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OFFICE OF THE GENERAL COUNSEL

April 5, 2019

[redacted]

RE: **Request for Letter Ruling on behalf of** [redacted]
File No. LR-17-012

Dear [redacted]

This letter is in response to your request for a letter ruling addressing the issues of whether (1) Taxpayer's purchase of motor vehicles for use as long-term leases of motor vehicles in Oklahoma which are subject to motor vehicle excise tax (including those trucks, truck-tractors, trailers and semitrailers subject to the reduced $10.00 motor vehicle excise tax) are also subject to Oklahoma sales and use tax at a rate of 1.25%, (2) long term leases of 12 months or more of motor vehicles on which motor vehicle excise tax has been incurred are subject to the 1.25% sales and use tax, and (3) sales of such leased motor vehicles to lessees at the end of their lease term are subject to the 1.25% sales and use tax even though such sales are exempt from motor vehicle excise tax. The basic facts presented in your request are as follows:

> The Taxpayer is engaged in the business of leasing licensed motor vehicles (including trucks) on a long-term basis. In the transactions at issue in this letter ruling request, the Taxpayer purchases motor vehicles and related long-term lease rights from new motor vehicle dealers licensed by the Oklahoma Motor Vehicle Commission (the "Dealers"). The Dealers purchase new motor vehicles from a motor vehicle manufacturer and receive the Manufacturer's Statement of Origin from the manufacturer. The Dealers then hold the vehicles in inventory to sell or lease the vehicles to customers. Customers who wish to lease motor vehicles select the vehicles from the Dealers' inventory. The terms of the leases are then negotiated between the Dealers and the customers. At that time, the Dealers submit credit applications that are signed by the customers to the Taxpayer. Upon approval of the credit applications by the Taxpayer, the Dealers and the customers execute leases, the terms of which

exceed 12 months (i.e., a long-term lease). At the same approximate time as the execution of the leases, the Dealers sell the leased vehicles and assign the lease rights to the Taxpayer. Pursuant to a power of attorney issued to the Dealers by the Taxpayer, the Dealers title the vehicles with the Commission in the name of the Taxpayer. Customers may opt pursuant to the lease agreement to purchase the vehicle from the Taxpayer upon termination of the lease.

The first issue is whether Taxpayer's purchase of motor vehicles for use as long-term leases of motor vehicles in Oklahoma which are subject to motor vehicle excise tax (including those trucks, truck-tractors, trailers and semitrailers subject to the reduced $10.00 motor vehicle excise tax) are also subject to Oklahoma sales and use tax at a rate of 1.25%.

Title 68 O.S. (2017) §2103(A)(1) states, "there shall be levied an excise tax upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state." However, this paragraph is qualified by 68 O.S. (2017) §2103(B) which states, in pertinent part, "The excise tax levied pursuant to this section shall not be subsequently collected at the end of the lease period if the lessee acquires complete legal title of the vehicle."

Thus, Oklahoma's excise tax is applied to all transfers of ownership of motor vehicles and to use of motor vehicles and to the use of a vehicle registered for the first time in Oklahoma. This excise tax is applied to leases and lease purchase agreements of all trucks in excess of eight thousand pounds and any truck-tractor. For commercial vehicles registered pursuant to Section 1120 of Title 47, the excise tax is in lieu of all sales taxes and use taxes. In addition, Title 68 O.S. (2017) §1357(3) exempts the sale of items to be resold from sales tax provided the purchaser has a valid Oklahoma sales tax permit.

Title 68 O.S. (2017) §1357(3) exempts from the tax levied by the Oklahoma Sales Tax Code "sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in the Oklahoma Sales Tax Code. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors, and other salespersons who do not have an established place of business and a sales tax permit."

Title 68 O.S. (2017) §1352(23)(b) defines "sale for resale" as "a sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate."

Based on the foregoing, Taxpayer's purchase of motor vehicles from a dealer for the purpose of leasing to consumers is not subject to Oklahoma sales and use tax at a rate of 1.25%

provided the Taxpayer holds a valid Sales Tax Permit. Taxpayer's purchase of motor vehicles from a dealer for the purpose of leasing to consumers is subject to excise tax.

The second issue is whether long-term leases of motor vehicles in Oklahoma are subject to Oklahoma sales and use tax at a rate of 1.25% on the motor vehicle lease transaction between the Taxpayer and a lessee. Title 68 O.S. (2017) §1355(6) exempts "leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103" from payment of taxes levied by Section 1350 et seq., i.e., sales tax. Okla. Admin. Code §710:65-13-30(g) clarifies this statute by stating "Leases of motor vehicles are exempt from sales tax provided that the lease is for a term of twelve (12) months or more and the vehicle excise tax levied by Section 2103 of Title 68 of the Oklahoma Statutes has been paid."

Based on the facts you have provided, the Taxpayer should not collect sales tax on motor vehicle lease transactions of twelve (12) months or more where Taxpayer has already paid the excise tax on these motor vehicles in accordance with Section 2103 of Title 68 of the Oklahoma Statutes.

The third issue is whether sales of the leased motor vehicles to the lessees are subject to the 1.25% sales and use tax even though these sales are exempt from motor vehicle excise tax. As Taxpayer is not a lessee according to the facts submitted, the Office of the General Counsel cannot issue a binding letter ruling on this issue. The following information is being provided in lieu of a letter ruling in hopes that it is helpful in reviewing this issue.

You have correctly noted that sales of the leased motor vehicles to the lessees are exempt from excise tax. Okla. Admin. Code §710:60-7-3(b)(17) states "Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued."

There is no provision in the Sales Tax Code which exempts the sale of a leased motor vehicle to the lessee. Under 68 O.S. (2017) §1355(2), sales tax at the rate of 1.25% would apply to sales of the leased motor vehicles to the lessees.

It is the opinion of the Office of General Counsel that:

(1) Taxpayer's purchase of vehicles for lease are not subject to sales tax provided Taxpayer falls within the exemption codified at Title 68 O.S. (2017) §1357(3); and
(2) Taxpayer's long-term leases of 12 months or more of motor vehicles in Oklahoma by the Taxpayer that are subject to motor vehicle excise tax (including those trucks, truck-tractors, trailers and semitrailers subject to the reduced $10.00 motor vehicle excise tax) are not subject to Oklahoma sales and use tax at a rate of 1.25%.

A letter ruling from the Office of General Counsel is discretionary and defined as an "informal written statement of policy or treatment of specific fact situations under Oklahoma law." OKLA. ADMIN. CODE § 710:1-3-73(e). This letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely

stated, and that there is no change in applicable law. *See* OKLA. ADMIN. CODE § 710:1-3-73(e). Furthermore, this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. § 206. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. § 221.

Sincerely,

OKLAHOMA TAX COMMISSION

Anna Wyatt
Assistant General Counsel

APPROVED.

Joseph L. Sappa
General Counsel