OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 8, 2013

**Re:** LR-13-041; Sales Tax Status of

This is in response to your inquiry regarding the sales tax status of Set forth below are the questions posed in your correspondence of April 4, 2013 along with the responses thereto.

## Questions:

1. Why are Booster clubs not considered Parent Teacher Organizations/Parent Organizations when they basically operate the same? See the Attached By-laws.

**Response:** In order to qualify for one of the statutorily provided exemptions, an applicant must wholly meet the specific requirements for exemptions contained therein. Section 1356(13)(a)(6) of Title 68 exempts sales of tangible personal property[1] made by parent-teacher organizations. Booster Clubs are not considered to be parent-teacher organizations for the purpose of the exemption.

2. Advised the only has a Sales Tax Permit, not a Tax Exemption Permit, do you concur?

**Response:** Tax Commission records reflect that is a holder of a sales tax permit/site number and has not been recognized as an entity exempted pursuant to the provisions of the Oklahoma Sales Tax Code.

[1] Sales of tangible personal property in paragraph (13) include sales of admission tickets and concessions at athletic events.

3. Advised the should be collecting and remitting sales tax, do you concur?

**Response:** must collect sales tax on the gross receipts attributable to sales of tangible personal property and other transactions taxable under the Sales Tax Code and report and remit same to the Oklahoma Tax Commission. In addition, the booster club can make purchases of tangible personal property exempt from sales tax for resale purposes pursuant to its Oklahoma sales tax permit. 68 O.S. § 1357(3).

4. Advised the could not have applied for a Tax Exempt Permit because it is a Booster Club, do you concur?

**Response:** does not qualify as a sales tax exempt entity under the Oklahoma Sales Tax Code.

5. Does the need to change its name to be exempt from collecting and remitting sales tax? If yes, do you have any name recommendations?

**Response:** No, as previously stated to be exempt from the requirements to collect and remit sales tax an applicant must wholly meet the specific requirements for exemption contained in the applicable statute. To document that it qualifies as a parent-teacher organization for purposes of Section 1356(13)(a)(6), the Booster Club would need to provide a letter from the school principal or superintendent verifying that the Club is the official Parent-Teacher Organization for

6. Advised even though the is non-profit organization, the Sales Tax Permit only applies to purchases for resale, do you concur?

**Response:** Yes, see response to number 3.

7. Advised the has to remit sales tax to the Oklahoma Tax Commission from 2010 to 2012 (six reporting periods), do you concur?

**Response:** Yes, should file amended sales tax returns for these periods and pay tax due on the amounts previously deducted from taxable sales. Interest and penalty should be calculated on all past due amounts. 68 O.S. § 217.

8. To the Best of our knowledge, the has not received any correspondence stating the Sales Tax Reports are incorrect. Why did the Oklahoma Tax Commission not advise the it was filing the Sales Tax Reports incorrectly prior to January 2013?

**Response:** Although the Booster Club deducted all its sales as nontaxable there was no indication on the face of the returns that the Booster Club was doing so pursuant to a claim as an exempt entity.

9. If it is determined the should collect and remit sales tax to the Oklahoma Tax Commission, the requests the Oklahoma Tax

Commission give the "Consideration" by "Waiving" the remittance of sales tax to the Oklahoma Tax Commission from 2010 to 2012?

**Response:** At the discretion of the Commission or its designee, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver must be made in writing to the Account Maintenance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, Oklahoma 73194 and must include all pertinent facts to support the request. 68 O.S. § 220.

10. If it is determined the should collect and remit sales tax to the Oklahoma Tax Commission, please advise if a sales tax is applicable to the following:

    Membership fees
    T-Shirt Sales
    Concession Stand Sales
    Silent Auctions
    Donations
    Banquet Ticket Sales

**Response:** Sales tax is due on t-shirt, concession and banquet ticket sales. Taxable items sold at auction or donated to and sold by the are also subject to sales tax. Fees paid to join the booster club are not subject to sales tax.

Copies of the referenced statutory provisions are enclosed.

This response applies only to the circumstances discussed in your request of April 4, 2013. 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

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Tax Policy Analyst