

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 21, 2014

Re: LR-13-061

Dear

This is in response to your inquiry regarding the proper application of sales tax on your memorial sales. Set forth are the facts presented along with the response thereto.

FACTS

My name is _____ My companies name is _____
My manufacturing facility is located in _____ TX. We have outlet retail stores in _____ Oklahoma where we pay sales tax to the State of Oklahoma. My question is, what part of a memorial sale do I pay taxes on? We have been paying sales tax on the full amount of the sale. I understand that other memorial companies pay a lesser amount than I do. I just want to be on an even playing field with my competition. I am currently selling a mausoleum to a customer in Broken Bow. The cost will include the actual mausoleum, foundation work, freight, crane rental & labor to install. What should I charge the customer for sales tax?

In addition to the facts outlined in your letter ruling request, it is my understanding based on our telephone conversation and the contract for sale of the above-referenced mausoleum that _____ will have the mausoleum shipped from Canada and will hire someone to provide the installation.

RESPONSE

_____ is acting as a vendor of tangible personal property responsible for installation thereof. As such, it must collect sales tax on the gross receipts attributable to the sale of the mausoleum in Oklahoma and report and remit same to the Oklahoma Tax Commission. See Oklahoma Administrative Code 710:65-19-42.

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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.

Separately stated delivery charges are not subject to sales tax unless they represent amounts paid by the seller in acquiring the property for sale. 68 O.S. § 1352(a)(12)(3) and Oklahoma Administrative Code 710:65-19-70(d). For example, if the amount billed by the vendor to its customer is attributable to the vendor's costs of preparing and transporting merchandise to the customer and is separately stated on the customer's bill or invoice, the delivery charge is not subject to sales tax. However, if such an amount relates to shipping, freight or delivery charges paid by a vendor to acquire the merchandise for sale, then the amount becomes part of gross receipts and is subject to sales tax when resold to a customer, even if separately stated on the customer's bill or invoice. Additionally, separately itemized labor/installation charges are not subject to sales tax. 68 O.S. § 1352(12)(a)(5).

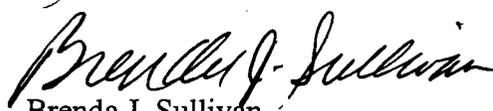
Therefore, _____ must collect and remit sales tax on amounts billed to its customer for the mausoleum, inclusive of foundation work, freight amounts paid to acquire the property for sale, and crane rental charges. Separately stated labor/installation charges and delivery/freight charges attributable to your costs of preparing and transporting the merchandise to the customer are not subject to sales tax.

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

This response applies only to the circumstances discussed in your request of August 1, 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