OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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May 25, 2001

Re: Our File Number LR-00-250.1 Tax status for the sell and installation of storm shelters

Dear

This letter is a follow-up to your request for an opinion to clarify the methodology your company should use in conducting its operation of the sale and installation of storm shelters.

Upon reviewing contract that was faxed to us on May 7, 2001, it appears that you are conducting your business as a contractor, making improvements to real property and are contracting for job performance rather than selling the storm shelters as a vendor. Please note, the area on your invoice with a line for tax is indicative of a vendor and should therefore not appear on your contract. Usually, any cost, including tax, that a contractor incurs as part of its job performance should be included in its lump sum contract price. A distinction between a contractor and a vendor is that a contractor is performing and selling a service, i.e. performance; and paying tax at the source. In contrast, a vendor issues an invoice as to the sale of goods and collects sales/use tax from its customer.

Contractors are considered the consumer/users of items purchased to improve real property. They pay tax on the materials used in their contracts and do not charge a mark-up on their material. Their profit is in labor/installation. Consequently, they do not charge sales tax on the revenue received from the contract. Please see Commission Rules 710:65-19-55 and 710:65-19-56.

A contractor's tax responsibility for materials purchased inside the state would be to pay state and/or local sales tax at the source. For out-of-state purchases of material stored at a location different from the job site, the tax responsibility would be to pay the tax to the vendors if they have a physical connection with Oklahoma. If the vendor does

not have a connection with Oklahoma such that it is required to remit use tax, then you should accrue and remit the tax due. If you order the material for a particular job, then the tax at the job site woud be the tax due. If not it is the storage site. (See Title 68 Section 1411 and the Oklahoma consumers use tax report enclosed).

Further, you should collect sales tax from your customer on the cash and carry sales at either the place of pick-up if delivered, or the place of delivery even though you have paid use tax on it earlier.

Based on the foregoing determination, if has been issued a permit, it should return the permit with a copy of this letter to the Oklahoma Tax Commission, Taxpayer Assistance Division, 2501 Lincoln Blvd. Oklahoma City, OK 73194. We suggest that notify its vendors in writing that it no longer sales for resale, and is required to pay the tax at the time of purchase.

Please find enclosed Commission Rules referenced herein. If I can be of further assistance, please feel free to contact me.

This response applies only to the circumstances set out in your request of January 10, 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,

Brenda J. Sullivan
Tax Policy Analyst