

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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October 19, 2011

Re: Sales tax exemption status of [REDACTED]; Our File No. LR-11-094

Dear Gentlemen:

This is in response to your request for relief from state sales tax payments for [REDACTED]

[REDACTED] Set forth verbatim are the facts presented in your correspondence and our telephone conversation and the response thereto.

FACTS

[REDACTED] has an outlet (unit of church) from which used clothing, household, and baby items are distributed to needy families. The outlet is called [REDACTED] and is located in downtown [REDACTED]. The outlet has been submitting state sales tax on the distributed items (Taxpayer FEI is [REDACTED]). However, with the purpose of distributing these items as a missionary effort to low income needy families, this is a request for consideration for relief from payment of these items.

All items that are distributed through the outlet are used. The items are donated by people in the community. No items are purchased for resale. Likewise, no items are donated by business firms to be distributed.

The items are not tagged with price amounts when family members enter the outlet. They are escorted to stocks (such as size, color, and seasonal type) of items for selection. Items are selected, and then placed on a counter to determine a value. The value is very nominal. In some situations, no payment is made by the family members due to financial, health, age, and/or other restrictive reasons. In other instances items are sold by the bag for \$1.50 each. The store is open only on Thursday, Friday and Saturday from 9:00 a.m. to 12:00 p.m.

The outlet operates on a very low expense budget. Profits do not occur. There are no salary or wage expenses. The budget includes utilities and rent with nominal maintenance expenses. For these reasons and explanations, this request for relief from state sales tax payments is made to support the unit's goal of distribution at minimal cost to needy families in the Tuttle Community.

RESPONSE

68 O.S. § 1356(7) provides that "sales of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with others persons engaged in the same or a similar business" are exempt from sale tax. The Tax Commission promulgated OAC 710:65-13-40 which outlines a test for determining if sales by a church are not in competition with establishments engaged in the same or similar business set forth as follows:

710:65-13-40. Sales by churches

(a) Sales "by" churches. Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and real practical effect upon putative competition. . . .

Based on the facts presented the actual effect on competition of the sales made by [redacted] is negligible, and therefore these sales are exempt from sales tax.

This response applies only to the circumstances discussed in your request of August 8, 2011. 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



Brenda Sullivan
Tax Policy Analyst