OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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June 29, 2005

Re: Our File Number LR-04-230; Sales tax on building telecommunication, radio and television towers.

Dear

This is in response to your inquiry concerning the sales tax implications of the building of telecommunications, radio and television towers. I have set out your fact situations and questions below and each question is followed by our response.

Your Fact Situation

"Taxpayer is in the business of building telecommunication, radio, and/or television towers which he then sells to service providers. He has been operating under the sales tax rules applicable to builders in that he would pay sales tax on the materials purchased to build the towers; and he did not charge sales tax to the buyer/service provider of the towers.

Oklahoma statute 68 Section 1354, included in House Bill 2335, effective 7-1-04 removed **labor** charges for construction, installation, servicing, repair, or maintenance of equipment in connection with **cellular** towers from the definition of telecommunications services, thereby making the charges exempt from sales tax.

Okla. Admin. Code section 710:65-19-330(f) states "Persons who provide telecommunication services are the consumers of the tangible personal property used in performing those services. Sales of such items to those persons are taxable." Based on this code section it appears that the taxpayer should be charging sales tax on the sale of the towers."

Your Question Number One: "Sales of tangible personal property purchased and used by a **licensed radio or television station** in broadcasting are exempt according to Okla. Statute 68 section 1359(8). Does this sales tax exemption apply to telecommunication towers as well?"

Our Response to Question Number One: No.

Your Question Number Two: If a tower serves a combination of service providers including telecommunication, radio, and/or television how does the taxpayer treat the tower as far as being subject to sales tax?

Our Response to Your Question Number two: Based on your facts and the fact that towers retain their identity as tangible personal property, and that they do not become part of real property, your client is acting as a vendor and is not acting as a contractor. For sales to a customer of either tangible personal property or services or both, whether sales tax is applicable depends on the status of your client's customer and what is being sold. Please see Oklahoma Tax Commission Rule 710:65-13-191 for radio and television broadcasters and 68 O.S. Section 1354(A)(4)(a)(4) for cellular telecommunications providers. Sales of services to radio and television broadcasters are not subject to sales tax and they may claim an exemption on certain purchases of tangible personal property pursuant to the rule noted. Sales of tangible personal property to telecommunications providers are subject to sales tax, as are sales of services related to the construction, installation, movement, servicing, repair or maintenance" of equipment that have a connection with the transmission of a message or image, unless the sale of such services are related to the transmission of the image or message from a cellular tower.

Unofficial copies of the statutes referenced above may be viewed at the following website by entering the appropriate section number as the search term:

www.oscn.net/applications/oscn/search.asp?simple=true

Unofficial copies of the Oklahoma Tax Commission rules referenced herein may be viewed at the following website by entering the rule number as the search term:

www.oar.state.ok.us/oar/codedoc02.nsf

This response applies only to the circumstances set out in your request of November 17, 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,
OKLAHOMA TAX COMMISSION

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