OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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December 19, 2012

Re: LR-12-039

Dear

In response to your request of February 1, 2012, attached are the applicable statutory and administrative rule provisions governing a business's requirement to register in this state for purposes of collecting Oklahoma sales and use tax.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar
Tax Policy Analyst

710:65-1-8. Established place of business; maintaining a place of business

(a) **"Established place of business" defined.**

(1) An **"established place of business"** means a location at which:

(A) Any person regularly engages in, conducts, or operates a business:

(i) in a continuous manner,

(ii) for any length of time,

(iii) that is open to the public during hours customary for the type of business; and

(B) Merchandise for resale is maintained, and not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent sales tax liability.

(2) A location used in conducting a hobby is not considered an **"established place of business"** even though occasional taxable sales are made from the location; i.e., a garage set up as a wood working shop. The occasional sales are taxable and are to be reported by the seller on a sales tax report as casual sales.

(b) **"Maintaining a place of business" defined. "Maintaining a place of business in this state"** means and includes the following:

(1) Having or maintaining in this state, directly or through subsidiary:

(A) an office (to include a home office),

(B) a distribution house,

(C) a sales house (such as a shop or store),

(D) a warehouse (could be in a home's garage), or

(E) any other physical place of business (a hot dog stand on wheels, a barbecue wagon parked on the roadside, or an ice cream truck traveling a route); or

(2) Having agents operating in this state such as salesmen, brokers, or wholesale buyers; or

(3) Whether the place of business, or agent is within this state temporarily (traveling salesman, buyers for out-of-state firms) or permanently (shop or store in a mall); or

(4) Whether the person is authorized to do business within this state. Example: A broker, who is self-employed, operates his business from an office he has established in a spare bedroom of his home in this state. He does not have an "established place of business" but he does "maintain a place of business in this state." [**See:** 68 O.S. §§ 1352(10), (13); 1401(10)]

[**Source:** Amended at 21 Ok Reg 2581, eff 6-25-04]

710:65-21-6. Retailers required to obtain a use tax permit

Every vendor who is "maintaining a place of business" as defined in *OAC* 710:65-1-8, both inside Oklahoma and outside Oklahoma, must obtain a use tax permit. The permit, which is free of charge, is issued upon receipt of a Business Registration form. As a part of the form, the vendor must list the names and addresses of all the vendor's agents operating in the state, along with the location of any and all other warehouses in which goods are stored, offices, and other places of business in the state, or the location of any tangible personal property or real property owned, which is located in Oklahoma.

[**Source:** Added at 15 Ok Reg 2827, eff 6-25-98]

68 O.S. § 1352

As used in the Oklahoma Sales Tax Code:

* * *

13. "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state;

* * *

28. "Vendor" means:

a. any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by the Oklahoma Sales Tax Code,

b. any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by the Oklahoma Sales Tax Code,

c. any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by the Oklahoma Sales Tax Code, or

d. any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of the property.

68 O.S. § 1401

The following words, terms and phrases when used in this article shall have the meanings respectively given to them in this section:

* * *

9. a. The term "retailer" means every person engaged in the business of selling tangible personal property for use within the meaning of the article; provided, however, that when in the opinion of the Tax Commission it is necessary for the efficient administration of this article to regard any salesmen, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors, employers or persons as retailers for purposes of this article.

b. A retailer shall be deemed to be engaged in the business of selling tangible personal property for use in this state if:

(1) both of the following conditions exist:

(a) the retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a retailer maintaining a place of business within this state, and

(b) the retailer sells the same or a substantially similar line of products as the related Oklahoma retailer and does so under the same or a substantially similar business name, or the Oklahoma facilities or Oklahoma employees of the related Oklahoma retailer are used to advertise, promote or facilitate sales by the retailer to consumers, or

(2) the retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse or similar place of business in Oklahoma that delivers property sold by the retailer to consumers.
c. For purposes of subparagraph b of this paragraph:

(1) "substantial ownership interest" means an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the

United States Code, or any successor to that statute, with respect to a person other than a director or officer,

(2) "ownership" means and includes both direct ownership and indirect ownership through a parent, subsidiary or affiliate, and

(3) the processing of orders electronically, including facsimile, telephone, the Internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this paragraph.

d. Any retailer that is part of a controlled group of corporations, and that controlled group of corporations has a component member that is a retailer engaged in business in this state as described in subparagraph b of this paragraph, shall be presumed to be a retailer engaged in business in this state. This presumption may be rebutted by evidence that during the calendar year at issue the component member that is a retailer engaged in business in this state did not engage in any of the activities described in this subparagraph on behalf of the retailer. For purposes of this subparagraph, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, and "component member" means "component member" as defined in Section 1563(b) of the Internal Revenue Code.

e. Any retailer making sales of tangible personal property to purchasers in this state by mail, telephone, the Internet or other media which has a contractual relationship with an entity to provide and perform installation or maintenance services for the retailer's purchasers within this state shall be included within the definition of "retailer" under the provisions of subparagraph a of this paragraph; and

* * *

10. The phrase "maintaining a place of business within the state" includes any person having or maintaining in the state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other place of business. It also includes any person having agents operating in the state under authority of the retailer or subsidiary, whether the place of business or agent is within the state permanently or temporarily, or whether the person or subsidiary is authorized to do business within the state is immaterial.

68 O.S. § 1406

Except as otherwise provided in Section 1 of this act, every retailer or vendor maintaining places of business both within and without this state and making sales of tangible personal property from a place of business outside this state for use in this state shall at the time of making such sales collect the use tax levied by Section 1401 et seq. of this title from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission, if the Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the Tax Commission the name and address of all the retailer's or vendor's agents operating in this state and location of any and all distribution or sales houses or offices or other places of business in this state. The retailer or vendor shall not collect the use tax levied by Section 1402 of this title from a purchaser who is a holder of a direct payment permit issued pursuant to Section 1364.1 of this title.