OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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March 12, 2012

Re: LR-12-002; 2012 Third-Party Drop Shipment Survey

Dear :

I have reviewed the ten questions and our responses thereto in the 2010 Third-Party Drop Shipment Survey. Regarding the 2012 survey, our responses have substantially changed from those given in 2010. Set forth are the questions posed and the responses thereto.

2012 Third Party Drop Shipment Survey Questions…

1. Given that Buyer Corporation is not registered in, and has no nexus with, your state (State B), will your state recognize the sale from Seller Corporation to Buyer Corporation as a sale for resale not subject to sales or use tax in your state? ("Yes" or "No") If the answer is yes, what documentation will your state accept to evidence that the sale from Seller Corporation to Buyer Corporation is a sale for resale?

Yes, Oklahoma will accept a resale certificate from the state of the Buyer Corporation. The Seller Corporation should obtain an exemption certificate listing the Buyer Corporation's resale number issued by its home state along with written confirmation 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 Corporation. The certification may be made in the manner set forth in paragraph (1) of Oklahoma Administrative Code (OAC) 710:65-13-200.

2. Does it matter if Seller Corporation delivers in its own equipment, rather than by common carrier?

No.

3. Do the FOB terms of sale matter in the taxation of this type of transaction? If so, please explain.

No.

4. Does it matter if Seller Corporation ships from an inventory pool in your state as opposed to an inventory pool in another state?

No.

5. What if Seller Corporation has a direct Pay Certificate from Buyer Corporation instead of a resale certificate from State A?

Direct pay certificates cannot be accepted to exempt purchases for resale. The resale certificate is the proper document. See OAC 710:65-9-10 and 710:65-13-200.

6. If Other Corporation is a consumer, would the execution of an affidavit (see Exhibit A) from Other Corporation to Buyer Corporation, furnished to Seller Corporation, be sufficient to relieve Seller Corporation from further responsibility or liability for your state's tax?

Since the Buyer Corporation supplied a valid exemption to Seller Corporation, the Seller Corporation is not required to collect tax on the transaction. OAC 710:65-13-200.

7. Does it matter if Other Corporation is reselling as opposed to consuming? Does it matter that other Corporation is an exempt or immune entity or purchasing for an exempt purpose other than for resale?

No, the taxability of the sale between Seller Corporation and Buyer Corporation is not affected by the fact that Other Corporation may be an exempt or immune entity or is reselling as opposed to consuming the goods purchased. See OAC 710:65-7-2.

8. What if Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in your state?

If Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in Oklahoma, the responsibility of Seller Corporation would be unchanged. Please note that a contractor may make exempt purchases based upon the exempt status of another entity only in statutorily-limited circumstances. See OAC 710:65-13-130, 710:65-13-131 and 710:65-19-56.

9. If Seller Corporation is required to remit or collect and remit the tax, is the tax measured by the price paid by Buyer Corporation, or by the price paid by Other Corporation? If measured by the price paid by Other Corporation, what is the Seller Corporation required to do if it does not know, and has no right to known, the price paid by the Other Corporation?

Seller Corporation is not required to collect and remit Oklahoma sales or use tax.

10. What is the code section the state relies on to reach its conclusion in each answer?

The applicable administrative rule provision(s) are referenced with the responses set forth above.

This response applies only to the circumstances discussed in your request of January 3, 2012. 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