

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 7, 2014

Re: LR-13-092

Dear

This is in response to the request made on your behalf for a letter ruling based upon the facts and circumstances presented. Set forth are the facts and questions presented and the response thereto.

FACTS

The Taxpayer is an Illinois corporation and is a construction contractor. The Taxpayer has been awarded a construction contract by the _____ a division the federal Department of Health & Human Services, to provide a modular building which will be transported to the _____ in _____ OK, and permanently affixed to the hospital such that the modular building will house a new MRI machine. The Taxpayer is the general contractor, i.e. the Taxpayer is selling to/providing services for, the _____ and not another contractor or entity.

The taxpayer will: purchase the modular building from a vendor located outside of the state of Oklahoma, subcontract for the transportation of the building on its own axle and wheels, and subcontract for the preparation and grading of the real property on which the modular building will sit as permanently adjoined to the existing hospital. As regards the purchase of the modular building, the Taxpayer will not pay sales tax to his vendor, nor will the Taxpayer self-assess and pay use tax to any state on his cost of the building. The site will be prepared, the axle and tires removed from the modular building, utilities extended and connected to the modular building, and the modular building will become permanently adjoined to the hospital such that access to the modular building is through the existing hospital.

It is the Taxpayer's and our understanding that because the modular building is to be permanently adjoined to the real property (Hospital), its nature is real property and not tangible

personal property. As such, the modular building is not subject to sales tax or use tax in Oklahoma. Further, we understand that any materials or supplies which are not part of the real property, i.e. any items/furnishings which are not permanent- such as nails, screws, lumber, desks and the like, purchased and/or used in the process of site preparation, installation and adjoining the modular building to the existing real property, are subject to sales tax if purchased at retail, or subject to use tax if previously not taxed, as the Taxpayer is the end user for such items. This is our understanding per OK 710:65-19-107.

We are respectfully requesting that your office review the facts and circumstances presented, and either confirm or amend our understanding, specifically:

1. Is the modular building tangible personal property or real property?

Response: The modular building is considered tangible personal property¹.

2. Is the Taxpayer liable for use tax on his cost of the modular building?

Response: Yes, since the contract appears to be one to make improvements to real property in Oklahoma, the Oklahoma Sales Tax Code provides that the contractor is the taxable consumer/user of all items of tangible personal property and taxable services used to complete the contract. Therefore, a contractor should charge a single price for materials and labor and 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 from 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. See OAC 710:65-1-7, OAC 710:65-19-55 and 710:65-19-56.

3. Is the Taxpayer required to assess sales tax upon his selling price of the modular building to the

Response: No. See response to question 2.

4. Is the Taxpayer required to self-assess use tax on his cost for non-permanent supplies used to adjoin the modular building to the real property?

Response: Yes. See response to question 2.

5. If the Taxpayer at retail, screws, nails or any other non-permanent items to prepare, install and adjoin the building to the real property, the taxpayer is liable for sales tax on those items.

Response: Yes. See response to question 2.

6. The rate for any taxable items is 9.333%

¹ "Tangible personal property is defined to mean "personal property that can be seen, weighted, measured, felt, or touched or that is in any other manner perceptible to the senses..."68 O.S. § 1352 (24).

Response: The percentage of tax to be charged on tangible personal property purchases is the state tax rate of 4.5% plus any applicable local tax due. For purposes of Oklahoma sales or use tax application the location where a sale is sourced determines the taxes that are to be charged. Retail sales are sourced in accordance with 68 O.S. § 1354.27 to the location where the purchaser or the purchaser's donee receives the product. Oklahoma Administrative Code 710:65-18-2, provides that "receive" and "receipt" does not include possession by a shipping company on behalf of the purchaser. The applicable state, city, and county sales and use tax rates are available from the Taxpayer Assistance Division or on the Tax Commission website under the headings, Quick Clicks, Sales/Use Tax Rate Locator.

7. If the Taxpayer has paid tax to another state on any taxable items in Oklahoma, if the rate paid is less than 9.333%, the Taxpayer is liable to the Oklahoma Tax Commission for the difference to 9.333%.

Response: If the rate charged by another state is less than the one charged by Oklahoma, the difference in the rate is to be multiplied by the purchase price of the tangible personal property to arrive at the amount of tax due for that purchase. OAC 710:65-21-20. Likewise, a credit against any municipal or county use tax paid may be taken if a municipal or county sales or use tax, respectively, has been paid to an out-of-state municipality or county. *Id.* Please note that no credit shall be given for tax paid in another state, if that state does not grant like credit for taxes paid in Oklahoma. 68 O.S. § 1404(3).

Copies of the referenced statutory and administrative code provisions are enclosed.

This response applies only to the circumstances discussed in your request of October 28, 2013. 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



Brenda J. Sullivan
Tax Policy Analyst