# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063


January 21, 2011

Re: LR-10-081 (Sales Tax Inquiry)

Dear

I am writing in response to your inquiry regarding sales tax, set for verbatim are the facts presented along with the response thereto.

Facts:

We have had conflicting information provided to us with regards to how our business is to pay/collect sales tax. I would like to have a ruling from your office as to how I am to handle sales tax in writing. I will give you a detailed description of our business and how we operate, so that we can be provided with documentation as to how we are to handle sales tax. I was told by a lady in your office that I did not need a sales tax permit. She informed me because I do not have a store front from which I sell items; I am considered a consumer of products and not a retailer. Therefore I don't need a sales tax permit. So I recently changed the way I pay sales tax to just paying when I purchase parts and equipment.

We are a heating, air conditioning, and plumbing service/repair company in City. We purchase both parts that are consumed, such as pvc glue, tape, screws/nails, chemicals, etc and parts such as thermostats and motors that are installed and charged separately for. We also purchase equipment such as condensing units, compressors and other equipment that are done as bid jobs. For example, a motor we pay $200 for would be installed at a "bid" price of $500.00 and the labor/parts are not separated out.

For years we have bought our parts with our sales tax permit on a tax exempt basis and then paid the tax on the price we sold the parts for. Most of our equipment is sold as a bid job, and in that case we would pay tax on the amount we paid for the equipment. We were told by your office that we were not handling the sales tax properly and told we do not need a tax exempt permit. I went into great detail to explain everything we do.

I have a friend in the business, who called to tell me he is being audited. He has never had a sales tax permit and has always paid his tax when he purchased parts and

equipment. He is being told that this is wrong and being charged tax on the parts he has marked up. This is very upsetting to me, because I have gotten such conflicting information. I would just like your office to provide me with a written letter as to how I am supposed to handle my sales tax. If you have any questions, please call and I can explain further if necessary.

Response:

I am unable to provide a definitive response to your request based on your business description, however, outlined below is a general overview of the sales/use tax treatment of contractors, repairmen and repairers/vendors making installation sales.

Contractors[1] are persons making improvements to real property and as such the Oklahoma Sales Tax Code provides that the contractor is the taxable consumer or user of all items of tangible personal property and taxable services used to develop and improve real property. OAC 710:65-1-7 and 710:65-19-56. Therefore, a contractor should not charge and itemize tax. The contractor would owe state sales or use tax and any local tax as applicable on the items purchased for use to make the improvements. If a contractor makes purchases outside Oklahoma, from a vendor that is not required to collect Oklahoma sales or use tax, the contractor is required to accrue and remit Oklahoma state and any local use tax on the materials purchased.

Likewise, repairmen[2] are considered taxable consumer/users of items purchased for use in the performance of their repair services. Pursuant to the definition of a "consumer" or "user", the repairmen must pay sales/use tax on purchases of items used in providing their services and they would not be issued a sales tax permit for their business. However, if a repairman maintains a parts inventory and is regularly engaged in making sales of these parts at a markup in conjunction with labor or installation, he should hold a sales tax permit and collect sales tax on the gross receipts[3] attributable to the sale of the tangible personal property in Oklahoma and report and remit same to the Oklahoma Tax Commission. Separately stated labor/installation charges are not subject to sales tax.

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[1] Section 1352(7) defines contractor to mean "any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property belonging to or purchased by the person into the real property being improved."

[2] Section 1352(21) defines repairman to mean "any person who performs any repair service upon tangible personal property of the consumer, whether or not the repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by the repairman into the tangible personal property being repaired."

[3] The terms gross receipts, gross proceeds and sales price are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold . . . whether received in money or otherwise. . . without any deduction for the following:

1. the seller's cost of the property sold,
2. the cost of materials used, labor or service cost,
3. interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
4. charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
5. delivery charges and installation charges, unless separately state on the invoice, billing or similar document given to the purchaser, and
6. credit for any trade-in . . . ." 68 O.S. § 1352(12)(a).

This response applies only to the circumstances discussed in your written request of March 10, 2010. 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