OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

September 23, 2005

Re: Our File Number LR-05-012; Sales tax on sales made by

This is in response to your inquiry referenced above. I have set out your inquiries below and each is followed by our response.

Your Inquiry # 1: Is required to pay use tax as a consumer on the cost of equipment, products and materials when sold to customers along with services provided by HES or is HES required to collect the sales tax as a retailer/dealer from customers on the separately itemized sales price of the equipment, products and materials on the invoices?

Our Response: Sales tax is required to be collected by "HES" on all sales of tangible personal property. A sale is defined as the transfer of tangible personal property for a valuable consideration and it includes the lease or rental of tangible personal property. Please see Oklahoma Tax Commission Rules 710:65-1-2 and 710:65-1-11. If buys tangible personal property for resale it may make the purchase exempt from sales tax for resale pursuant to Rule 710:65-13-200. If it purchases goods for its own use in providing services, it owes sales or use tax on them pursuant to Rule 710:65-1-10. If it later sells the goods that it purchased for its own use, no refund is allowed for the sales or use tax paid as stated in that rule. If has purchased tangible personal property exempt for resale, and does not resale it, but instead uses it in its business, owes sales tax on the "sales value" of the good as required by Rule 710:65-1-2. If an article of tangible personal property is purchased exempt for the purpose of being resold via a rental or lease agreement, and the item is withdrawn for use by sales tax is due on the "sales value" of such rental goods as required by Rule 710:65-1-2.

Your Inquiry #2: If it is determined that is required to pay use tax as a consumer, is entitled to a credit from the amount of sales tax previously collected from its customer against any previously owed use taxes?

Our Response: is not required to pay use tax as a consumer on tangible personal property it is purchasing for resale.

Your Inquiry #3: Is entitled to a refund of the additional sales tax paid on the marked up amount of the equipment, products and materials which would then pass along to its customers?

Our Response: is not entitled to a refund of the additional sales tax paid on the marked up amount of the equipment, products and materials.

This response applies only to the circumstances set out in your request of November 22, 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

Michael G. Pillow
Tax Policy Analyst

cc: Jim Mallard