OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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May 9, 2007

Re: Our File Number LR-06-199; Sales Tax relating to the Air Conditioning Contractors

Dear

This is in response to your inquiry concerning your responsibility to pay sales tax and not collect sales tax from your customers.

Based on the statement in your letter that you "are a mechanical contractor providing heating, air conditioning and ventilation, HVAC" services, you are engaged in providing services and in improving real property and are the consumer/user of whatever you use to do so.

As a contractor, you are not to charge your customers sales tax, regardless of the method of invoicing you use. While the method of invoicing you use may make it look like you are "selling" tangible personal property rather than "using" tangible personal property to repair or improve real property, you are still not to charge sales tax based on the appearance of making a sale. Rather, you might change your method of invoicing or add a note to the invoice so it is evident that the invoice in question is one that relates to a contract billing not the sale of tangible personal property.

I have enclosed a rule (710:65-19-60) which sets out the conditions under which contractors are to do business in Oklahoma. It clarifies that even fabrication of duct work does not lead to a sale of tangible personal property. It also lists the entities or types of entities, where a contractor, by having a contract with one of those entities or types of entities, may make purchases exempt from sales tax, necessary for carrying out the contract following the limits and obtaining the documentation set out in rule 710:65-7-13.

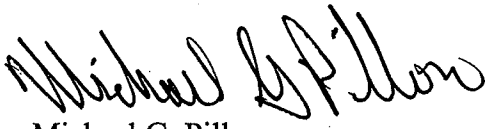
To further clarify the limits, I have enclosed a copy of that rule. Please note that the last subsection (c), contains the documentation requirements. Also note that since August 25, 2006, contractors and subcontractors with construction contracts with churches have been able to make purchases exempt from sales tax of construction materials necessary for carrying out those contracts. We have drafted a rule which is being processed this rulemaking season, which will

instruct contractors to follow the same documentation requirements for churches as they do for schools or cities or counties as set out in rule 710:65-7-13.

This response applies only to the circumstances set out in your request of November 8, 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.

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION



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