

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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December 04, 2007

RE: LR -07-025

Sales Tax Inquiry regarding sales taxes on fees or delivery charges.

Dear

Please forgive the late response to your inquiry of February 05, 2007 regarding the two policies that you are considering for your customers. You had asked if "pay as you go" and "service express" are subject to sales tax.

Our response:

Your definition of *pay as you go* is:

"Allowing the customer next day delivery for a fee that covers the company's cost for overnight delivery plus a mark up". This is considered to be a delivery charge only and not subject to sales tax unless the fee is included in the selling price.

(Pursuant to 710:65-19-70. Delivery charges)

(a) **Definition. "Delivery charges"** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. "Delivery charges" does not include charges for the delivery of "direct mail" if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

(b) **Separately-stated delivery charges.** In every case where a delivery charge represents the cost of transporting the items sold from the vendor to the consumer, and is separately-stated on the invoice or statement, such charges are not subject to sales tax.

(c) **Delivery charges included in price.** If delivery charges are included in the selling price of the tangible personal property sold, the charges are subject to sales tax.

(d) **Transportation costs of the seller.** Shipping, freight, or delivery charges paid by a seller in acquiring property for sale are considered costs of doing business to the seller and may not be deducted from the gross proceeds of the sale in computing tax liability, even though such costs may be passed on to his customers and regardless of whether they are separately-stated.

(e) **Demurrage.** Demurrage is a charge for detaining a ship, freight car, or truck beyond the time allowed for loading or unloading. This is considered a penalty and is not subject to sales tax.

Your definition of "**Service Express**" is:

"The customer pays an annual fee, should the customer require a replacement meter, they get next day delivery at no additional cost to them". The annual fee for "Service express" is subject to sales tax.

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IT IS OUR MISSION TO SERVE THE PEOPLE OF OKLAHOMA BY PROMOTING TAX COMPLIANCE THROUGH QUALITY SERVICE AND FAIR ADMINISTRATION

(Pursuant to 710:65-19-77. Dues and fees)

(a) **General provisions.** Dues, fees, or any charge, payment, or contribution required as a condition precedent to membership in a club; or for access to the club establishment; or for access to or use of facilities, equipment, services, or privileges are subject to sales tax.

(b) **Definitions.** For purposes of this Section, "**dues**" and "**fees**" are used synonymously. "**Dues**" means, but is not limited to, payments made to support and maintain clubs, associations, or other membership organizations, or to acquire and retain membership therein. "**Dues**" includes free or complimentary dues or fees. In transactions where no monetary consideration is stated, "**dues**" means that value equivalent to the charge that would have otherwise been made.

(c) **Exemptions and exclusions.** Examples of transactions which are excluded from the application of this Section or are specifically exempt by statute are:

(1) Fees for instructional services at locations where no membership dues are charged, and there is no member/non-member difference in fees, are considered fees for the provision of nontaxable services.

(2) Dues paid to fraternal, religious, civic, charitable, or educational societies or organizations by regular members thereof, if:

(A) The organization operates under a lodge plan; and

(B) The organization does not operate for a profit which inures to the benefit of any individual member or members of the organization to the exclusion of other members.

(3) Dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects.

4) Dues or fees paid to YMCAs or YWCAs or municipally-owned recreation centers for the use of facilities and programs. As used in this Section, "**recreation centers**" shall not mean zoological or botanical parks or golf courses.

This response applies only to the circumstances discussed in your written request of February 05, 2007. Pursuant to Commission Rule 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.

If you should have any questions, please feel free to contact me.

Sincerely,

Oklahoma Tax Commission


Marc Morrison
Tax Policy & Research Division