

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 23, 2001

Re: Our file Number LR-01-155; Sales tax on the periodic sale of building materials.

Dear

This is in response to your inquiry concerning the subject referenced above. I have scanned into this letter, your fact scenario and your questions, each of which is followed by our response.

Your Scenario

Our client, a Texas corporation manufactures and sells building components primarily to customers in Texas, but will occasionally sell building components to customers in other states.

offices are in Texas and all of its employees reside and work in the State of Texas or Louisiana. advertises in national trade publications and occasionally attends tradeshows in Oklahoma and certain other states. All customer orders are accepted and processed in Texas. Upon receipt of an order, enters into a contract with the customer substantially in the form attached as **Exhibit I** hereto (the "Contract"). The terms of the Contract provide that it is executed in Texas and any litigation or dispute arising under the Contract is to be resolved in the court of proper jurisdiction in County, Texas.

The Contract generally provides that will manufacture the specified building components at its plant in Texas and ship them FOB Texas (the customer takes ownership in Texas). The building components are shipped to the customer by a third-party common carrier, either by truck or by rail. In general, the customer is responsible for erection or assembly of the building components at their site.

may order insulation and other materials related to the building components from out of state suppliers to be delivered directly to the customer's site for installation at the time of erection or assembly of the building components. is usually not registered in the state in which the supplier is located and is not registered in Oklahoma. As such, does not have a resale or manufacturer's exemption certificate in the supplier's state or in Oklahoma and is charged a sales tax on the materials. The supplier may charge Oklahoma sales tax (if it has nexus with Oklahoma) or sales tax for the state in which it is located. Sales tax paid by on these materials is generally factored into the overall Contract price.

has had four or less sales to customers in Oklahoma in the last three years. is currently not registered to collect and remit sales or use tax in Oklahoma. has not sent employees into Oklahoma to solicit orders from customers, oversee erection or assembly of building components or engaged in any other activities relating to its trade or business. has not entered into any contracts for the erection or assembly of any building components in Oklahoma. has not filed any liens in Oklahoma with respect to sales to customers in Oklahoma.

Question 1

Assuming does not send employees into Oklahoma and has no contracts for the erection or assembly of building components in Oklahoma, will be required to collect and remit sales tax to Oklahoma on sales to its Oklahoma customers?

Response: *If has no physical connection with the state of Oklahoma, it cannot be compelled to collect Oklahoma sales or use taxes. Please refer to Oklahoma Tax Commission Rules 710:65-1-8, 710:65-15-1, 710:65-21-4 and 710:65-21-6.*

Question 2

Assuming only sends employees into Oklahoma for tradeshow and does not solicit or process orders for building components at such tradeshow, will have nexus for Oklahoma sales tax purposes and be required to collect and remit sales tax to Oklahoma on sales to its Oklahoma customers?

Response: *If the employees are only attending the tradeshow and are not engaged in the solicitation of business at the show, as would not be the case if has a booth at the tradeshow, then would not have the required physical connection with the state as specified in the rules noted above.*

Question 3

Will a contractor, paid by on behalf of a customer, that enters Oklahoma to erect or assemble building components for a customer be considered an "agent" of under Oklahoma law? If so, will be deemed to have

nexus for Oklahoma sales tax purposes and be required to collect and remit sales tax to Oklahoma on its sales to its Oklahoma customers?

Response: *If as set out in certain terms of the contract that was attached to your letter, is required to erect the building on its customers' foundations, it would be acting as a contractor for each such building, and as such, would be responsible for accruing and remitting use tax on the materials used in the construction.*

Question 4

If files a lien in Oklahoma against an Oklahoma customer, will have nexus for Oklahoma sales tax purposes and be required to collect and remit sales tax to Oklahoma on sales to its Oklahoma customers?

Response: *As noted in the response to question number 1 above, physical connection is required with the state of Oklahoma before a vendor can be required to register and collect sales or use tax.*

Question 5

If is subject to Oklahoma sales tax in Questions 1-4 above, does Oklahoma allow for a waiver of penalties and interest on the resulting sales tax liability from prior periods if voluntarily discloses and remits Oklahoma sales tax on such sales?

Response: *Upon application, the Oklahoma Tax Commission can waive interest and or penalties. Please see Oklahoma Tax Commission Rule 710:1-5-12. The Oklahoma Tax Commission also participates in the Multistate Tax Commission's Voluntary Disclosure Program. Information on that program can be viewed at their website:*

<http://www.mtc.gov/TXPYRSVS/disclose.htm>

This response applies only to the circumstances set out in your request of September 6, 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