

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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September 16, 2013

Re: LR-13-051

Dear

This is in response to your request for a ruling regarding the tax status of _____, _____ business operation in Oklahoma. Set forth are the facts presented along with the response thereto.

FACTS

We are a food service company doing business in numerous states. Our company contracts with private fraternity and sorority housing corporations and provides the food and service they request, whether it is two or three meals a day during the school term. In Oklahoma, we will begin service on the _____ campus in _____ in August.

Many of our houses are explaining to us that their previous food provider charged them tax on only the tangible food items and not the services. We need to get your ruling on this so that we pay our fair share to the state of Oklahoma but we also treat our customers on a fair basis.

To explain, we order food from a company that will be delivered to the house. We pay for the food. We have employees in _____ that prepare the meals and serve the meals to the students. Also, involved in our costs to the house would be the services that we provide to the house of unloading food trucks, clean up after each meal provided, menu planning with house mothers or designee and calculations of nutritional information for the students as well as any other services they request of us.

If you could give us a ruling on which parts of our food service is taxable, we will be able to break this down for the houses.

RESPONSE

Pursuant to 68 O.S. § 1354(A) there is levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;

* * *

6. Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere. . . .

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)(a). In accordance with Section 1352(12)(a) of Title 68 no deduction from gross receipts is allowed for the following:

- (1) the seller's cost of the property sold,
- (2) the cost of materials used, labor or service cost,
- (3) interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
- (4) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
- (5) delivery charges and installation charges, unless separately stated on the invoice, billing or similar document given to the purchaser, and
- (6) credit for any trade-in.

Therefore, the . . . must collect and remit sales tax on all amounts billed to its customers for serving meals, inclusive of charges for food and for the labor of unloading food trucks, planning, preparing and serving the meals along with charges for calculation of nutritional information and meal clean-up.

Attached are copies of the cited Oklahoma statutory and administrative rule provisions.

This response applies only to the circumstances discussed in your request of July 22, 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
Tax Policy Analyst