

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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September 13, 2000

Re: Our file Number LR-00-133; Sales and use tax responsibilities of parties engaged in various utility construction scenarios.

Dear

This is in response to your inquiry concerning the above referenced subject. I have scanned in and enclosed your four multi-part fact situations and have set out our responses to each of the questions asked on the enclosed four attachments.

This response applies only to the circumstances set out in your request of June 13, 2000. 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 that there has been no change in applicable law.

These responses are based on the following Oklahoma Tax Commission Rules:

710:65-1-2 710:65-1-7 710:65-19-56 710:65-19-329 710:65-19-330

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION



Michael G. Pillow
Tax Policy Analyst

Attachment 1
UNDERGROUND CONSTRUCTION

FACTS

Company A enters into a contract with a customer to do the following:

1. Using Company A's equipment (or equipment it leases), a tunnel or trench is made by removing ground (e.g., dirt, rock, stones, etc.) and placing it above ground.
2. Pipe is placed in the tunnel or trench and is covered up with dirt, rock, stone or sand. Black dirt and seed are then placed on top of the dirt, rock, sand, etc. The pipe is furnished by the customer.
3. The land on which the tunnel or trench is made may be owned by various persons, including the customer, a utility or municipality, or other persons. (Note: The land is not owned by Company A.)

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company A's bill to the customer subject to sales/use tax? If yes, under what law or regulations?

Response to Question A: Company A is a contractor and as such, is the taxable consumer user of all tangible personal property used in the completion of the contract. Except in the case where the work involves construction of telecommunications lines, no part of the bill to Company A's customer is subject to sales tax. However, if the line being laid is a telecommunications line, and the customer is not a telecommunications company that could make the purchase exempt for resale as a part of its sale of telecommunications services, the gross proceeds of the bill would be taxable.

- B. Would the answer to "A" be different if, in Fact 2, the pipe was purchased and furnished by Company A instead of the customer? Is Company A's purchase of the pipe subject to sales/use tax?

Response to Question B: The answer to question "A" above would not be different if the pipe was purchased and furnished by Company A instead of Company A's customer. Company A's purchase of the pipe would be subject to sales or use tax as appropriate.

- C. Is the tax treatment the same, regardless of who owns the land on which the tunnel or trench is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:

- owned by a utility?
- on which the utility has an easement?
- owned by a governmental unit such as city, village or county?
- owned by a corporation or individual?

Response to Question C: The tax treatment is the same without regard to who owns the land on which the tunnel or trench is located.

- D. Is Company A liable for use tax?

Response to Question D: Company A is subject to use tax on all purchases made outside Oklahoma which are brought into Oklahoma. It owes sales tax to its vendors on all purchases made in Oklahoma.

Attachment II
DIRECTIONAL DRILLING

FACTS

Company Z enters into a contract with a customer to do the following:

1. Using Company Z's equipment (or equipment it leases), a circular shaped horizontal hole is made in the ground. The ground (e.g., dirt, rocks, stones, etc.) is removed and placed above ground.
2. A pipe is placed in the hole. The pipe is furnished by the customer.
3. The land on which the hole is made may be owned by various persons, including the customer, a utility or municipality, or other persons. (Note: The land is not owned by Company Z.)

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company Z's bill to the customer subject to sales/use tax? If yes, under what law or regulations?

Response to Question A: Company Z is a contractor and as such, is the taxable consumer user of all tangible personal property used in the completion of the contract. Except in the case where the work involves construction of telecommunications lines, no part of the bill to Company Z's customer is subject to sales tax. However, if the line being laid is a telecommunications line, and the customer is not a telecommunications company, that could make the purchase exempt for resale as a part of its sale of telecommunications services, the gross proceeds of the charge would be taxable.

- B. Would the answer to "A" be different if, in Fact 2, the pipe was purchased and furnished by Company Z instead of the customer? Is Company Z's purchase of the pipe subject to sales/use tax?

Response to Question B: The answer to question "Z" above would not be different if the pipe was purchased and furnished by Company Z instead of Company Z's customer. Company Z's purchase of the pipe would be subject to sales or use tax as appropriate.

- C. Is the tax treatment the same, regardless of who owns the land on which the hole is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:

- owned by a utility?
- on which the utility has an easement?
- owned by a governmental unit such as city, village or county?
- owned by a corporation or individual?

