

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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July 9, 2009

Re: Sales and Use Tax Inquiry; Our File No. LR-09-090

Dear]

I am writing in response to your inquiry regarding whether digital downloaded images are subject to sales and use tax in Oklahoma.

FACTS

has sales tax nexus with the state of Oklahoma, is currently collecting and remitting sales tax and is planning to start a new line of digital scrapbooking products to be purchased and downloaded by customers in Oklahoma. All servers will reside in Utah.

QUESTION

Are purchases of digital downloaded images taxable?

RESPONSE

In Oklahoma, unless specifically exempted by the provisions of the Oklahoma Sales Tax Code, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other enumerated transactions. 68 O.S. § 1354. Use tax is levied on the purchase price of all tangible personal property, not otherwise exempted, which is brought into Oklahoma for storage, use or other consumption within Oklahoma. 68 O.S. § 1402. Tangible personal property is defined to mean "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses . . . [and] includes electricity, water, gas, steam and prewritten computer software". Digital images delivered electronically do not constitute tangible personal property. Moreover, transfers of digital images delivered electronically do not fall within one of the enumerated transactions subject to sales tax under the Sales Tax Code. Therefore, the sale of digital downloaded images is not subject to sales or use tax in Oklahoma.

This response applies only to the circumstances discussed in your request of May 27, 2009. 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.

Sincerely,

OKLAHOMA TAX COMMISSION

A handwritten signature in cursive script, appearing to read "Marc Morrison".

Marc Morrison
Tax Policy Analyst