OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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August 9, 2004

Re: Our File Number LR-04-136; Tax status of management fee and maintenance

Dear

This is in response to your request for a written determination of the transaction outlined in your correspondence. I have scanned your fact scenario into this letter followed by our response.

"I would like to request a written determination on the following situation.

My company operates retail stores in multiple states. Often, when we need a repair or maintenance job done at one of our retail locations, we hire a company to coordinate the work that needs to be done. The company we hire only coordinates the work. They do not actually perform any of the work. There is a wide variety of repair and maintenance work that is coordinated in this manner, including HV AC repair, plumbing and parking lot maintenance. We do not have contracts with any of these vendors, however, we do have agreements with many of them as to what their fees will be.

The transaction process is as follows:

We contact the vendor. The vendor hires a local company to go out to the retail location and do the necessary work. The local company bills the vendor. The local company often charges our vendor sales tax. The vendor sends us a bill which itemizes the amount charged by the local company and the vendor's fee.

The vendor's fee is listed as either "management fee," "overhead and profit," or a set "mark-up." It is usually either a flat fee or a percentage of the amount billed by the local company for the work.

We need to know whether the vendor's fee is subject to sales and/or use tax. Also, are we liable for sales or use tax on the portion of the bill attributable to the local company's repair work? If so, can we take a credit for any tax paid by our vendor to the local company? Also, will the taxability of the transaction be affected by whether the vendor has nexus in your state or not? Does the vendor's nexus status affect who is liable for the tax?

I have included copies of some past invoices to illustrate how these companies typically invoice us. I have verified that these companies are in business strictly to coordinate the repairs. They have no other involvement."

Please be advised that the transactions that you described as having repair or maintenance work done at your retail stores results in the improvement of real property. Businesses engaged in making improvements to real property are the taxable consumers and are subject to the rules governing contractors. Contractors are considered the consumer/users of items purchased to improve real property. They pay tax on the materials used in their contracts and do not charge a mark-up on their material. Their profit is in labor/installation. Consequently, they do not charge sales tax on the revenue received from the contract. Usually, any cost, including tax, that a contractor incurs as part of its job performance should be included in its lump sum contract price. Please see Commission Rules 710:65-19-55 and 710:65-19-56.

Question: We need to know whether the vendor's fee is subject to sales and/or use tax.

Our Response: No.

Question: Also, are we liable for sales or use tax on the portion of the bill attributable to the local company's repair work?

Our Response: No, the contractors pay sales/use tax as a consumer/user on their purchases.

Question: If so, can we take a credit for any tax paid by our vendor to the local company?

Our Response: Not applicable.

Question: Also, will the taxability of the transaction be affected by whether the vendor has nexus in your state or not?

Our Response: No.

Question: Does the vendor's nexus status affect who is liable for the tax?

Our Response: No.

This response applies only to the circumstances set out in your request of June 24, 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