OKLAHOMA TAX COMMISSION

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March 31, 2016

Via U.S. Mail and E-Mail

Re: Request of for Letter Ruling;
File No. LR-15-009

Dear

This letter is in response to your letter to Tony Mastin in which you request a letter ruling on behalf of regarding sales and use tax on materials sells to customers of its hydraulic fracturing and cementing services. The facts presented in your letter are as follows:

A. The Services

provides well fracturing and cementing services in Oklahoma. To perform a well fracturing job, pumps specifically-engineered fluids at high pressure into a well bore, creating fractures in underlying rock formations. Proppants, such as sand or ceramic pellets, are added to treatment fluid to keep fractures open after pressure subsides. To perform a cementing job, mixes cement and related additives and then pumps that mixture into place within a wellbore. also provides cementing services to cement casing in place, seal a lost circulation zone, or set a plug.

B. Customer Agreements and Historic Invoicing Practices

Before performing services for customers, enters into Master Services Contracts with them ("Service Agreement(s)") governing and the customers' respective rights and obligations with respect to the services. Service Agreements are heavily negotiated by and its customers, and

as a result, the terms of each Service Agreement vary by customer. Notwithstanding this variation, the Service Agreements generally provide-in some form-that customers are responsible for sales tax on the sale or use of all materials, products and supplies furnished by which includes all proppants and fluids (with respect to fracturing jobs) and cement and cement additives (with respect to cementing jobs) that transfers to its customers (collectively, "Materials"). For example, some Service Agreements explicitly provide that all prices for Materials are exclusive of tax and customers agree to pay any taxes thereon. To the extent there is any ambiguity in a Service Agreement regarding whether a customer is responsible for sales tax on Materials, the terms and conditions of the Work Orders, Field Tickets, and Invoices (as defined below)-which show that the customer is responsible for sales tax on Materials-would govern. These documents are uniform and consistently used. Furthermore, charges, and customers pay, sales tax on Materials, regardless of any potential ambiguity in the Service Agreement. For your reference, I have attached two sample Service Agreements as **Exhibit A**.[1] The first is a Service Agreement entered into with a customer and the second is a form Service Agreement uses whenever it generates the first draft during customer negotiations. While every Service Agreement admittedly varies, the two samples are generally representative of the Service Agreements enters into with customers.

often provides customers with a proposal for a particular job ("**Proposal(s)**") either before or after entering into a Service Agreement. Proposals set forth cost estimates for the job, as well as estimates on Materials and services to be provided in connection therewith. Cost estimates included in Proposals separately state charges for Materials and services and further provide that taxes are not included but will be "added to the actual invoice." A sample of a Proposal is attached as **Exhibit B**.

After entering into Service Agreements, customers submit Work Order Contracts ("**Work Order(s)**") to requesting that provide services and Materials to the customer. Work Orders provide that customers request "to furnish equipment and service personnel to deliver and operate the same as an independent contractor to [the customer] and deliver and sell products, supplies and materials for the purpose of servicing [the well]," and they also make customers responsible for sales tax on "all materials, products or supplies furnished" by

After completes a job, it will provide the customer's field representative with a field ticket ("**Field Ticket(s)**") setting forth the charges for services and Materials provided. The Field Ticket is provided to the customer in anticipation of an invoice and states that the Field Ticket "does not include taxes," and "applicable sales tax will be billed on the final invoice." Once a customer field representative executes the Field Ticket, sends the customer an

[1] Referenced exhibits from the original request are not attached to this Letter Ruling.

invoice ("**Invoice(s)**") which separately states charges for services from charges for Materials.

Unlike Service Agreements, the terms and provisions of Work Orders, Field Tickets, and Invoices are not negotiated and, consequently, do not vary from customer to customer. For your reference, samples of a Work Order, Field Ticket, and Invoice are attached as **Exhibit C**.

