# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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February 5, 2004

Re: Our File Number LR-04-018; Clarification of proper collection and remittance of sales/use tax

Dear

This in response to your inquiry for clarification of how your company should be collecting and remitting sales and/or use tax based on the three scenarios listed in your correspondence. I have scanned your fact scenarios into this letter, followed by our response.

Our records indicate that the Audit Division of the Oklahoma Tax Commission recently determined that your firm qualifies as a manufacturer. In view of this additional information and facts concerning (hereafter referred to as the following rulings have been determined for each item requested.

1. "Our primary business is as a glass window subcontractor. We purchase raw materials in the form of bulk sheet glass and bulk metal from both in-state and out-of-state vendors. The materials are then fabricated in our shop into custom fit windows, glass partitions, etc., which we install as a subcontractor in both new and existing buildings for a total contract price.

**Our Response:** Pursuant to Commission Rule 710:65-19-56, is operating as a contractor. All work performed involves incorporating tangible personal property into real property. See Commission Rules 710:65-1-7 (3), 710:65-19-56 and 710:65-19-370(a). Since contractors are considered the consumer of items used to fulfill contracts, should pay sales tax at the time of purchase of tangible personal property and taxable services used in performing its services. If you were to remove tangible personal property which was purchased tax exempt for the manufacturing aspect of your business, to fulfill your contractual agreements, sales tax would be due on the items removed as withdrawals from stock. See Commission Rule 71:65-1-7

(2) **Withdrawals from stock.** In its billings for the contracts, should clearly show that it is charging for performance of a contract to improve real property rather than for the sale of goods.

2. We purchase pre-made glass door units from an out-of-state vendor and drop ship the units from the out-of-state vender directly to an out of-state customer and have a local glass contractor in that state do the installation. We also purchase these same pre-made glass door units and take delivery at our Oklahoma location and handle the installation ourselves.

**Our Response:** Pursuant to O. S. Title 68 Section 1363 and Commission Rule 710:65-13-200 is acting as a vendor making over the counter sales of pre-made glass door units and may purchase the units for resale exempt from sales tax. When the inventoried stock is resold, would be required to collect and remit the sales tax on those taxable sales. See Rule 710:65-19-370 (c).

Please be advised that effective November 1, 2003, the manner in which to determine where sales tax is due changed for some delivery sales. Under the new law, all delivery sales are sourced to the location where receipt by the purchaser occurs. See proposed Commission Rule 710:65-18-3.

Sales transactions where delivery of the goods occurs outside of Oklahoma (out-of-state customers) are not subject to Oklahoma sales tax. Questions regarding the proper application of sales transactions that occur in other states should be addressed to their taxing authorities.

Additionally, labor charges for installation or other special services are not taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice. See Commission Rules 710:65-19-158 and 710:65-19-159.

3. We do in-state replacement of broken or damaged glass windows in commercial buildings on a repair basis.

**Our Response:** For certain transactions, such as those listed above where is a vendor and/or a contractor, the taxability of the transaction depends on your invoicing method. If you buy glass tax exempt for resale and invoice the glass separately, you are acting as a vendor and should charge sales tax on the glass but not on the separately stated labor charges.

It is recommended that the books and records of clearly show the terms of the transactions which are made by your company so they can be handled properly.

Enclosed find the Statutory Reference and Commission Rules noted. If I can be of further assistance, please contact me.

This response applies only to the circumstances set out in your request of January 23, 2004. 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.

Sincerely,

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst