



Public Trust Contractors: Sales Tax Exemption

It is clear under Oklahoma law that municipal and public trust purchases are tax exempt. In addition, municipal contractors may use the city or town's tax exemption to make purchases under their agreement in performance of their public contracts. However, a confusing issue is whether public trusts' contractors have the same privilege.

This issue has had a history at the Oklahoma Tax Commission (OTC) and came to a head in 1995, when OTC abandoned its practice of allowing contractors of public trusts to claim a sales tax exemption for purchases made for a public trust project. The statute on contractors at the heart of this issue is 68 O.S. Section 1356, paragraph 10. The League still gets questions on this issue.

General Rule. The general rule is that sales to municipalities and public trusts are exempt under §1361 of Title 68. See, *Board of County Commissioners v. Warram*, 285 P.2d 1034 (Okla. 1955), which specifically held that: "Trusts with one or more governmental entities as a beneficiary are exempt from all forms of taxation in Oklahoma."

Contractor Exemption? State law exempts sales to political subdivisions (municipalities) and their contractors pursuant to 68 O.S. Section 1356 (10). However, in 1995 the OTC observed that public trusts are not among the enumerated entities whose contractors can claim the exemption.

Purchasing Agent. Several public trusts have preserved the benefits of the exemption by making purchases for the public contract directly or through the municipality. Often the contractor is designated as a purchasing agent for the public body but the purchase order is issued by the public body rather than by the contractor and the purchase is paid for by the public trust's funds.

Clarify the Actual Buyer. To comply with OTC rules on a public trust's contractors, it must be clear that it is the municipality or the public trust that is making the purchase and paying the bill. OTC adopted a rule prohibiting a public trust from appointing agents. A legal argument that can be made, if challenged, is that OTC rules, in addition to AG opinions, must be read consistently with the general powers of a public trust, which is a form of express trust. As such, the public trust has independent authority to appoint agents both under the general law of agency as well as pursuant to its trust indenture. Therefore, OTC's rule must be construed to mean that a public trust may not transfer its tax exemption to its agent.

Please Note: This summary is not a substitute for legal advice. You should consult your city or town attorney prior to taking any action based on this document.