

State law exempts sales to political subdivisions and certain agencies of the state ". . . 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 or to any subcontractor to such a public contract." 68 O.S.1991 §1356, para. 10. The Oklahoma Tax Commission observed that public trusts are not among the enumerated entities whose contractors can claim the exemption. Although sales to public trusts are exempt under §1361, para. 1, which exempts sales to ". . . any political subdivision of this state or any agency of a political subdivision . . .", sales to contractors are expressly not exempt.

Public trusts and their contractors historically claimed an exemption, however, on the basis that the public trust acts for the municipality in financing public improvements. As a matter of logic and public policy, it makes little sense to allow a sales tax to raise the costs of public construction projects financed by revenue bonds or other obligations to be satisfied with public funds or other obligations to be satisfied with public funds. This principle was recognized and applied by an opinion of the Oklahoma Tax Commission dated June 2, 1987. See copy attached.

Even so, in 1994, the Oklahoma Tax Commission amended its rule 710:65-13-140 as follows:

(a) Trust authorities organized pursuant to 60 O.S. §176 et seq. may purchase material exempt from sales tax, but may not appoint an agent to do so. In order for the transaction to be exempt from sales tax, the purchase must be made-invoiced to and paid for by the authority, using public monies or public bond monies as payment using authority funds or revenue received for bonds let by the authority.

Although it can be questioned whether a state administrative agency has authority to limit municipalities' power to appoint agents, at the very least the new language makes clear the Oklahoma Tax Commission's determination that a sales tax exemption for public trust contracts exists only if the public trust is the direct purchaser.

Several public trusts have preserved the benefits of the exemption by making purchases for the