

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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March 12, 2008

Re: Sales tax inquiry; Our File No. LR-08-005

I am writing in response to your request for guidance regarding a sales tax issue. The facts presented in your request have been set forth verbatim along with the questions posed and the responses thereto.

The [redacted] has received a grant from the State of Oklahoma- [redacted] to build new affordable single-family homes to replace those destroyed by the July 2007 flood. We have also received an \$180,000 loan commitment from the [redacted] to serve as a construction loan to build two new homes at a time. Oklahoma law not permit the [redacted] to borrow [redacted] funds for this project. However, the [redacted]; a trust of the City, has the ability to borrow these funds from [redacted] has taken bids for the homes and has stated in bid documents that the [redacted] will provide a Sales Tax Exemption Notice for all project materials and services purchased by the contractor related to the project.

Question 1: Reference Part 55. Trust Authorities 710:65-13-550. Would the construction loan funds received by the [redacted] from [redacted] constitute authority funds? If so, if all materials and services secured to construct project homes were invoiced to the [redacted] and paid with authority funds, would these funds be exempt from Oklahoma Sales Tax?

Section 1356(1) of Title 68 specifically exempts from the imposition of sales tax sales of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; In accordance with Section 1356(1), Oklahoma Administrative Code 710:65-13-550 provides that trust authorities are exempt from sales tax on their purchases as follows:

(a) Trust authorities organized pursuant to 60 O.S. § 176 et seq. may purchase material exempt from sales tax, but may not appoint an agent to do so. In order for the transaction to be exempt from sales tax, the purchase must be invoiced to and paid for

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by the authority, using authority funds or revenue received from bonds let by the authority.

(b) Purchases made with flow-thru funds are taxable. Flow-thru funds are defined as monies deposited in a trust authority account, by private industry, with the authority to dispense the funds under the trust's own name. [See: 68 O.S. § 1356]

as a Title 60 trust authority may purchase tangible personal property and services exempt from sales tax. The funds borrowed by pursuant to a loan agreement with the do not constitute flow-thru funds as contemplated by OAC 710:65-13-550. Generally, the use of flow through funding refers to a scheme whereby a public trust authority establishes a checking account in its name and permits a non-tax exempt entity to flow its private funds through that account to pay for its purchases which are subject to sales or use tax. Therefore, based on the facts presented the loan proceeds would be considered authority funds and all purchases of material and services made to construct project homes which are invoiced to the and paid with would be exempt from sales tax.

Attached is Tax Commission Form 13-16A—Application for Sales Tax Exemption—which upon completion should be forwarded to the attention of Sandy Johnson, Oklahoma Tax Commission, P.O. Box 26907, Oklahoma City Oklahoma 73126-9057.

Question 2: Alternatively-If the owns the home building sites and contracts with the to construct project homes-would materials and services secure and purchased by the private contractor for this project be exempt from Oklahoma Sales Tax due to the fact that the homes would be owned by the but later resold to families.

With certain exceptions, contractors are considered consumer users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. OAC 710:65-1-7. However, a contractor who has a public contract with one of the entities set forth in Section 1356(10) of Title 68 may make purchases of tangible personal property and services necessary for carrying out the public contract exempt from sales tax. The is not one of the entities specifically provided for in Section 1356(10) therefore the described purchases by the private contractor would not be exempt from sales tax.

This response applies only to the circumstances discussed in your correspondence of February 20, 2008. 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION



Marc Morrison
Tax Policy Analyst