

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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March 17, 2009

Re: Our File No. LR-09-31

Dear

I am writing in response to your request regarding the taxability of two transactions set out in your correspondence of March 6, 2009. Set forth verbatim are your facts along with the questions posed and the response thereto.

Situation #1: There are occasions where a county commissioner will purchase tin horns specifically for new driveways, entrances, etc. into a newly built private residence and/or rural subdivision. The county installs the tin horn according to the county's specifications, then invoices the private individual or company for the purchase and installation of the tin horn. The tin horns are purchased under the county's normal tax exempt status and are installed in the county's road easement/right-of-way.

Is this "sale" of a tin horn under the above circumstances a "taxable event"? Labor and materials will generally run \$200 to \$600 depending on the size and number of tin horns, etc.

Situation #2: There have been two recent occasions of a county commissioner engaging in a larger scale transaction involving the actual building of new "oil & chip" roads in rural subdivisions in the commissioner's district. The roads are part of plats approved by the Board of County Commissioners, but the roads are the developer's responsibility to build according to county minimum specifications. The developer normally provides a "bond" to ensure the subdivision roads will be done according to county specs, but in these two cases, two separate developers "hired" the county to build the oil & chip roads in their subdivisions. I don't have specifics on the 2nd transaction, but in the first and

larger transaction, the county billed the developer \$33,378, which included a "materials" cost of \$23,873, for road oil, chips, fill dirt, etc.

Since the county accepted the plats, the roads are considered part of the county's road system, and any "future" maintenance will be the county's responsibility.

Are the materials used for these transactions "taxable" events under the sales tax code?

In both situations, the county is acting as a contractor making improvements to real property. For purposes of the Sales and Use Tax Codes, contractors are consumers or users¹, and the County, if not otherwise exempt under Section 1356(1) of Title 68, would be required to pay sales or use tax, as applicable, on all taxable services and tangible personal property purchased to develop and improve real property. No sales tax was due on the amounts charged the private individual or company in Situation 1 or on the amounts charged the developer in Situation 2.

This response applies only to the circumstances discussed in your request of March 6, 2009. Pursuant to Commission Rule 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



Christy J. Caesar
Tax Policy Analyst

¹ "Consumer or user means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. Consumer or user includes all contractors to whom a taxable sale of material, supplies, equipment, or other tangible personal property is made or to whom a taxable service is furnished to be used or consumed in the performance of any contract." 68 O.S. § 1352(6).