



Re: Request for Letter Ruling on behalf of [REDACTED]; File No. LR-23-006

Dear [REDACTED]:

This letter is in response to your request for a letter ruling ("Request") on behalf of [REDACTED] regarding sales and use tax for genetic testing kits and subsequent analysis of the customers' DNA.

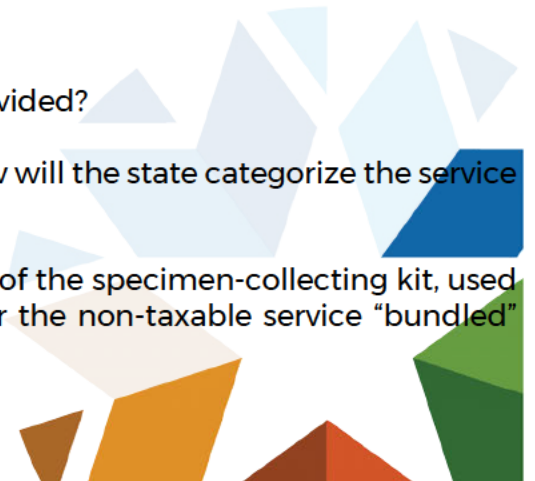
Statement of Facts

The basic facts as presented in the Request are as follows: [REDACTED] ("taxpayer" or "company") is a [REDACTED] taxpayer with a distribution center in [REDACTED] and a specimen-processing laboratory in [REDACTED]. The company's customers are both national and international. The company has been selling its services to Oklahoma customers and has never been contacted by the state pertaining to this tax matter.

The company is an online provider of ancestral and health history reports to individual customers. The reports are generated from the company's analysis of the customers' DNA (saliva specimens). The customers collect their own saliva using a kit which is mailed to them by the company from a distribution center located in [REDACTED]. Once the customer has used the kit, they mail it from their home to a company-owned lab in [REDACTED] where the DNA specimens are processed. The customers then access their individualized, personal reports through the company's website.

Rulings Requested

1. Where is the service to the customers deemed to be provided?
2. If the service is deemed to be provided in Oklahoma, how will the state categorize the service being provided to the company's customers?
3. Given the use of tangible personal property, in the form of the specimen-collecting kit, used in performance of the service, would the state consider the non-taxable service "bundled" with the tangible personal property to be taxable?



4. Are the specimen collection kits used by customers to collect their saliva sample subject to use tax in Oklahoma?

Legal Analysis

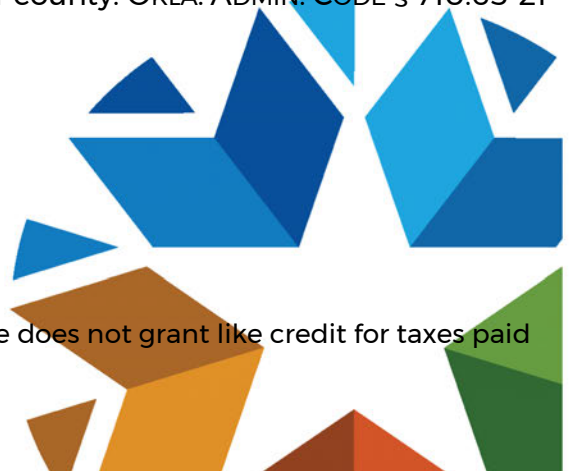
The Oklahoma Sales Tax Code levies an excise tax of 4.5% on the gross receipts from sales of tangible personal property and specifically enumerated services. 68 O.S. § 1354. The service described in your request, DNA testing and providing individual, personalized ancestral and health history reports, is not among the enumerated services in 68 O.S. § 1354 which are subject to tax in Oklahoma. Therefore, the service itself is not subject to sales or use tax in Oklahoma.

You also asked whether Oklahoma would consider the non-taxable service “bundled” with the tangible personal property to be taxable. A bundled transaction is defined as, “the retail sale of two or more products, except real property and services to real property, where the products are distinct and identifiable, and the products are sold for one nonitemized price.” 68 O.S. § 1352(1). However, “a transaction that otherwise meets the definition of a bundled transaction shall not be considered a bundled transaction if it is . . . the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service.” OKLA. ADMIN. CODE § 710:65-1-2. Based on the information provided in your letter, the true object of the transaction is the DNA testing service and subsequent results, and the sale of the tangible personal property (the specimen collection kits) is essential to use of the service. Therefore, the non-taxable service would not be considered taxable as part of a bundled transaction with the tangible personal property.

The Oklahoma Use Tax Code levies an excise tax of 4.5% on the storage, use or consumption in this state of tangible personal property purchased or brought into this state. 68 O.S. § 1402. Use tax is due at the time of importation or storage of the property within the state. *Id.* The company is required to remit use tax to the State of Oklahoma on the specimen collection kits because they are tangible personal property brought into the state for use in providing the service.

However, tangible personal property on which sales or use tax has already been paid in another state¹, which has a sales or use tax rate equal to or greater than the rate charged by Oklahoma, is exempt from use tax. 68 O.S. § 1404(3). If the rate charged by another state is less than the rate charged by Oklahoma, the difference in the rate is to be multiplied by the purchase price of the tangible personal property to give the amount of tax due for that purchase. *Id.* In addition, a credit against any municipal or county use tax paid may be taken if a municipal or county sales or use tax, respectively, has been paid to an out-of-state municipality or county. OKLA. ADMIN. CODE § 710:65-21-20.

¹ No credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in this state. 68 O.S. § 1404(3).



Reliance on this Letter Ruling

A letter ruling from the Office of General Counsel of the Oklahoma Tax Commission 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). A letter ruling “may generally be relied upon only by the taxpayer to whom it is issued” and applies only to the circumstances set forth in your letter, provided that all facts were accurately and completely stated in such letter and that there was no change in applicable law. See OKLA. ADMIN. CODE § 710:1-3-73(e). Please be advised that this letter ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 O.S. § 206. Further, the Oklahoma Tax Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. § 221.

Respectfully,

Oklahoma Tax Commission

Elizabeth Field

Elizabeth Field
General Counsel

