OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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October 22, 2004

Re: Our File No. LR-04-181

I am writing in response to your inquiry of August 31, 2004 to Mr. Mastin, wherein you posed questions regarding the taxability of purchases made to construct the

A restatement of the facts outlined in your inquiry, the questions posed therein along with the responses thereto are set forth below.

is a 501(c)(3) Oklahoma Not for Profit Corporation created to support the including the construction of a performing arts center on school property. A license agreement between the school district and was executed in November of 2003. has entered into a contract with to build a performing arts center. Upon completion, the license agreement will terminate and the building will be turned over to the school for its use, operation and management.

Question 1
Are purchases of materials for the construction of a performing arts center on school property for the benefit of the school by a 501(c)(3) organization exempt from sales and use tax prior to the effective date of Senate Bill 1121?

No, purchases of materials for the construction of a performing arts center on school property for the benefit of the school by a 501(c)(3) are not exempt from sales and use tax prior to the November 1, 2004 effective date of SB 1121.

Question 2
If the answer to Question 1 is in the negative, can designate as purchasing agent on this project to purchase required material under the Public schools exemption from sales and use tax.

Section 1356(10) of Title 68, does allow a contractor who has a public contract with a public school district and any subcontractors to that public contract, to make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales and use tax. However, it does not appear that the requirements for this exemption are met in this instance.

Question 3
If purchases of material prior to November 1 are subject to sales and use tax, what is the operative date for determining the application of the tax, i.e. (a) When the material are delivered? (b) When the invoice is prepared? (c) When the materials are paid for?

The operative date for determining the application of the tax for a specific transaction would be the date of purchase of the materials reflected on the applicable invoice.

This response applies only to the circumstances discussed in your request of August 31, 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar

Christy J. Caesar
Tax Policy Analyst