OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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December 30, 2003

RE: Our File Number LR-03-250; Tax exempt transaction

This is in response to your request for a ruling on each of the transactions listed in your correspondence. You asked, "as to whether your company should charge sales tax or if your customer is tax exempt"; pursuant to an agency agreement with an exempt entity, Garfield County Commissioners, referred to as the "County".

Generally, purchases by contractors and subcontractors are subject to sales tax in Oklahoma. However, the Oklahoma Sales Tax Code contains only three provisions which allow a contractor or a subcontractor to make purchases exempt from sales tax based on the exempt status of another entity. One of the exceptions is pursuant to contracts with certain political subdivisions or agencies of the state in which counties are considered subdivisions. See Section 1356 (10) of Title 68 enclosed.

Section 1356 (10) of Title 68 allows persons with whom a county has entered into a public contract to purchase, exempt from sales tax, items necessary for carrying out said public contract.

It is the Commission's position that the above-referenced exemption only applies to property which is transferred to the possession of the county or to property that is consumed in fulfilling the terms of the public contract.

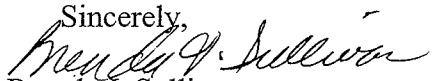
Therefore, if the contract between and the "County" specifies that the purchase, rental, parts and servicing of equipment is necessary to carry out the contract and title to the equipment passes to the County, then each transaction would be exempt, otherwise each would be taxable.

Additionally, in the case where a contractor or subcontractor has a contract that falls within the limited exceptions, for the exemption to apply, the contractor or

subcontractor must establish properly completed documentation as set out in Commission Rule 710:65-7-13, copy enclosed, titled "Vendors' responsibility-sales to contractors".

This response applies only to the circumstances set out in your request of November 14, 2003. 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,



Brenda J. Sullivan
Tax Policy Analyst

Enclosures