

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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May 23, 2002

RE: Our File Number LR-02-072; Various sales tax questions regarding real and tangible personal property and retailers and contractors

To Whom It May Concern:

This is in response to your inquiry requesting a determination of the taxability of the items and services listed in your correspondence. I have set out below the transactions enumerated, followed by our responses as to their sales/use taxability and have referenced the related Oklahoma Tax Commission Rules and Oklahoma Statutes.

**Question 1:** Does the retailer become a contractor if they install the purchased item?

**Our Response:** No, a retailer may make installation sales; see Commission Rules 710:65-19-157 and 710:65-19-159.

**Question 2:** Once installed, what items would be considered to become part of the real property?

**Our Response:** Please see Commission Rule 710:65-1-2 which defines tangible personal property and 710:65-19-107 which relates to Fixtures; "materials" defined for the purpose of developing and improving real property.

**Question 3:** If the items become real property, are they taxable? And if so, would the tax be a sales tax paid by the purchaser or a use tax paid by the contractor?

**Our Response:** Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase. Therefore, purchases of tangible personal property, i.e. dishwashers, refrigerators, freezers, etc., to make improvements to real property are taxable at the time of purchase. The subsequent sale of the real property and the tangibles attached in such a way that makes them a part of the realty are not subject to sales tax. See Commission Rule 710:65-19-107.

**Question 4:** If the item is considered real property, would sales tax be charged to the purchaser or use tax paid by the contractor on any repairs made to the item?

**Our Response:** Labor charges for installation or repair services are not generally taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice. However, there is one exception to this general rule. Section 1354(D) of Title 68 levies a sales tax on "all local telecommunication service and rental charges including all installation and construction charges and all services and rental charges having any connection with transmission of any message or image."

**Question 5:** If the item remains tangible personal property after installation, who is responsible for the tax on repairs?

**Our Response:** Regardless of real or tangible personal property, the responsible person(s) for any taxable repairs is dependent upon who is making the agreement for the repairs, i.e. the ultimate consumer or user.

Sincerely,

Brenda J. Sullivan  
Tax Policy Analyst