

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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November 10, 2009

Re: Sales Tax Inquiry; Our File No. LR-09-088

Dear [REDACTED]

I am writing in response to your request regarding the sales and use tax implication of the sale and installation of precast fabricated building in Oklahoma. Set forth verbatim are the facts presented along with the question posed and the response thereto.

FACTS

My client is a company engaged in the manufacture and sale of precast fabricated buildings All styles of these prefabricated buildings are presently manufactured at two facilities. The first facility is located in Washington state and the second facility is located in the state of Texas.

While the Company offers many styles and sizes of buildings for sale, they generally, fall into three broad categories that can be described as "Vault Buildings", "Flush/Shower Buildings", or "Utility and Concession Buildings". It is in the context of these three categories that I will focus my explanation in detail.

With respect to the Vault Buildings, these buildings are self contained toilet buildings that do not require water, sewer, or electric. The vault is generally, a square concrete receptacle with an

Liner that is placed below grade and then the building is placed on top of the vault. Vault buildings may be sold/delivered under one of three types of contracts in your state. These contracts are generally described as:

Building - Ship Only: The Company is responsible to deliver the vault and building via common carrier to the location where it will be installed. The Company is not responsible for off-loading the building or installation. The customer is responsible for off-loading from the truck and all site preparation and installation.

Building - Set Only: The Company is responsible for delivery of the vault and building via common carrier to the location where it will be installed. The Company is further responsible for arranging for and paying a crane company to off-load the building and place it on the customer prepared site. The customer is responsible for all site preparation.

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Building - Full Installation: The Company is responsible for delivery of the vault and building via common carrier to the location where it will be installed. It is the Company's responsibility to hire a crane company to off-load the building and place it on the customer's site that the Company is responsible for preparing. If the Company is engaged to complete the site preparation, it hires a subcontractor to perform the work for it. The Company does not own any construction equipment to complete these tasks, all site work is subcontracted. Generally with the vault buildings, site preparation would include digging a hole sub grade to accept the vault upon delivery. Following the setting of the building on the vault, the subcontractor would back fill the hole to complete the installation.

With respect to the Utility/Concession Buildings and the Flush buildings, these facilities are equipped to customer needs. Furthermore these buildings connect to site water, sewer or septic, and electricity. These buildings may be sold/delivered under four types of contracts in your state. These contracts can be generally described as:

Building - Ship Only: The Company is responsible for the delivery of these buildings via common carrier to the location where they will be installed. The customer is responsible for off-loading, site preparation and connection to the utilities (water, sewer, and electric).

Building - Set Only: The Company is responsible for delivery of the building via common carrier to the location where it will be installed. The Company is further required by its customer to provide a crane to off-load the building from the common carrier and placing it on the customer prepared site. The Company rents the crane with an operator from a local company and does not use Company equipment or personnel in off-loading the vehicle. The site preparation and utility hook-ups are the responsibility of its customer under the terms of this contract.

Building - Set w/ Hookups: Under the terms of this contract, the Company is responsible for the delivery of the building via common carrier to the location where it will be installed. The Company is also responsible to hire a crane company to off-load the building and place it on a customer prepared site. The Company is also responsible to hire subcontractors to perform the utility hookups, (water, sewer, and electric). Again the crane rental and the subcontractors who make the utility connections are not employees of the Company.

Building - Full Installation: Under the terms of this contract, the Company is responsible for the delivery of the building via common carrier to the location where it will be installed. The Company is also responsible to hire a crane company to off-load the building. With a full installation, the Company is responsible for hiring a subcontractor to perform the necessary actions to prepare the site, these may include, excavation, pouring of a concrete pad, rough-in of utilities (water, sewer, and electric). The subcontractor that the Company hires is responsible for providing the manpower and equipment to complete the work, as the Company does not own construction type equipment, nor does it engage in those activities themselves. Finally, the Company is also responsible for hiring the subcontractors who make the utility connections.

All of the buildings that the Company sells include a standard warranty. The details of the warranty are set out as follows:

The company warrants that all goods sold pursuant hereto will, when delivered, conform to specifications set forth in the contract. Goods shall be deemed accepted and meeting specifications unless notice identifying the nature of any non-conformity is provided to the company in writing within one (1) year of delivery. The company, at its option, will repair or replace the goods or issue credit for the customer provided the company is first given the

opportunity to inspect such goods. It is specifically understood that the company's obligation hereunder is for credit, repair or replacement only, F.O.B. the company's manufacturing plant, Spokane, Washington and does not include shipping, handling, installation or other incidental or consequential costs unless otherwise agreed to in writing by the company.

This warranty shall not apply to:

1. Any goods which have been repaired or altered without the company's express written consent, in such a way as in the reasonable judgment of the company, to adversely affect the stability or reliability thereof;
2. To any goods which have been subject to misuse, negligence, acts of God or accidents or
3. To any goods which have not been installed to manufacturer's specifications and guidelines, improperly maintained, or used outside of the specifications for which such goods were designed.

QUESTION

What are the sales and use tax implications of the sale and installation of precast fabricated buildings in Oklahoma?

RESPONSE

Regarding the Building Ship Only contracts, since your client is utilizing a common carrier and is not engaged in the installation of tangible personal property, it is required to register to obtain an Oklahoma vendor use tax permit and collect state and any applicable local use taxes due on the tangible personal property transferred pursuant to these contracts. The remaining contracts are subject to Oklahoma sales tax since tangible personal property is being shipped to and installed in Oklahoma by your client's agents requiring your client to obtain an Oklahoma sales tax permit and collect and remit state and local sales tax on its sales in Oklahoma. See OAC 710:65-15-1.

This response applies only to the circumstances discussed in your request of May 22, 2009. Pursuant to Oklahoma Administrative Code 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