

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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January 27, 2017

Re: LR-17-003; Sales Tax Inquiry

Dear

This is in response to your request for a letter ruling regarding the sales taxability of sales of memberships. The facts presented in your request of January 11, 2017 are set forth below along with the questions posed and our responses thereto.

FACTS

("the Company") offers a membership program known as (). The public may sign up for a free one-month trial, monthly paid, or annual paid Membership to receive, during the membership period, the intangible right to access certain benefits associated with shopping on ("Website"). Participants in the membership program are referred to as "Members" or Members. Members are required to agree to the Terms & Conditions to activate their Membership. The current suite of Membership benefits that Members have the right to access is outlined below:

- Shipping – Members are entitled to receive free two-day shipping and other discounted shipping benefits on eligible purchases made on the Website. Products eligible for these shipping benefits are designated as such on the Website's product pages. Also, certain products sold by third-party merchants participating in the "Fulfillment by program are eligible for shipping benefits.
- Videos – Members may view movies and television shows, designated as "Videos," an unlimited number of times at no additional cost during the course of their Membership. Videos can be viewed on the Member's

television, computer, Xbox gaming system, Kindle Fire, or other compatible device. All Members are permitted to stream Videos; Members with a Fire phone, Kindle Fire HD, or Kindle Fire HDX tablet can also download Videos if their phone or tablet is registered to the same account as their Membership. If a Member cancels their Membership, or the Membership expires after a movie or television show is downloaded, the Member will lose access to the downloaded movie or television show. In compliance with our content agreements, there are restrictions on how much time Members are allotted to access downloaded Videos without an Internet connection.

- (KOLL) allows Members who own Kindle devices to choose from thousands of electronic books (“e-books”) to borrow for free, as frequently as one book a month, with no due dates. If a Prime Member cancels their Membership, or the Membership expires after a book is borrowed, the Member will lose access to the borrowed book.
- – The feature allows Members who own Kindle devices to receive our free e-book per month from four e-books selected by editors. The selected e-book becomes a permanent part of the Member’s Kindle library. To access this benefit, Members must own a Kindle device that is registered to the same account as the Membership.
- – The heavy/bulky items in are only available for purchase by Members. The benefit allows Members to ship up to 45 pounds of heavy/bulky items for a flat shipping fee of \$5.99.
- Exclusive Access to – is a line of premium, everyday essential products (currently limited to baby wipes) only available for purchase by Members.
- provides Members discounts on certain items of tangible personal property. For example, Members can purchase certain televisions and software at a discount. The suite of products offered to Prime Members at a discount continues to expand.
- – Members receive 30-minute early access to select on and sales events on The deals and sales events are designated as such on the product detail page or on the respective websites.
- provides Members with unlimited, ad-free access to more than a million songs and albums. Music may be played on the Member’s computer, Kindle Fire, or other compatible device. Music may be streamed or downloaded for listening with an Internet connection. Similar to other digital benefits outlined herein, if a Member allows their Membership to lapse or expire, they will lose access to the downloaded titles.

- receive unlimited storage for photos in the Cloud and 5GB of storage for videos and files. Members must have a Cloud account registered to the same account as their Membership to activate this benefit. As long as the Membership is active, photos uploaded to the Cloud will not count against the Member's 5GB of fixed storage capacity in the Cloud for files and videos.
- - Members receive access to a dynamic and distinctively organized selection of original programs, comedy, lectures, and audio editions of articles from the pages of The Wall Street Journal, The New York Times, Harvard Business Review, Foreign Affairs, McSweeney's and other leading periodicals. also showcases 20 hand-selected from essential stories of the day, meditation and commute-sized comedy to audio compilations focused on science, history, technology and more. With and a selection of audiobooks, the for benefit represents a remarkable value available free exclusively for members.
- - In addition to KOLL and Members receive access to unlimited reading from a rotating selection of books, magazines, comics, and more on their computers and devices (Kindle devices or other devices with the Kindle App).
- Members receive greater access to the largest platform for video game players to broadcast streaming video of themselves playing video games and to interact with their viewers, recently integrated with members receive free channel subscriptions, discounts on game purchases, exclusive access to games and in-game content, and other perks.

Although not a programmatic offering, Members may also purchase an . The allows customers to simply press a button to reorder a product. Upon pressing the button, an order is placed through the customer's account for the specific item. Each button works for a single product. Currently, only Members are eligible to purchase however, it will likely be offered to all customers. When the is sold, tax is appropriately calculated and collected where is required to collect sales and use tax.

While the Company does not directly provide the membership benefits, it is contractually obligated to ensure the benefits are provided to Members. To meet its contractual obligations, Company pays its affiliates to provide the underlying service related to each benefit. For example, one of Company's affiliates provides the expedited shipping service, while another affiliate provides the e-book benefits.

ISSUE

A. Is Company's sale of Memberships to Oklahoma customers subject to sales and use tax?

RESPONSE

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other transactions as specified in Section 1354 of Title 68 of the Oklahoma Sales Tax Code. 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." 68 O.S. § 1352(24).

The described offerings of providing free or discounted shipping of customer purchases, access to digital goods i.e., videos, music, e-books, audiobooks and games, cloud storage of customer videos, photos and files, and discounted prices of goods sold by Company do not constitute the transfer of tangible personal property nor do they fall within the enumerated transactions subject to sales tax pursuant to Section 1354 of Title 68 of the Oklahoma Statutes. Therefore, the Company is not required to collect and remit sales and use tax on amounts charges for Memberships sold to Oklahoma customers.

ISSUE

B. Is Company's provision of a free, one-month trial Prime Membership to Oklahoma customers subject to sales and use tax?

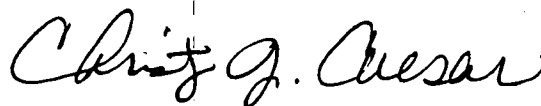
RESPONSE

No, please see response to issue A.

This response applies only to the circumstances discussed in your request received January 11, 2017. 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



Christy J. Caesar
Tax Policy Analyst