OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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January 3, 2011

Re: LR-11-001

Dear

This is in response to the request for a letter certifying the sales tax exemption of along with a determination that may pass through its sales tax exemption to an entity with whom it has entered into a public contract.

In , in order to provide health insurance for their employees, several Oklahoma cities and towns formed, in accordance with the Interlocal Cooperation Act, 74 O.S. § 1001 et seq., the On the Oklahoma Tax Commission by Order No. adopted the Findings, Conclusions and Recommendations of the Administrative Law Judge in Case No. The ALJ concluded therein that "as an agency of the political subdivisions which fund and govern it, is exempt from sales tax under the provisions of 68 O.S. Supp. 1988, § 1356(A). Pursuant to Order No. the Business Tax Division issued a letter dated documenting the sales tax exemption of In 1993, the members of the voted to amend the agreement establishing the to change the name of the group to the Resolution filed with the Oklahoma Secretary of State.

Pursuant to Section 1354 of Title 68 of the Oklahoma Statutes, sales tax is due on the gross receipts of each sale enumerated therein, unless specifically exempted by the provisions of the Oklahoma Sales Tax Code.

68 O.S. Supp. 2010, § 1356(1) specifically exempts from the levy of sales tax:

> Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivisions of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by Section 1350 et seq. of this title, except as hereinafter provided. . .

Generally, as outlined in Section 1356(1) of Title 68, purchases made by contractors performing services for government entities are subject to sales tax. An exception to this rule was codified in 68 O.S. 1981, § 1356(H), which provides as follows:

> There are hereby specifically exempted from the tax levied by this article:
>
> (H) Sale of tangible personal property or services to any county, municipality, public school district, the institutions of the Oklahoma system of higher education and the Grand River Dam Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both.

In 1985, this section was amended to include subcontractors to a public contract with one of the enumerated agencies or subdivisions. 68 O.S. 1985, § 1356. Numerous entities have been added since enactment. However, neither nor entities created pursuant to the have been added.

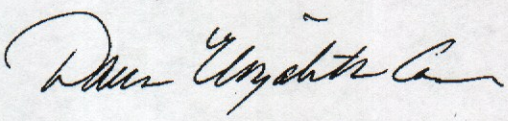
As a general rule, exemption statutes are to be strictly construed against exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977). The language of an exemption statute may not be construed so as to give it an effect which is not intended. *Protest of Hyde,* 188 Okl. 413, 110 P. 2d 292 (1941).

Based on the documentation submitted, as an agency of political subdivisions, is sales tax exempt on its purchases of tangible personal property and services. 68 O.S. Supp. 2010, § 1356(1). However, sales to contractors in connection with the performance of any contract with the are not exempt from sales and use tax.

This response applies only to the circumstances discussed in your request of October 18, 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



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