

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 16, 2015

Re: LR-14-40

Dear

This is in response to your request for a determination of whether the lease of equipment with an end of term purchase option is subject to sales tax. Set forth verbatim are the facts presented in your correspondence of June 30, 2014, along with the question posed and our response thereto.

Facts

equipment financing and typically my customers in OK provide me with a Manufacturers Sales Tax/Exemption Permit so sales tax is not charged. I am working with a new customer in OK that does not have an Exemption Permit so I will need to collect sales tax on this purchase. Should I collect sales tax upfront or use tax monthly over the term of the finance contract?

My finance contract is called a lease but the end of term purchase option is only \$1.00. It appears from the attached publication that you do not treat my finance contract like a lease for tax purposes because the end of terms purchase option is just \$1.00. I interpret your definition to mean that my contract is not treated like a lease and tax is due upfront and in full just like purchase. Can you please confirm that tax is due upfront?

Question:

Should I collect sales tax upfront or use tax monthly over the term of the finance contract?

Response:

In accordance with OAC 710:65-1-2 "**Lease or rental**" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term-for consideration. A lease or rental may include future options to purchase or extend.

(A) "**Lease or rental**" does not include:

- (i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or
- (iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) "**Lease or rental**" does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

The computation of sales tax on a lease is governed by OAC 710:65-1-11 which states in subsection (a), "The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales tax." The tax is to be paid on the gross proceeds of the lease, which will include not only the lease payments, but also any additional charges that are due from the lessee to the lessor, such as late charges, termination charges, reimbursement by the lessee of property taxes paid by the lessor, and any other charges by the lessor to the lessee allowed by the agreement. OAC 710:65-1-11(c). Therefore, sales tax would be due on the "gross receipts" or "gross proceeds" of the stream of payments based on the tax rates in effect at the time the payments become due.

However, if the agreement is one which is excluded from the lease classification or is otherwise considered a conditional sale, sales tax must be charged on the full agreed price at that time of sale and reported on the vendor's return for the period in which the sale occurred. OAC 710:65-1-9(4).

Based on the facts presented, it appears that the agreement in question does not constitute a lease and therefore sales/use tax should be collected upfront on the total amount charged for the described transaction.

Attached are copies of the above-referenced Oklahoma Tax Commission administrative rule provisions.

This response applies only to the circumstances discussed in your request of June 30, 2014. 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

A handwritten signature in black ink that reads "Morgan E. Lankford". The signature is written in a cursive style with a large, stylized initial "M".

Morgan E. Lankford
Tax Policy Analyst