# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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October 19, 2011

Re: Our File No. LR-11-099

Dear

This is in response to your request for a letter ruling relating to the application of use tax on certain shipping and handling charges. Set forth verbatim are the facts presented along with the question posed and the response thereto.

FACTS

is a direct sales retailer licensed to collect vendor's use tax in Oklahoma under license number Our consultants host or attend in-home parties at which they solicit orders for our products. When the consultants take the order, they collect payment in full from the customers.

charges an amount equal to 8% of the price of the products being purchased on each order as a "Shipping & Handling Charge." This charge covers several things: the cost of shipping the order to the customer (or to the consultant for distribution to customers), which we have no way of determining at the time the order is placed; the cost of the packing materials; the cost of picking the items and packing them for shipment; and other related costs. This charge is separately shown on the order form, which acts an invoice from which the customer pays with a credit card.

QUESTION

The question has arisen is whether we should be charging the vendor's use tax on the 8% shipping & Handling Charge.

RESPONSE

Although you indicate that is currently registered to collect vendor use tax from its Oklahoma customers, as a vendor operating a multi-level distribution system in Oklahoma, must obtain an Oklahoma sales tax permit and report and remit

sales tax on the retail value of the products sold. The sales tax is to be passed through the multi-level distributors, who are not required to hold an Oklahoma sales tax permit, to the consumers/users. The distributors are to collect the sales tax from the consumer.

Shipping and handling charges associated with the shipment of multi-level sales merchandise to the distributor or the distributor's customers are not subject to sales tax, if separately stated. 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 to the location where the purchaser or the purchaser's donee receives the product. Oklahoma Administrative Code 710:65-18-2, provides that "receive" and "receipt" does not include possession by a shipping company on behalf of the purchaser.

Also please note that 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. . . ." 68 O.S. § 1352(12). "Vendors operating a multi-level distribution system will collect tax on the gross receipts of the retail value of the products sold." See Oklahoma Administrative Code 710:65-19-214(a). Oklahoma Statutes or Commission Rules do not contain special provisions which allow a deduction from gross receipts before computing sales tax on transactions related to multi-level sales, nor are the provisions concerning coupons applicable to multi-level sales. Consequently, sales tax should be collected on the retail value of the products sold without regard of credits or discounts to its hostesses.

This response applies only to the circumstances discussed in your request of August 12, 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 J. Sullivan
Tax Policy Analyst