OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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May 18, 2000

Re: Our file Number LR 00-80; Taxability of explosives and explosive accessories used in the performance of shot services.

Dear

This is in response to your inquiry for clarification of the taxability of explosives and explosive accessories used in performing shot services for the different scenarios that you presented.

Based on the information provided, we are unable to provide a definitive response to your request without additional information. The specific responsibilities of the parties involved depend on how your business is structured for sales and services. What needs to be determined is whether your status for the shot services is as a vendor of tangible personal property where the products and services are to be supplied, seller of explosives and explosive accessories or as a contractor performing shot services. "Vendor" is defined at Section 1352 (21) and "Contractor" is defined at 1352 (4) and 1354(20) of Title 68 and Commission Rules 710:65-1-7, 710:65-19-55, and 710:65-19-56, copies of which are enclosed. Therefore, please furnish documentation, including, but not limited to, the applicable contract or agreement that fully explains the arrangement between your distributors and customers, and release forms, etc.

However, under the circumstances set out in your letter, for scenario number 1, it appears that the transaction would be for the performance of shot services only. The provider of the services, acting as a contractor (purchasing the explosives and explosive accessories), should pay sales tax on the materials, when they are purchased. Contractors are the consumer/users of items purchased for the performance of contracts. They pay tax on the materials used in their contracts and do not charge sales tax on the revenue received from the contract. In your case as a manufacturer/vendor, the amount on which your company is required to pay sales tax is the "sales value" of the manufactured items which are withdrawn from inventory for use in a contract in providing the shot services. "Sales value" is defined in Oklahoma Tax Commission Rule 710:65-1-2, a copy which is enclosed.

For scenario number 2, it appears that this transaction is both a sale of tangible personal property and a performance contract. The customer receives two billings, one for the sale of the delivered explosives and the other for the shot services. Based on this invoicing method, your company is operating as a vendor making sales of tangible personal property and should charge, collect and remit sales tax on the total costs billed for the sale of the explosives and accessories. Please note that labor charges for the shot services are not taxable if the vendor and vendee agree to them separately and they are disclosed as a separate line item on the bill or invoice or in your scenario on a separate invoice. See Commission Rules OAC 710:65-19-158, 710:65-19-159 and 710:65-1-11(c). Further, this transaction represents that a sale has occurred to the extent of the delivered explosives and the shot service would consummate the sale, both products and services are supplied. In the case of a sales transaction, a sale, as defined pursuant to Title 68 Section 1352 (15), is "the transfer of either title or possession of tangible personal property for a valuable consideration..." Sales tax would be due on the "gross receipts" or "gross proceeds" which means "the total amount of consideration for the sale of any tangible property or service taxable under this article, but not limited to any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment..." "Further, there shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale". See 68 O.S. Section 1352(7)(b).

Therefore, for this transaction where the contract provides both products and services are to be supplied, to the extent that the services are a part of "gross receipts or gross proceed", the total consideration for the sale would be taxable or to the extent the performance is distinct from part of the sale of the products, then the labor would not be taxable, as stated previously. The language of the contract is the determining factor as to the tax responsibility for each party involved.

For scenario number 3, this transaction implies a service only contract. Your company would be responsible for remitting the proper sales tax on the explosives and accessories as outlined in the response for scenario number 1.

The administration of sales tax on the particular transactions in which will be entering into will depend on the terms of the transactions. Please submit the requested information including the variations of contracts if you desire a more specific response. If I can be of further assistance, please contact me at (405) 521-3133.

This response applies only to the circumstances set out in your request of April 7, 2000 and may not be relied upon by any entity other than the addressee. In the event of any change in the facts surrounding the transaction described, this letter ruling would no longer be applicable. You are further advised that subsequent statutory or administrative rule changes or judicial construction of the statutes or rules upon which this advice is based may yield a different result from that which is expressed here.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst