

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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December 8, 2005

Re: Our File Number LR-05-096; Sales tax on various transactions

Dear

This is in response to your inquiry concerning the various transactions into which your client may enter. I have copied into this letter ruling your fact pattern and questions. Each question is followed by our response.

## **Your Fact Pattern**

Company X is a service company (subsidiary) headquartered in the state of Michigan. Company X's services are performed in multiple states. Company X's operations can best be described as construction, construction management, rehabilitation and corrosion control services for pipeline, utility, fiber and water industries. Company X enters into contracts with its customers for services. Services can be billed as time & material jobs or lump-sum service bid arrangements. Company X generally purchases and provides all construction materials and supplies as a component of the contract with the customer. Primary service categories are as follows:

### *Engineering & Technical Services*

Company X provides customers with engineering support services, site testing, and global position satellite (GPS) surveys.

### *Construction Services*

Company X provides construction services on real property. These services include excavation and underground pipeline repairs and maintenance. Company X employs and provides construction crews for the operation of Company X owned equipment used in performing the construction services.

### *Horizontal Directional Drilling Services*

Company X provides real property drilling services necessary for the installation of pipelines, conduit, cable and remediation wells. Company X has installed pipe sizes with diameters up to 60 inches and has completed continuous bores up to 7,100 feet in length.

On the basis of the above fact pattern, please provide a taxability decision for the following sale and purchase transactions

**Sale Transactions** *(should a sales tax be collected from the customer):*

Engineering Services  
Technical Services - Site Survey  
Construction Management Services (oversight of project)  
Real Property Construction Services  
*(time and material contract)*  
Real Property Construction Services  
*(lump sum contract)*

Pipeline Installation (new installation)  
Pipeline Repair Services  
Excavation Services  
Survey Services  
*(surveys to assess existing underground pipe, etc for customer)*

Equipment Rental (with operator; per hour charge)  
Equipment Rental (no operator; daily rental rate)

**Our Response:** *Your client is a sales tax vendor and is required to collect sales tax on the gross receipts of the sales you characterize as "Equipment Rental (no operator, daily rental rate)." For the other transactions above, your client would be classified as a "contractor" under the Oklahoma Sales Tax Code and would be the consumer user of any tangible personal property used in making the improvements to real property that your client undertakes to do as a contractor. Please refer to Oklahoma Tax Commission Rules 710:65-1-7; 710:65-1-11; 710:65-7-13; 710:65-19-56; 710:65-19-76 and 710:65-19-309.*

**Purchase Transactions** *(should sales/use tax be remitted on the following items)*

Pipeline Materials *(incorporated into realty)*  
Mobile Equipment *(used for excavation & installation)*  
Survey Service Materials *(copper wire, etc. not incorporated into realty)*  
Drilling Fluids *(used for drilling services)*  
Mud Cleaning System *(does this qualify for pollution control Exemption? Cleans mud and releases mud and water back into environment)*

**Our Response:** *All of the items listed above which are used by your client in its business as a contractor are subject to either sales tax or use tax in Oklahoma when your client purchases them in Oklahoma or brings them into Oklahoma from another state. There is no "pollution control" exemption from sales tax in Oklahoma. There is an exemption related to equipment used to mitigate hazardous waste but it is based on the operation being permitted as a hazardous waste remediation site, which, based on the fact situation you have given, your client is not*

*involved with and would not qualify for this exemption. Please refer to the rules referenced above.*

***Additional Questions:***

What if Company X purchases installation and excavation equipment for initial delivery into the state of Michigan and subsequently uses the equipment throughout multiple states on a per-job basis. Is any tax due to your state on this limited period equipment usage within your state when tax has been paid to the state of Michigan on the purchase of the equipment (assuming sales tax rate of 6.0%).

**Our Response:** *Use tax is due on the value of the equipment when it is brought into Oklahoma. A credit of the rate of tax paid in Michigan may be taken against any Oklahoma use tax that is due, up to the rate of 4.5%. However, city and county use tax may still be due if the equipment is used in a city or county with a use tax. If a city sales or use tax was paid to a Michigan city, a credit against the Oklahoma city's use tax may be taken for up to the rate of tax paid the Michigan city. The county tax in Oklahoma is handled in the same manner. Please refer Oklahoma Tax Commission Rule 710:65-21-20.*

What if Company X purchases large quantities of pipeline materials for initial delivery to the state of Michigan and subsequently transports and installs some of the pipeline materials in your state. Is any tax due on the material purchases installed in your state?

**Our Response:** *The Oklahoma State and any local use tax should be handled in the same manner as for the transaction set out immediately above.*

Does your state provide for a sales/use tax exemption for materials incorporated into realty within an enterprise zone (or any similar type of zone)? If yes, what is the process for pursuing an exemption from sales tax on the purchase of the materials?

**Our Response:** *No.*

Does your state provide for any special sales/use tax exemption for materials sold to pipeline, utility, fiber, or water companies or cooperatives for incorporation into real property? If yes, please provide detail

**Our Response:** *Cities, counties, rural water districts, public trusts and rural electric cooperatives are exempt on their purchases. Contractors with cities counties, and public trusts, making purchases of materials necessary for the carrying out of public contracts with the cities, counties and rural water districts, may also make purchases exempt provided they comply with the certification requirements set out in the statutes. There is no similar exemption for contractors with public trusts. Rural electric cooperatives may also make purchases exempt from sales tax, but may not appoint an agent, such as a contractor, to do so for them. Thus contractors making purchases necessary for carrying out contracts with rural electric cooperatives are subject to sales tax on their purchases made in Oklahoma or use tax on tangible personal property purchased outside Oklahoma which is brought into Oklahoma for use in Oklahoma. Please refer to Oklahoma Tax Commission Rules 710:65-7-13 and 710:65-13-550.*

This response applies only to the circumstances set out in your request of June 3, 2005. 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

A handwritten signature in black ink, appearing to read "Michael G. Pillow". The signature is written in a cursive style with a large, sweeping initial "M".

Michael G. Pillow  
Tax Policy Analyst