

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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October 29, 2002

Re: Our File Number LR-02-176; Sales tax on materials used and services provided by a Telecommunications service provider.

Dear

This is in response to your inquiry concerning the subject referenced above. I have set out your Fact Pattern and your Questions below. Each question is followed by our response.

Fact Pattern:

Company A is a service provider. Company A's customers are telecommunication equipment manufacturers and telecommunications service providers. Company A's services can best be described as follows:

(Equipment is defined as "telecommunication equipment located at ultimate user sites")

- New Equipment Installation
- Installation of Equipment Enhancements to Existing Equipment
- Replacement Equipment Installation
- Equipment Repairs
- Engineering Services

Company A ***does not purchase or resell*** any of the equipment installed. Company A's customers contact Company A to provide the above services on their behalf. Company A only invoices its customers (*telecommunication equipment manufacturers and telecommunication service providers*) for the services provided. Depending on the type of service provided, the telecommunication equipment manufacturers and telecommunication service providers may or may not invoice *their* customers.

Company A rarely solicits new customers. Company A has been selected by its customers as a "preferred service provider." Services are provided both on fixed fee and time & expense arrangements.

Company A does provide miscellaneous installation materials, supplies, and accessories (examples include wiring, fuse panels, switches, nuts and bolts, etc.) as part of their services. These items are generally incidental to the installation process and constitute 10% or less of the cost of the service provided. On occasion, the cost percentage can reach 25% or be billed as a flat 25% pursuant to special contract arrangements. Materials, supplies, and accessories are purchased both in stock quantities and for specific jobs. The items are either shipped to one of Company A's warehouses to be withdrawn as needed or earmarked and shipped directly to a job site.

The equipment which Company A installs for its customers can be replaced when broken or enhanced, however, it is generally affixed to real property.

Questions:

1. Should Company A be collecting sales tax from its customers on any of the installation or repair services referenced above? *Please remember that Company A is provided with the equipment that is being installed by Company A's customer(s).. Company A does not furnish or bill for the equipment to be installed Company A merely furnishes a service, and any necessary miscellaneous installation materials and supplies which become the property of the customer after installation.*

RESPONSE: Providing they hold sales tax permits in Oklahoma, the customers of Company A may make purchases of the services provided by Company A as purchases of telecommunications for resale, since the services will be used in the subsequent provision of end-to-end telecommunications services. Please see Oklahoma Tax Commission Rule 710:65-19-330, especially subsection (d)(3)(D).

2. Company A currently remits sales/use tax on the purchase of installation materials, supplies, and miscellaneous accessories provided as a component of their services. Should Company A be remitting sales/use tax on these purchases or should Company A be purchasing these items for resale and separately stating the tangible items on the invoices and billing the customer applicable sales tax? *Please remember that the cost of these incidentals in comparison to the total service fee is generally 10% or less. There are a few contracts where the cost is 25%, or the customer is billed a 25% fee no matter the actual cost.*

RESPONSE: If Company A separately states the charge for installation materials and charges sales tax on them or makes an exempt sale of the materials used, it may make purchases of them as purchases for resale. Please see Oklahoma Tax Commission Rule 710:65-13-200.

3. If a customer hires Company A to provide one of the services above for its customer, and Company A's customer bills their customer for the equipment installed and the services provided by Company A, can Company A accept a resale certificate from its customer and purchase all incidental materials tax exempt?

RESPONSE: Yes, it may accept a resale certificate from its customer and purchase all incidental material exempt from sales tax as a purchase for resale. Please refer to the rule cited in the question immediately above.

4. Is telecommunication equipment considered real property or tangible personal property?

RESPONSE: If the equipment retains its character as telecommunications equipment, it retains its status as tangible personal property. Please see Oklahoma Tax Commission Rule 710:65-19-107.

5. Are there any special exemptions or tax exclusions when providing services for the telecommunications industry?

RESPONSE: Please refer to the rules previously cited.

6. If Company A has a warehouse in your state at which materials, supplies, and accessories are shipped and stored until use, does Company A owe sales/use tax to your state or to the state in which the goods are ultimately used in an installation service (which may or may not be your state)?

RESPONSE: If Company A holds an Oklahoma Sales Tax Permit, it may buy, exempt for resale, those items it is going to install and invoice to its customer. If not, then Oklahoma sales tax would be due when the materials are purchased in Oklahoma, or, if the goods are purchased outside Oklahoma, use tax is due when they are brought into Oklahoma for storage. If the items are later shipped outside Oklahoma then a credit could be taken against the use tax paid at an earlier time.

7. If Company A does not have a warehouse in your state, however, pulls items from another state's warehouse and has paid sales/use tax to the warehouse state, does not company A have any additional tax liability due to your state when using the materials for an installation job in your state?

RESPONSE: If Company A brings into Oklahoma, items on which use tax is due, it may take a credit for the sales or use tax paid another state up to the rate of tax in Oklahoma.

8. Company A's personnel uses various small tools, such as pliers, screwdrivers, etc. to perform the installation services. Are these items subject to sales/use tax at the point of purchase? Does it make any difference in regard to taxability of the tools, etc. are specialized and only usable for one job?

RESPONSE: The small tools used by the personnel of Company A are subject to sales tax if purchased in Oklahoma and subject to use tax if purchased outside Oklahoma and brought into Oklahoma. The fact that they are specialized and usable only for one job does not affect their taxability.

9. If a customer provides a tax exemption or direct pay certificate to Company A, and if your state treats Company A as a "service provider," can Company A accept the exemption or direct pay certificate in good faith?

RESPONSE: Please see response to question number 1 above.

10. Are there any statutes, regulations, court cases, letter rulings or publications that would be helpful to Company A with their taxability decision-making process? If yes, please reference or attach to your response..

RESPONSE: A copy of the sales tax rules is being mailed to you.

This response applies only to the circumstances set out in your request of September 20, 2002. 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



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