

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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October 9, 2006

Re: Our File Number LR-06-105; Tax status of various leasing transactions

Dear

This is in response to your request for an opinion on how to charge sales, use, rental, or other taxes on lease products and customers that were listed in your correspondence.

The administration of Sales and Use Tax for sales or rental of tangible personal property is found in the Oklahoma Sales Code, O. S. Title 68, Article 13 §§ 1352, 1354, 1356 and Article 14 §§ 1401 and 1402 respectively. Pertinent rules are contained in Title 710, Chapter 65 of the Oklahoma Administrative Code. Also, note that the rental of tangible personal property is included in the definition of a "Sale". See 68 O. S. § 1352 (15) (a) and Commission Rule 710:65-1-2 and 710-65-1-11 "Lease or rental".

Section 1354 (A) (1) of Title 68 specifically levies a sales tax on the sale of tangible personal property except newspapers and periodicals. Therefore, the four items listed in your correspondence as lease products (Temporary chain link fence, Portable toilets, Storage containers, and Temporary power poles and related equipment) are subject to sales tax unless otherwise sold to an exempt entity or for resale. See Commission Rules 710:65-1-2, 710:65-1-4, 710:65-1-11, 710:65-7-8 and 710:65-13-200.

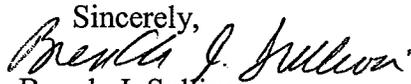
Sales that are made to an individual or entity would be subject to sales tax unless the Sales Tax Code specifically exempted the entity making the purchase. Please see O. S. Title 68 § 1356 and Commission Rule 710:65-7-15 (non-governmental entities) and 710:65-13-130 (governmental organizations) for examples of entities with specific statutory exemption, along with the requirements placed on the vendor concerning documentation that must be obtained in order for the vendor to be relieved of liability from having to charge sales tax on sales to such entities. Also see Commission Rule 710:65-7-6.

Contractors doing business in Oklahoma are responsible for paying sales or use tax on all materials purchased for the development, repair, altering, remodeling and improvement of real property. Contractors may not make tax exempt purchases of materials based on the tax exempt status of their customer. Only would a contractor be able to make purchases exempt from sales or use tax if specifically provided for under O. S. Title 68 § 1356 (10) and Oklahoma Tax Commission Rule 710:65-1-7 (3), 710:65-19-55 and 710:65-19-56(c) and 710:65-7-13. Additionally, recent legislation allows contractors to make exempt purchases of tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a church. Language is being added to our rule to include sales by vendors to contractors and subcontractors with churches as an additional type of transaction where the vendors are allowed to exempt the purchases of contractors or subcontractors.

For each customer situation listed (a through f), I have referenced the pertinent rules as listed above.

- a) Construction contractor. **Taxable, 710-65-19-55 and 56**
- b) Non profit and charitable organizations. **Exempt, only those with specific statutory exemption. 710:65-7-15**
- c) State and local government agencies. **Exempt, 710:65-13-130**
- d) Federal government. **Exempt, 710:65-7-15 and 710:65-13-130**
- e) Resellers. **Exempt, 710:65-13-200**
- f) Contractors who would work on projects for exempt organizations such as local agencies or charitable organizations. **There are a few limited exceptions where a contractor may purchase exempt on behalf of an exempt entity. 710:65-7-13.**

This response applies only to the circumstances set out in your request of June 23, 2006. 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. You may reference Oklahoma Tax Commission Rules at our website: www.ok.tax.state.ok.us and the Sales Tax Code at <http://www.oscn.net>. If I may of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst