OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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

June 28, 2016

Re: Our File No. LR-15-038

Dear

This is in response to your request regarding the taxability of certain vehicle rental charges under Oklahoma sales and vehicle rental tax regulations. Set forth are the facts and questions presented and the responses thereto.

FACTS

This is a request on behalf of
and as to whether the following three categories of fees associated with car rental agreements are subject to (1) Oklahoma sales tax and (2) the Oklahoma vehicle rental tax: (A) the airport customer facility charge, (B) the airport concession or access fee, and (C) certain fees associated with optional satellite radio service.

Customer Facility Charges.
and the (collectively, the "Airports") each impose a Customer Facility Charge ("CFC") on all rental car transactions emanating from those respective airports. The CFC is imposed on a "transaction day" basis and is required to be collected from the customer by the applicable rental car company and then remitted to the airport. These charges are used by the collecting airport for a variety of purposes, which may include infrastructure projects and maintenance (which may or may not be related to facilities used by the rental car companies), operating costs and debt servicing. The CFC is not revenue to the rental car company.

and have rental branches located at each of the three airports listed above. has rental branches located at the and the

Question: Should the CFC be included in gross receipts for purposes of calculating and collecting (1) sales tax and (2) the vehicle rental tax?

RESPONSE

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). A deduction from gross receipts is allowed for "any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser." 68 O.S. § 1352(12)(b)(3).

Since the incidence of the subject customer facility charge is on the consumer/rental car customer, the CFC, if separately stated, should not be included in gross receipts for sales tax calculation purposes. Likewise, consistent with this reasoning and stated conditions, the computation of vehicle rental tax imposed pursuant to Section 2110 of Title 68 on the gross receipts of any rental agreement of a motor vehicle for ninety days or less, should not include the CFC.

Concession and Access Fees. The Airports each charge a concession fee to rental car companies, through each car rental company's Concession and Lease Agreement with the airport, for the privilege of operating an on-airport rental car service and for access to customers that the applicable airport generates. These concession fees are passed on to customers in the form of a "concession fee recovery" or a "concession recoupment." These charges are separately stated on a customer's rental agreement and again on the invoice delivered at the time of payment.

The also charges an off-airport concession fee or "access" fee to rental car companies that retrieve airport patrons from the airport, transport them to a rental car facility within ten (10) miles of the airport, and enter into a car rental agreement. This fee is imposed for the privilege of accessing customers that the airport generates and is charged at a rate equal to that charged to on-airport car rental companies. These off-airport concession fees are passed on to rental car customers in the form of an "access fee." These charges are separately stated on a customer's rental agreement and again on the invoice delivered at the time of payment.

Question: Should the concession fee recovery and the access fee be included in gross receipts for purposes of calculating and collecting (1) sales tax and (2) the vehicle rental tax?

RESPONSE

The concession fee recovery and the access fee should be included in gross receipts since both are expenses of which are passed through to their customers. Gross receipts or gross proceeds or sales price is the base upon with which sales tax is calculated...without any deduction for the following . . . interest, losses, all taxes imposed on the seller, and any other expense of the seller. 68 O.S. § 1352(12)(a)(3).

Satellite Radio Service. provides rental car customers with vehicle in which satellite radio-receiving equipment has been installed. The added value of this equipment is taken into account in determining the ultimate rental charge for vehicle, and sales and vehicle rental tax is charged to customers on the full rental charge. In its default state (i.e., absent affirmative election by the customer to activate the service), satellite radio is not active. If a customer elects to activate the satellite radio service, an activation command is sent to the satellite radio service provider, thereby activating the system, and the customer is charged (1) an activation fee and (2) a periodic service fee (at a daily, weekly or monthly rate) in order to maintain access to the satellite radio service during the term of the vehicle rental.

Question: Should the activation fee and the periodic service fee be included in gross receipts for purposes of calculating and collecting (1) sales tax and (2) the vehicle rental tax?

RESPONSE

Under the fact scenario outlined above, both the activation and periodic service fees constitute gross receipts for purposes of the sales tax and vehicle rental tax levies. Therefore, the satellite radio activation and service charges would be subject to sales and vehicle rental tax.

This response applies only to the circumstances discussed in your request received September 29, 2015. 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

Brenda J. Sullivan
Tax Policy Analyst