



TAX POLICY DIVISION
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RE: LR-08-021
Sales Tax

We are in receipt of your sales tax inquiry and the two matrices that you requested that we complete. Instead of completing each matrix, our response to each inquiry is listed below:

Matrix #1. Exemption Applicability & Contractor Flow-through Provisions.

Are sales to government entities, private & public education institutions, 501(c) (3) organizations, non profit hospitals, religious organizations, direct pay permit holders, and manufactures exempt from sales tax? Can an exempt entity allow a contractor to purchase items for installation on their behalf and what documentation is required?

Our response:

In general, federal, state & local governments, schools, certain 501 (c) (3) organizations, non-profit hospitals, churches and manufactures are exempt from sales taxes and there are no exemptions to customers in Enterprise zones. Direct pay permit holders may purchase items tax exempt and defer the tax due until it is used or consumed. Due to the fact that many of the answers requested will not be sufficient to cover all of the aspects of your matrix or since they may be too long to quote, (for example, only certain 501 (c) (3) organizations in Oklahoma are exempt or certain sales to or by them), listed below are the appropriate rules for each and they can be viewed on our website (OKTAX.STATE.OK.US) under rules & decisions, chapter 65 Sales & Use taxes.

qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [See: 68 O.S. §1356(41)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC 710:65-13-80*. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), (b)(3), or (b)(6) of this Section, the vendor must obtain:

- (1) A copy of the exemption letter or card issued to one of the entities described in (b) of this subsection;
- (2) Documentation indicating the contractual relationship between the contractor and the entity; and,
- (3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

Matrix #2. with questions A, B, C, D, & E.

Question A. Is labor, materials installed, or separately stated construction management fees subject to sales tax and is the contractor responsible for collecting or paying sales & use tax on all materials purchased & installed for security systems, fire alarm systems & HVAC systems?

Our response

In general, labor and fees are not subject to sales tax so long as they are itemized separately and most materials will be subject to sales tax (Pursuant to **710:65-19-4, Alarm systems**).

(a) As used in this Section, the term "**monitored systems**" means burglar, security and fire alarm systems which are furnished, installed and monitored under contract with the person furnishing and installing such systems. Systems which are monitored by a person other than the person who furnished and installs such system, e.g., those which are

connected directly to the police or fire department, are not "**monitored systems**" as the term is used in this Section.

(b) Charges, separately stated, exclusively for monitoring systems constitute charges for a service which are not subject to sales tax. The person selling/leasing and installing the monitored system is deemed to be selling tangible personal property and must collect and remit the tax on such property at the time of sale.

(c) Persons engaged in the sale or lease and installation of burglar, security or fire alarm systems are engaged in making sales, the total charge for which is subject to sales tax. Separately stated installation charges are not subject to sales tax. Persons engaged in sales or leases must register as a vendor and collect and remit sales tax in respect to the sales or leases. All items used by the vendor in installing such a system, for example wiring which remains a part of the building nails and similar items, are taxable to the vendor at the time of purchase.

(d) The sale of security and fire devices such as smoke detectors, and similar items which do not become attached to realty are sales of tangible personal property, the total charge for which is subject to sales tax. Persons engaged in the sale and installation of other types of security devices such as permanent window bars and similar items which become permanently affixed to realty are consumer/users with respect to such transactions and must pay the tax on all property installed.

Question B. Does the state of Oklahoma have one sales/use tax rate for all transactions and does your state have a variable state & local tax rate?

Our Response:

Currently, the state of Oklahoma has a 4.5% sales & use tax rate for all taxable transactions and there are multiple city and county sales and use tax rates. You may view these rates on our website address that was previously mentioned.

Question C. If a contractor is required to pay sales/use tax on materials, what rate do they use?

Our response:

For those sales that are not sales of mobile telecommunications services and are not the lease or rental of tangible personal property other than transportation equipment, the sales shall be sourced to the location for which city and county sales taxes will be charged in the following manner (**pursuant to 710:65-18-3, Sourcing of retail sales**):

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this [paragraph] shall not apply to florists until January 1, 2009. Prior to that date, all sales by florists shall be sourced to its business location;

(3) When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) When the provisions of paragraphs (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and,

(5) When none of the previous rules of paragraphs (1), (2), (3) or (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

Question D. Does the previous answer change if the contractor purchases materials in bulk and stores in inventory until needed for a job?

Our Response:

No, it does not change.

Question E. Does the previous answer change if the contractor purchases materials in bulk and stores in inventory until needed for a job for resale as a retailer?

Our Response:

No, it does not change.

This response applies only to the circumstances discussed in your written request of March 07, 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.

If you should have any questions, please feel free to contact me.

Sincerely,

Oklahoma Tax Commission



Marc Morrison

Tax Policy & Research Division