



## OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

LARRY G. SHROPSHIRE  
ADMINISTRATOR

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*Bill Johnson*  
*Commerce & Industry Administrator*  
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November 5, 2002

Dear

You have requested an opinion 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 expand a manufacturing facility in the City of an incorporated city in Oklahoma, and the beneficiary of your Authority.

Facts:

Leadership of the private corporation (hereinafter "Corporation") is considering for a modernization and expansion project for its presently existing manufacturing facility. The expansion will perpetuate the plant's competitiveness and its continued presence and growth in The Corporation intends to operate a state-of-the-art facility, ("Facility"), to service customers throughout the world.

The economic and industrial impact on the city is the investment of over Five Million Dollars, and the retention of approximately 1900 jobs paying an average over \$41,000.00 annually. The project entails the construction of a 50,160 square foot addition to the production section and a 13,200 square foot addition to the mixing section of the plant.

The larger addition will house a new textile slitting machine and a textile cutting machine. These machines are required for building the new brand tires. In addition, a new tire building machine will be added.

The smaller addition will be attached to the mixing department and will house a new chemical weighing machine to accurately weigh chemicals added to rubber mixes.

Authority owns the land on which the Corporation is considering expansion. The Authority is planning to issue its obligations, a note or bond, which will be purchased on a private placement basis by a lending

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institution. The issuance will fund the Authority's construction and equipping costs in order to provide the needed inducement for the Corporation to expand 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 portions of 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 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 does not make them "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.

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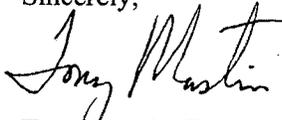
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Section 1404 of title 68 of the Oklahoma statutes sets out exemptions from such tax and at subsection (e) specifically exempts tangible personal property exempted from taxation under the Sales Tax Code found in Article 13 of title 68. The exemption 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.

Sincerely,



Tony Mastin, Director  
Tax Policy Division

Sincerely,



Bill Johnson  
Commerce and Industry Administrator