For several decades, has separately stated charges for Materials and has collected sales tax thereon. has done this because its interpretation of Oklahoma law indicates that it acts as a retailer of Materials and not as a consumer. Because views itself as a retailer of Materials, it has consistently purchased Materials from its venders under a resale certificate. The Commission has not challenged this position.

A letter ruling is requested on the two specific issues described below.

Issue 1: Whether acts as a retailer of Materials transferred to customers, and may therefore purchase Materials from vendors under a resale certificate.

The Oklahoma Sales Tax Code ("Sales Tax Code") imposes an excise tax of four and one-half percent (4.5%) on non-exempt sales of tangible personal property. 68 O.S. Supp. 2015, § 1354(A). The term "tangible personal property" is defined as "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses." *Id.* § 1352(24). The Materials described above, including proppants, fluids, cement and cement additives, are tangible personal property subject to sales tax in Oklahoma.

The Sales Tax Code also levies an excise tax, at the same rate, upon certain enumerated services. *Id.*, § 1354(A). The hydraulic fracturing and cementing services described above are not among the enumerated transactions subject to sales tax in Oklahoma pursuant to section 1354.

If acts *solely as a provider of a nontaxable service*, the items of tangible personal property and taxable services used by in providing that nontaxable service would be taxable to OKLA. ADMIN. CODE § 710:65-19-309. As the taxable consumer/user of the Materials, would pay state sales or use tax and any local tax, as applicable, on the items purchased to provide the hydraulic fracturing and/or cementing services, *see* OKLA. ADMIN. CODE § 710:65-1-7, and would not separately state charges for Materials or collect sales tax thereon from its customers.

If acts *as a vendor making sales of tangible personal property*—i.e., proppants, fluids, cement and cement additives—along with the provision of a nontaxable service, must collect sales tax on gross receipts attributable to the sales of tangible personal property in Oklahoma and report and remit the same to the Oklahoma Tax Commission. 68 O.S. § 1352(28). Separately stated charges for the nontaxable services are not subject to sales tax. In addition, purchases of tangible personal property for resale purposes, by a vendor using a valid Oklahoma sales tax permit, are exempt from sales tax. 68 O.S. § 1357(3).

Based on your description of activities in conjunction with the exhibits attached to your request, acts as a vendor making sales of tangible personal property along with the provision of a nontaxable service. As such, it is the opinion of the Office of the General Counsel that acts as a retailer of Materials transferred to customers, and may therefore purchase Materials from vendors under a resale certificate.

Issue 2: Whether the Commission will only apply its determination prospectively, if the Commission determines that is a consumer of Materials transferred to its customers.

There is a longstanding precedent in Oklahoma Supreme Court decisions and the Commission's rulings for applying changes to tax policies prospectively when retroactive application would upset settled expectations of taxpayers. Oklahoma courts have a long history of making tax decisions prospective where the holding changes an existing policy or understanding and would result in significant retroactive assessment if not limited to prospective application.[2] Thus, it is the opinion of the Office of the General Counsel that if the Commission determines is a consumer of Materials transferred to its customers, the Commission will only apply its determination prospectively.

In conclusion, this letter ruling applies only to the circumstances set forth in your letter, and may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law. *See* OKLA. ADMIN. CODE § 710:1-3-73(e). Please be advised that this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. § 206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction or adjustment authorized under 68 O.S. § 221.

Respectfully,

Joseph Pierce
Assistant General Counsel

APPROVED:

Elizabeth Field
Assistant General Counsel

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[2] See *Globe Life & Accident Ins. Co. v. Okla. Tax Comm'n, 913 P.2d 1322 (Okla. 1996); Oklahoma County v. Queen City Lodge No. 197,* 156 P.2d 340 (Okla. 1945); *Gibson v. Phillips Univ.*, 158 P.2d 901 (Okla. 1945); *First of McAlester Corp. v. Okla. Tax Comm'n*, 709 P.2d 1026 (Okla. 1985).