

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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July 16, 2001

Re: Our file Number LR-01-095; Use tax on a series of transactions involving manufacturing equipment.

Dear

This is in response to your inquiry in which you ask a series of questions concerning the ability of a contractor to make purchases exempt from sales tax for use in the building of a manufacturing plant. I have set out your fact situation below followed by your questions. Each is followed by our response:

Facts:

Company owns land in Oklahoma and intends to construct a manufacturing plant on that land. Company A contracts with Company B for Company B to act as Company A's general contractor/construction manager. Company C is a manufacturing company located in Company C will sell products, the sale to occur in FOB Company C's plant, which will be affixed to and become part of the manufacturing plant being constructed in Oklahoma.

1. If Company C sells its products to Company A, does the manufacturing exemption apply so that there is no use tax applicable?

**Response:** If Company A is recognized as a bona-fide manufacturer in Oklahoma, it may make purchases of machinery and equipment, exempt from sales or use tax, for use in its manufacturing process. Please refer to Oklahoma Tax Commission Rule 710:65-13-150.1. A copy is attached.

2. If Company C contracts with Company A to provide the product, with the contract signed by Company B as construction /purchasing agent for Company A, and the products are shipped to Company A, in care of Company B, to the construction site, and Company A is invoiced for the sale, is a use tax applicable?

**Response:** The facts in this scenario appear to be at odds with the fact situation you outlined above. Due to the ambiguity in the relationship of the parties, it is not clear what the tax consequences would be. However, if Company B is acting as a construction contractor to Company A, Company B will have no valid exemption to claim on any purchases it makes.

3. Is the answer to question 2 the same if the payment by A is made through B, its construction manager/purchasing agent?

**Response:** Yes

4. If the product is ordered by Company B, the supply contract signed by Company B, the products shipped to Company B, the products installed at Company A's site by Company B pursuant to its construction contract with Company A, the sale invoiced to Company B and the invoice paid by Company B:

a. does a use tax apply for the Company C to Company B transaction?

**Response:** Yes. As noted above, Company B will not have a valid claim for exemption since it is a contractor.

b. does a use tax apply for the Company B to Company A transaction whereby such transaction is governed by the construction contract between Companies A and B?

**Response:** No. A contractor is the consumer user of goods used in the contract. Even if the goods were to be sold as tangible personal property to Company A by Company B, no sales or use tax would apply since Company A is eligible to make purchases of tangible personal property exempt from sales or use tax for use in its manufacturing process.

This response applies only to the circumstances set out in your request of June 22, 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