

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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January 3, 2002

Re: Our File Number LR – 01-184; Tax status of manufacturer sales and installation of electronic display systems to schools and universities

Dear

This is in response to your request for a letter ruling as to the taxability of the items listed in your correspondence regarding your company's contractual agreement with high schools and universities for the sale and installation of electronic display systems (football, baseball, basketball and wrestling scoreboards). Please note the pertinent Oklahoma regulations and rules concerning tangible personal property, the administration of sales tax exemption for schools and universities, manufacturers and the limited exceptions which allow contractors to make exempt purchases from sales tax based on the sales tax exemption of those entities that are exempt from sales tax.

We submit the following in response to your request.

Tangible personal property

Section 1354 (A)(1) of Title 68 specifically levies a sales tax on the sale of tangible personal property except newspapers and periodicals. For the purpose of answering this questionnaire see Commission Rule **710:65-19-107(a) Fixtures; "materials" defined for the purpose of developing and improving real property**. It states, "the term 'materials for the purpose of developing and improving real property' as used in the Sales and Use Tax Codes, means all **tangible personal property**, including any device or appliance used by builders, contractors, or landowners in making improvements, additions, alterations or repairs to real property in such a way that such tangible personal property becomes identified with a part of realty."

Therefore, the electronic display systems (football, baseball, basketball and wrestling scoreboards) are all considered tangible personal property at the time of the sale for installation.

Exemptions for schools and universities

The Oklahoma Sales Tax Code provides an exemption for purchases by private and public schools and the institutions of The Oklahoma State System of Higher Education. See Title 68 Section 1356 (10) and (11), a copy of which is enclosed.

Although sales to schools are exempt, purchases made with funds of students, faculty sponsors, sponsoring organizations are not exempt, even if those students, faculty members, etc. are to be reimbursed for their expenses at a later date by the public or private school. In other words, purchases made with other than public funds of a public school or funds of a private school are subject to sales tax.

Manufacturing exemption

To implement and administer the exemption afforded manufacturers, the Commission promulgated Rule 710:65-13-150.1, a copy of which is enclosed. See subsection (b) **Activities included in manufacturing operations.** "Purchases by a manufacturer of tangible personal property or services for use in a manufacturing operation are exempt from sales and use taxes in Oklahoma. Operations performed by a sub-contractor to the manufacturer may also qualify as a manufacturing operation if the contractor is performing sub-assembly work leading to completion of the finished product."

Since the installation is not part of the manufacturing production, _____ may not issue the electrician a resale certificate to exempt the sales tax for his/her labor and materials. However, in the case where a contractor has a contract that falls within the limited exceptions, for the exemption to apply, the contractor must have an agency agreement with the exempt entity, by which they are appointed as purchasing agent to make exempt purchases on behalf of the exempt entity to fulfill their contractual agreement. See the next paragraph regarding contractors.

Contractors

Oklahoma law contains **no provision exempting contractors** from sales tax on their purchases of tangible personal property or taxable service. Moreover, even when hired by an entity which is exempt from the payment of sales and use taxes, a contractor or subcontractor may not generally make tax exempt purchases. In fact, the Oklahoma Sales Tax Code contains only three provisions which allow a contractor to make purchases exempt from sales tax based on the exempt status of another entity:

- A. A contractor who has a public contract, or a subcontractor to that public contract, with Oklahoma municipalities, counties, public school districts, the institutions of the Oklahoma System of Higher Education, rural water

districts, the Grand River Dam Authority, the Oklahoma Municipal Power Authority, and the Northeast Oklahoma Public Facilities Authority may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

- B. A contractor who has entered into a contract with a private institution of higher education* or with a private elementary* or secondary institution,* may make purchases of materials, supplies and equipment used in the construction of buildings owned and used by the institutions for education purposes exempt from sales tax.
- C. A contractor who has contracted with an agricultural permit holder to construct facilities which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder may make purchase of materials, supplies and equipment exempt from sales tax.

See Sections 1356(10), (11) and Section 1358(8) of the Sales Tax Code which are enclosed. Certification by the contractor of the above to the vendor is required on each invoice or delivery ticket as set out in Oklahoma Tax Commission Rule 710:65-7-6, which is also enclosed.

Generally, an electrical contractor pays sales or use tax as a consumer on the purchase of all materials, supplies, tools, and equipment used in fulfilling their contractual agreements. If the electrician has a contractual agreement with the exempt entity, the electrician would be able to purchase exempt from sales tax the materials necessary to fulfill its contractual agreement. However, under the circumstances described in your letter the electrician would not be under contractual agreement with the exempt entity therefore no exemption applies.

To help you make a correct determination of the exempt status of an organization, please find enclosed a copy of a booklet entitled Sales Tax Vendor Liability Notice, Rules and Forms and copies of Rules 710:65-7-6, 710:65-7-8, 710:65-7-13, 710:65-7-15 which deal with potential sales you might make.

Other entities not listed in the above discussions would be subject to tax on their purchases if they do not have a resale certificate.

Please note the following comments regarding vendor's responsibilities for taxable sales transactions made in Oklahoma.

Oklahoma sales tax is levied on transactions that occur within Oklahoma. Use tax is levied on a transfer of title or possession of tangible personal property that occurs outside Oklahoma, i.e., property purchased out of state and subsequently brought into Oklahoma for storage, use or consumption pursuant to

Title 68, Section 1402 of the Oklahoma Statutes. For sales shipped to Oklahoma residents which are solicited through advertisements and direct mailing or telephone orders, your company would be required to collect Oklahoma use tax if it has a physical connection with Oklahoma, such as agents, a business situs, inventory or other property, or affiliates operating in Oklahoma under its authority. Should your company have agents making sales from inventory within this state they would be required to collect Oklahoma sales tax, as might be the case if your company travels to shows, fairs or exhibitions, delivers and/or installs the products sold by their company. See Commission Rules 710:65-21-1, 710:65-21-2, 710:65-21-5, 710:65-21-6 and 710:65-21-7.

For taxable sales, your company would be required to collect Oklahoma sales tax since they have a physical connection with Oklahoma, i.e. make deliveries in their own truck and perform installations and/or service the product for their Oklahoma customer.

If you have additional questions concerning this matter or if I can be of further assistance, please free to contact me a t (405) 521-3133.

Sincerely,


Brenda J. Sullivan
Tax Policy Analyst

Please note that in the case of a contract with a private institution of higher education or a private elementary or secondary institution, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education or the State Department of Education.