

# OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION  
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August 4, 2014

RE: LR-13-002 (Sales and Use Tax Inquiry)

I am writing this letter in response to your request regarding Oklahoma sales and use tax. Set forth verbatim are the facts presented along with the responses thereto.

Facts:

(hereafter referred to as C) is a corporation registered and located in the state of Arizona. We are registered in the state of Oklahoma with an out of state use tax certificate. We sell and install flooring and ceiling materials to government, non-profit and public agencies, including housing authorities, schools, universities, hospitals, and federal, state and local agencies. We are requesting a ruling concerning our business transactions in the state of Oklahoma and the proper reporting and payment of use tax, if any. We have obtained conflicting guidance from the OK Department of Revenue which we would like to resolve. Following are our business facts:

C is a corporation with its principal place of business located outside Oklahoma. C purchases material from vendors, also located outside Oklahoma, that are in the business of selling carpet and other floor covering products (linoleum, vinyl composition tile, sheet vinyl, carpet tiles, etc.) The jobs may involve new construction or the refurbishing of existing facilities. The customer may be invoiced under a lump-sum contract (materials and labor are not separately stated), or separated contract (materials and labor are separately stated).

C acknowledges nexus with Oklahoma, and asks how sales, where we both provide and install flooring to Oklahoma customers as noted above, should be reported and respectively taxed.

Questions:

1. Do use tax rules differ between the types of customers listed above?
2. Please advise which of the above types of customers can appoint C as designated purchasing agent to allow for a sales tax exemption. For such appointments, is C exempt from use tax as a result?
3. We have heard that the installation of flooring for some types of customers is exempt without being designated as a purchasing agent. Please explain which types of customers fall in this category.
  - a. If we perform installations for these types of customers, do we have to obtain a sales tax exemption certificate from them, or can we rely on our written contract documenting that our customer is exempt?
  - b. If we are supposed to obtain a sales tax certificate from the customer, and they refuse to give us one, does that convert the transaction to a use-taxable transaction?
4. Are we subject to use tax based on the method of invoicing: materials and labor not separately stated versus materials and labor is separately stated?
5. Do different use tax rules apply to the following types of flooring?
  - a. Carpet
  - b. Carpet tiles
  - c. Vinyl composition tile
6. What Oklahoma statutes support this ruling?

Response:

Oklahoma Tax Commission records indicate that \_\_\_\_\_ has been issued a consumer use tax account in order to accrue, report and remit Oklahoma use tax on the use, storage, or consumption of tangible personal property brought into the state of Oklahoma.

Contractors are considered as the end users and consumers of tangible personal property when contracting for the services that they provide to their customers in the state of Oklahoma. If \_\_\_\_\_ invoices its customers a single price for both installation and flooring materials and does not separately itemize labor and tangible personal property, then Continental is acting as a contractor which generally must pay sales tax on any purchases of tangible personal property made inside the state of Oklahoma or accrue use tax on any tangible personal property brought into the state of Oklahoma for use, storage or consumption. However, the Oklahoma Sales Tax Code does contain limited exceptions which allow a contractor or a subcontractor to make purchases exempt from sales/use tax based on the exempt status of another entity. Instances when a contractor can make purchases exempt from sales/use tax based on the exempt status of another entity are set forth in Oklahoma Administrative Code 710:65-1-7(3)(A)–(I). Additionally, OAC 710:65-7-13(c) sets forth the documentation that a vendor must obtain for relief of liability purposes when making sales to contractors or subcontractors claiming exemption pursuant to another entity's exempt status.

If \_\_\_\_\_ invoices its customers separately stating charges for materials and labor, then \_\_\_\_\_ is acting as a vendor and should be collecting Oklahoma sales tax from its customers from the sale of the separately stated tangible personal property. Further, should \_\_\_\_\_ make sales to persons claiming a sales tax exemption, it must obtain and maintain the applicable documentation as outlined in OAC 710:65-7-6 through 710:65-7-20 in order to be

relieved of any liability for the sales tax and the duty to collect imposed by Section 1361 of Title 68.

Should [redacted] make sales of tangible personal property in this State on a regular basis, it is required to hold an Oklahoma sales tax permit<sup>1</sup> and collect, report, and remit state and any applicable local sales tax on its sales in Oklahoma. Vendors who hold a valid Oklahoma sales tax permit may purchase, exempt from sales tax, items to be resold to their customers. 68 O.S. § 1357(3).

This response applies only to the circumstances discussed in your written request of January 7, 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



Marc Morrison  
Tax Policy Analyst

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<sup>1</sup> 68 O.S. §§ 1363 and 1364.