OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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December 5, 2011

Re: LR-11-122

Dear

This is in response to your request for clarification regarding the taxability of certain items in Oklahoma for sales and use tax purposes. Set forth verbatim are the questions presented in your correspondence of October 31, 2011 along with our responses thereto.

QUESTION 1
How many years should records be retained for audit purposes?

RESPONSE
The Tax Commission requires taxpayer books and records to be kept for three years. See 68 O.S. § 1365(F) and Oklahoma Administrative Code 710:65-3-32.

QUESTION 2
Are rental sales (short term rental of personal property, i.e. lawn equipment, tables, chairs, etc.) subject to sales tax?

RESPONSE
Yes, sale tax is due on the gross receipts of each sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma sales tax code. 68 O.S. §1354(A)(1). "Sale" is defined to mean, "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state. . . ." 68 O.S. §1352(21). The term "sale" includes but is not limited to "the exchange, barter, lease, or rental of tangible personal property

resulting in the transfer of the title to or possession of the property." 68 O.S. §1352(21)(a). Therefore, the rental or lease of tangible personal property is subject to sales tax. See OAC 710:65-1-11.

QUESTION 3
Are donations of store merchandise to an organization or individual subject to use tax?

RESPONSE
Yes, sales tax is due on the sales value[1] of store merchandise which was purchased tax exempt and subsequently withdrawn from inventory for donation. 68 O.S. § 1362(D). The business withdrawing the merchandise from inventory should include the sales value of such property on Line 2 of its sales tax report for the month the property was withdrawn.

QUESTION 4
If so, are they still subject to tax if they are given to a tax-exempt organization?

RESPONSE
Yes, please see response to Question 3.

QUESTION 5
Are labor or services subject to sales tax?

RESPONSE
Only the services which are specifically enumerated in Section 1354 of Title 68 of the Oklahoma Statutes are subject to sales tax. Labor charges for installation or repair of tangible personal property if separately stated are not subject to sales tax. However, labor or service cost associated with the production, manufacture, fabrication of an item of tangible personal property cannot be deducted from the gross receipts upon the sale of such property for sales tax calculation purposes.

Copies of the referenced statutory and administrative code provision are enclosed.

This response applies only to the circumstances discussed in your request of October 31, 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

Brenda J. Sullivan
Tax Policy Analyst

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[1] As defined in OAC 710:65-1-2.