Response to Question C: The tax treatment is the same without regard to who owns the land on which the tunnel or trench is located.

D. Is Company Z liable for use tax?

Response to Question D: Company Z is subject to use tax on all purchases made outside Oklahoma which are brought into Oklahoma. It owes sales tax to its vendors on all purchases made in Oklahoma.

**Attachment III
WIRE ON POLES**

FACTS

ABC enters into a contract with a utility company or telephone company to do the following:

1. Using ABC's equipment (or equipment it leases), ABC attaches wire above ground to poles. Some poles are removed and replaced/moved.
2. The wire is furnished by the utility company or telephone company.
4. The land on which the poles are located may be owned by various persons, including the utility company, telephone company or others. (**Note:** The land is not owned by ABC.)
5. If there are truck tire ruts in performing this job, some dirt may be placed in the ruts by ABC to level the ground and grass seed is planted.

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of ABC's bill to the customer subject to sales/use tax? If yes, under what law or regulations?

Response to Question A: Company ABC is a contractor and as such, is the taxable consumer user of all tangible personal property used in the completion of the contract. Except in the case where the work involves construction of telecommunications lines, no part of the bill to ABC's customer is subject to sales tax. However, if the line being installed is a telecommunications line, and the customer is not a telecommunications company, that could make the purchase exempt for resale as a part of its sale of telecommunications services, the gross proceeds of the charge would be taxable.

- B. Would the answer to "A" be different if, in Fact 2, the wire was purchased and furnished by ABC instead of the customer? Is ABC's purchase of the wire subject to sales/use tax?

Response to Question B: The answer to question "A" above would not be different if the pipe was purchased and furnished by ABC instead of ABC's customer. ABC's purchase of the pipe would be subject to sales or use tax as appropriate.

- C. Is the tax treatment the same, regardless of who owns the land on which the pole is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility or telephone company?
 - on which the utility or telephone company has an easement?
 - owned by a governmental unit such as city, village or county?
 - owned by a corporation or individual?

Response to Question C: The tax treatment is the same without regard to who owns the land on which the pole is located.

D. Is ABC liable for use tax?

Response to Question D: ABC is subject to use tax on all purchases made outside Oklahoma which are brought into Oklahoma. It owes sales tax to its vendors on all purchases made in Oklahoma.

Attachment IV

POLES - WIRING/FOUNDATION, ETC.

FACTS

Company B enters into a contract with a customer to do the following:

1. Using Company B's equipment (or equipment it leases), Company B digs a trench for electrical wire to connect to a light on a pole. A hole is dug for a light pole foundation.
2. A cement foundation is made for the light pole. Company B purchases the cement for the foundation.
3. Wire is placed in the trench, with the wire partially above ground when it is coming out of the cement foundation, so it can be connected to the light. (**Note:** The connection to the light is not done by Company B.) The wire is furnished by the customer. After the wire is placed in the trench, the trench is filled with sand, gravel or dirt.
4. A pole is attached to the cement foundation. The pole is furnished by the customer.
5. The land on which the trench, foundation and pole are located may be owned by various persons, including the customer, a utility company, a governmental unit or other persons.

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company B's bill to the customer subject to sales/use tax? If yes, under what law or regulations?

Response to Question A: Company B is a contractor and as such, is the taxable consumer user of all tangible personal property used in the completion of the contract.

- B. Would the answer to "A" be different if, in Fact 3, the wire was purchased and furnished by Company B instead of the customer? Is Company B's purchase of the wire subject to sales/use tax?

Response to Question B: The answer to question "A" above would not be different if the pipe was purchased and furnished by "B" instead of "B's" customer. "B's" purchase of the pipe would be subject to sales or use tax as appropriate.

- C. Is the tax treatment the same, regardless of who owns the land on which the trench, foundation and pole are located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility?
 - on which the utility has an easement?
 - owned by a governmental unit such as city, village or county?

- owned by a corporation or individual?

Response to Question C: The tax treatment is the same without regard to who owns the land on which the pole is located.

- c. Is Company B liable for use tax?

Response to Question D: ABC is subject to use tax on all purchases made outside Oklahoma which are brought into Oklahoma. It owes sales tax to its vendors on all purchases made in Oklahoma.