OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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December 14, 2006

RE: Our File Number LR-06-144; Tax status of resale permit holder and fence contractor purchase of concrete

Dear :

This is in response to your request concerning the taxability of concrete used to set fence posts. I have restated your questions below, followed by our response.

1. Can a company with a resale permit buy concrete tax exempt for fence posts?

Our Response: Commission Rule 710:65-13-200 states in part "The gross proceeds derived from sales of goods, wares, merchandise, ..., for resale, to persons having a valid sales tax permit who are regularly engaged in reselling the articles or services purchased are exempt from sales tax. In addition to furnishing his sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that said purchaser is engaged in the business of reselling the articles purchased."

Therefore, the resale permit holder must be in the business of reselling concrete.

2. Do they have to be a fence Contractor?

Our Response: A Fence Contractor may not purchase exempt from sales tax, material used in the performance of contract. A contractor is considered the consumer or user and is required to pay the sales tax or use tax on the purchase of tangible personal property and taxable services used in fulfilling contracts. See Commission Rules 710:65-1-7, 710:65-19-55 and 710:65-19-56.

3. Can they be a landscaper or Oilfield Construction?

Our Response: Please be advised that a landscaper falls in the category of a contractor, see the above rules for a non inclusive list of contractors.

4. What are the requirements?

Our Response: The requirements for resale are listed in Commission Rule 710:65-13-200, 710:65-7-8 Vendors' responsibility for sales for resale and 710:65-7-13 Vendors' responsibility-sales to contractors.

You may reference the above rules at our website: www.oktax.state.ok.us
If I can be of further assistance, please write or contract me at (405) 521-3133.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst