

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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February 26, 2001

Re: Our file Number LR-00-213; Sales tax due on certain transactions

Dear

This is in response to your inquiry in which you set out various fact scenarios and ask for guidance in applying the Oklahoma sales tax code to your business.

To ensure that the guidance provided was correct and addressed your particular fact situations, an auditor visit was requested and completed. Based on that visit and on your letter, it is apparent that your business should be classified as a contractor for the sales where you contract to build a building on the customer's site. As a contractor, the business is the consumer/user of the items used in the construction of the building. If the building materials have been purchased exempt from sales tax, as a purchase for resale, they are subject to sales tax at the time they are withdrawn from the tax free inventory. You do not charge and collect and remit sales tax on the gross receipts of the contract. Please refer to Oklahoma Tax Commission rule 710:65-1-7.

For those occasions where you construct a building and sell it to a customer, you are selling a piece of tangible personal property and the selling price of the building is subject to sales tax, without any deduction for the labor involved in the construction of the building.

The gross receipts arising from the sale of buildings that you have previously constructed and which you have at the fair grounds, as examples of your firm's work, are subject to sales tax. If the order for the building is taken at the fair grounds and is approved at the fair grounds, and the purchaser does not have the right to reject delivery of the building, the rate of tax due is the rate applicable to sales made at the fair grounds.

Your other questions and our responses to each are:

1. I occasionally contract with someone to deliver a pre-built building and /or materials to a job site. If I list it separately, is this portion of the bill taxed?

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Response: No, separately stated and separately agreed to charges for delivery of tangible personal property that has been sold by a vendor is not subject to sales tax. Please refer to Oklahoma Tax Commission rule 710:65-19-70

2. I am sometimes contracted to tear down a pre-existing building. This would be labor only. Is this portion taxed?

Response: If the work is separately agreed to and separately stated from any sale of tangible personal property, the charges for tearing down a pre-existing building would not be subject to sales tax.

3. Sometimes a customer calls me several months after I have constructed a building. They might ask me to install a window or a door in the building. Is that portion taxed upon the materials only or on the entire amount?

Response: In instances like these, you are acting as a contractor. You should accrue and remit sales tax on the sales value of the materials you use in the performance of the contract that you have purchased exempt from sales tax.

4. Sometimes I finance a building with a finance company for the customer. I receive payment for the building upon completion from the finance company. I receive no money prior to this time. When is the tax due?

Response: If you are acting as a contractor and are improving real property, and are buying all your material exempt from sales tax for resale, you should accrue the tax as the material is withdrawn from your inventory. If you are acting as a vendor of a portable building, not a contractor, you should charge and remit the tax for the month in which the sales agreement was signed, without regard to the time and manner of payment of the agreement.

5. Sometimes I am contracted to paint a building. Is this taxed upon materials only or the entire amount?

Response: As a contractor, you are the taxable consumer user of the items used to complete the contract. If you have an inventory of paint that you have purchased exempt from tax for use in your business of building portable buildings, and you withdraw it for use in a painting contract, you should accrue sales tax on the sales value of the paint. If you have to purchase the paint specifically for the job, you should pay sales tax when you make the purchase.

6. Sometimes I build a building on a concrete slab. Is this job taxed upon the materials only or on the entire amount?

Response: According to the auditors who visited your operations, for these types of jobs, you are acting as a contractor that is engaged in improving real property. As a result, you are the consumer/user of the items used to construct the buildings. You should pay sales tax on the goods as they are purchased or if you have purchased them exempt from sales tax for use in your business of building portable buildings, you should accrue sales tax on the sales value of the materials when you withdraw it from your tax free inventory.

7. Sometimes I am called back to a job at a later date to install insulation or paneling. Is this taxable on the materials only or on the entire amount.

Response: If you are improving real property you are the consumer user and the tax consequences of the work is as is set out in the response to question number six above.

8. Sometimes I go to a customers house to look at a job site. If I sell the job, I usually write the contract while I am at the customers house. Do I tax this job at the tax rate of the location of the job site or at my business's location?

Response: If the job is one where you are acting as a contractor improving real property, the tax is applicable where you buy the materials or where you withdraw them from your inventory of materials purchased exempt for resale. If the job involves the sale and delivery of a pre-built portable building, the sales tax that is due is at the rate where you accept the contract, if the purchaser does not have the right to reject the delivery of the portable building. If they do, it is the customers location.

A complete copy of the sales tax rules has been mailed to you.

This response applies only to the circumstances set out in your request of September 15, 2001. 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.

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

Sincerely,
OKLAHOMA TAX COMMISSION


Michael G. Pillow
Tax Policy Analyst

Cc: Darwin Crider