



# OKLAHOMA TAX COMMISSION

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September 8, 2009

, Tax Senior Manager

RE: Letter Ruling— Company  
Our File No. LR-09-007

Dear :

You have requested a Letter Ruling on behalf of your client, Company (“ regarding the requirement to affix Oklahoma coin-operated vending machine decals (68 O.S. §1501, *et seq.*) to certain soft drink vending machines either owned or operated by in Oklahoma, under various transactions with the owners of property on which the machines are located. A Letter Ruling from the Office of General Counsel, Oklahoma Tax Commission, is an “informal written statement of policy or treatment of specific fact situations under Oklahoma law.” OKLA. ADMIN. CODE 710:1-3-73(e).

The following is a summary of the **facts** you assert in your Letter Ruling Request:

Sales of product from vending machines occur through two types of transactions: “wholesale” transactions and “full service” transactions. Under a wholesale transaction, sells products at a wholesale price to property owners who lease vending machines from The property owner sets the retail product price, controls the machine and collects receipts. The lease contract does not specify a term and the machine reverts back to upon termination of the business relationship. Under a full service transaction, sells products directly through machines owned by and located on property owner’s property. sets the retail price, controls the machine and pays a commission to the property owner based on the receipts from the machine.

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has machines operated under both wholesale and full service transactions located on the property of public and private schools, churches, government entities and on tribal land constituting "Indian country".

This Letter Ruling addresses the following **issue**:

With regard to either wholesale or full service transactions, is required to pay the annual fee (evidenced by a decal affixed to the machine) prescribed by 68 O.S. §1503 on vending machines located on property owned by public and private schools, churches, government entities and on tribal land constituting "Indian country"?

The following **analysis** is based on the facts you assert: The terms of 68 O.S. §1503 provide in pertinent part:

A. Every person who **owns** and has available to any of the public for operation, or who **permits to be operated** in or on his place of business, coin-operated vending devices shall pay for such privilege an annual fee. A fee shall be required for each machine ... if upon insertion of a coin ... dispenses one or more products separate and apart from any other ... dispenser of one or more products.... The annual fee required shall be as follows:

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2. For each coin operated vending device requiring a coin or thing of value of twenty-five cents (\$0.25) or more, Fifty Dollars (\$50.00).... (Emphasis added.)

The terms of 68 O.S. §1503.1 provide in pertinent part:

The following coin-operated vending devices shall be exempt from the provisions of this article, Section 1501 *et seq.* of this title:

1. All coin-operated vending devices **owned by** and located in a public or private school, a church, or a government entity.... (Emphasis added.)

The touchstone for the exemption from the annual fee required by Section 1503 is **ownership** of the machine, without regard to the nature of the property on which the machine is located. Under the full service transactions, clearly owns the machines. Likewise, under the wholesale transactions, retains ownership of the machines, merely leasing them to property owners under a true lease agreement which is terminable

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at will and upon which event the machines revert to                      The machines operated under either transaction on the property of public or private schools, churches or governmental entities are not exempt because the exemption statute, Section 1503.1, requires the machine be **owned** by such property owner.<sup>1</sup>

With regard to                      liability to pay the annual fee on machines located on tribal land constituting "Indian country", the analysis afforded by an Oklahoma Attorney General Opinion, Op.Atty.Gen No. 76-248 (July 7, 1976) is instructive. The subject of that Opinion was whether companies operating coin-operated devices on a federal military reservation are subject to the fee imposed by Section 1503. The Attorney General opined:

In view of the factual situation herein involved, it appears quite obvious that the Oklahoma Tax Commission in levying the coin operated devices tax is neither levying a tax upon property or a military reservation for which no reservation was made, nor is it hampering the use to which the United States has devoted its property. The tax levied by Section 1503 is directed toward exacting a license fee from "private persons" who own, operate, and make available to any of the public coin operated music and amusement devices. It seems apparent that the use of the word "public" is for the purpose of making a distinction between those persons who operate such devices for a profit as a part of their normal business operations and thus persons who have said devices within their own homes as merely sources of entertainment.<sup>2</sup>

Applying this rationale, no tribal exemption issue comes into play in either the wholesale or full service transactions you describe. Because Section 1503 is directed toward exacting a license fee from private persons who own or operate coin-operated machines made available to the public (                      and not the levy of a tax upon the tribe or its land,                      is not exempt from the annual fee imposed by Section 1503. This Letter Ruling does not address the authority of the tribe upon whose lands a machine is operated to require a similar fee to be paid by

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<sup>1</sup> Under Section 1503 there exists the possibility for joint and several liability to pay the annual on the part of the property owner, should GPCC fail to do so. *See, e.g., Okla. Tax Com'n v. Allcott*, 1944 Ok 327, 195 Okla. 99, 154 P.2d 973, 974 (interpreting prior law which imposed liability to remit a percentage of gross receipts from coin-operated machines upon the "operator", defined as any person who maintains for use or permits such use upon his property of the machine.).

<sup>2</sup> Section 1503.1, the exemption section governing coin-operated devices, was amended in 1991 to exempt machines **installed on federal military bases**. 1991 Okla. Sess. Laws Ch. 174, §2. No such statutory exemption exists for machines operated in Indian country by a private company.

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In **conclusion**, because \_\_\_\_\_ owns the machines it operates under both wholesale and full service transactions, and because the annual fee thereon is not exempt under 68 O.S. §1503.1, in all the transactions described located on all the various properties described, GPCC is liable to pay the annual fee for those machines imposed by 68 O.S. §1503.

This Letter Ruling generally may be relied upon only by the taxpayer for whom it is issued, provided that all facts have been accurately and completely stated, and there has been no change in applicable law.

Respectfully,

Assistant general Counsel

Approved: \_\_\_\_\_

\_\_\_\_\_  
General Counsel