



## OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

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*Commerce & Industry Administrator*  
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LARRY G. SHROPSHIRE  
ADMINISTRATOR

October 3, 2002

Dear

You have requested a letter ruling regarding the application of Oklahoma sales and use tax to transactions to be performed by a public trust, created and existing pursuant to Title 60, Sections 176 et seq. of the Oklahoma Statutes, (the "Authority") to bring a large warehouse/distribution facility to its beneficiary, an incorporated city in Oklahoma.

### ***Facts***

Leadership of the private corporation (hereinafter "Corporation") is considering an Oklahoma community as a location for a manufacturing facility. The Corporation intends to operate a state-of-the-art facility, ("Facility"), to service customers throughout the midwestern and southwestern United States.

The economic and industrial impact on the city is the investment of over One Hundred Thirty Million Dollars, and the creation of approximately 160 jobs paying an average of approximately \$41,000 annually once the facility is operational.

Authority owns the land on which the Corporation is considering locating. The Authority is planning to issue its obligations, a note or bond, which will be purchased on a private placement basis by a lending institution. The issuance will fund the Authority's construction and equipping costs in order to provide the needed Facility to induce the Corporation to locate in Oklahoma and to further economic development efforts in this rural Oklahoma community. Security for the Authority's obligation will be a first mortgage on the Facility and a pledge of revenues pursuant to a Lease Agreement between the Authority and the Corporation.

The Authority will engage a construction manager to supervise the construction *and act as one of the subcontractors for the Project*, but shall itself be general contractor. *In its role as general contractor, the Authority also will enter into other contracts with other subcontractors for the construction and equipping of the Project.* All materials used in construction of the facility and all equipment installed in the facility would be purchased by and billed to Authority pursuant to vendor invoice. Authority funds

October 3, 2002

Page 2

out of its Project Construction Fund, funded with proceeds from the sales of its obligations, would be used to pay the invoices.

***Sales Tax Liability***

Section 1356 of Title 68 of the Oklahoma Statutes specifically exempts political subdivisions or any agency of a political subdivision from the sales tax imposed in Article 13 of the Statutes, which is the sales tax code. The Tax Commission further clarifies that public trusts created pursuant to the Public Trust Act are one of the entities exempt from the tax in OTC Rule 710:65-13-140. That rule sets out:

*(a) Trust authorities organized pursuant to 60 O. S. sections 176 et seq. may purchase material exempt from sales tax, but may not appoint an agent to do so. In order for the transaction to be exempt from sales tax, the purchase must be invoiced to and paid for by the authority, using authority funds or revenue received for bonds let by the authority.*

*(b) Purchases made with flow-thru funds are taxable. Flow-thru funds are defined as monies deposited in a trust authority account, by private industry, with the authority to dispense the funds under the trust's own name.*

Based upon the facts submitted, it appears that the transactions described would be exempt from sales tax under Oklahoma Tax Commission Rule 710:65-13-140. The Authority may engage a construction manager to supervise the construction, but all purchases must be invoiced to and paid for by the authority using authority funds. The raising of funds through a note or bond purchased by a lending institution are not "flow-thru funds" as contemplated by Oklahoma Tax Commission Rule 710:65-13-140. The use of "flow through funding" refers generally to a scheme whereby a public trust authority establishes a checking account in its name and permits a non-tax exempt entity to flow its private funds through that account to pay for its purchases, which are subject to sales or use tax.

Funds will be available as a result of issuance of its bond. The funds are not "flow-thru" funds as contemplated by the Tax Commission rule set out above and Authority's purchases to build and equip the facility are not subject to Oklahoma sales tax.

***Use Tax Liability***

Section 1402 of Title 68 of the Oklahoma Statutes sets out there is an excise tax imposed for storing, using or otherwise consuming within this state, tangible personal property purchased or brought into this state.

Section 1404 of Title 68 of the Oklahoma Statutes sets out exemptions from such tax and at subsection (e) specifically exempts tangible personal property exempted from taxation under the Sales Tax Code found in Article 13 of Title 68. The exemption is reiterated in OTC rule 710:65-21-20. Therefore, if the purchases described in the facts herein are made out of state and the tangible personal property is brought into the state, such property is not subject to Oklahoma use tax.

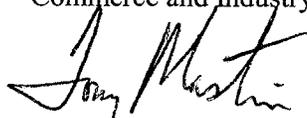
This letter ruling is applicable to the facts set out herein. Should the facts differ, this letter ruling will be of no consequence.

October 3, 2002  
Page 3

If you would like for me to obtain a formal, binding ruling regarding the foregoing information, I will be glad to do so at your request.

Sincerely,

Bill Johnson  
Commerce and Industry Administrator



Tony Mastin, Director  
Tax Policy Division