OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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March 30, 2004

Re: Our file Number LR-04-040; Taxability of transactions

Dear

This is in response to your inquiry for clarification regarding Oklahoma Tax Commission Rules as they pertain to your business as a steel fabricator who works as a subcontractor on a contractual basis for general contractors.

Generally, in Oklahoma, contractors which are engaged in improving real property are the consumers or users of the items used to make the improvements. They are not required to charge sales tax on their contract billings. They should pay sales tax on the materials used at the time they are purchased. They are not issued sales tax permits nor are they required to file sales tax reports. See Oklahoma Tax Commission Rule 710:65-19-56 which deals with the treatment of Contractors and subcontractors.

You stated in your correspondence that you are a subcontractor who holds an Oklahoma sales tax permit and who is regularly engaged in the business of selling steel, etc., and fabricating it to ship to a jobsite in Oklahoma for your contract with a Texas General Contractor. Based on this information you are required to accrue and remit sales tax on the sales value of the materials which were purchased exempt from sales tax and withdrawn from your inventory to complete the terms of the contract with the Texas General Contractor. See Commission Rule 710:65-1-7 (2). If a withdrawal from the retail inventory is used to fulfill lump-sum contracts, then it is to be reported on line 2 of the Oklahoma Sales Tax Report and you should pay the sales tax due. However, the expenses and any portion of the contract that does not represent the withdrawal of material from an inventory purchased exempt from sales tax for resale are not subject to sales tax.

Further, if you are required to purchase goods to complete the contract, rather than withdraw goods previously purchased from your inventory, you should advise your vendors that purchases are not exempt for resale but rather are taxable as the consumer/user.

Our response is based on Oklahoma's definition of a contractor found in Title 68 O.S. Section 1352 (4) and Commission Rules 710:65-1-7, 710:65-7-13, 710:65-19-55 and 710:65-19-56. Copies are enclosed for your reference.

This response applies only to the circumstances set out in your request of February 26, 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. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

cc: Christina Brown, TPA
Enclosure