administrative fee.

The purpose of the administrative fee is to compensate Auctioneer for the many value added services that are available to buyers. Buyers at have an array of value added services available to them. These services are available to all buyers, however, buyers have no obligation to use them. Some of the services are as follows:

Auctioneer offers potential buyers the opportunity to inspect items either on the internet or at the auction site;
Auctioneer guarantees clear title to the buyer and offers a full refund if clear title is not passed to the buyer;
Access to an on-line bidding system;
Access to a 21 language website which offers a host of services including an upcoming auction calendar, equipment inventory searching, equipment specifications including high resolution photos, historical auction results, and shipping arrangements;

- Referrals to preferred shipping vendors;
- Referrals to preferred financing vendors;
- Referrals to preferred insurance vendors;
- Referrals to preferred extended warranty vendors; Internet Wi-fl access at the auction site during the auction;
- Auctioneer may assist with loading property onto the buyers' vehicle;
- Provide ID cards to streamline buyer registration at the auction.

ISSUES

1. Is Auctioneer required to collect and remit sales tax on the 10% administrative fee for lots sold to buyers for a price $2,500 or less?

Yes, 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). Gross

receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold . . . whether received in money or otherwise, without any deduction for charges by the seller for any services necessary to complete the sale. . . ." 68 O.S. § 1352(12)(a)(4). See also, Oklahoma Administrative Code 710:65-1-9.

2. Is Auctioneer required to collect and remit sales tax on the 2.5% administrative fee for lots sold to buyers for a price greater than $2,500?

Please see response to issue 1.

3. If Auctioneer is required to collect and remit sales tax on the fees, then can Auctioneer accept a resale or exemption certificate to relieve the obligation to collect and remit sales tax?

Yes, the "Auctioneer" hereinafter "Vendor" may accept a resale certificate from the buyer. Additionally, the vendor should obtain written confirmation from the buyer that it is in the business of reselling the items being purchased and that the items being purchased are for resale. The certificate should be signed by a person authorized to bind the buyer. The certification may be made in the manner set forth in paragraph (1) of Oklahoma Administrative Code 710:65-13-200, copy enclosed.

This response applies only to the circumstances discussed in your request of March 10, 2011. 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