

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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June 14, 2001

Re: Our File Number LR-01-58; Tax status of listed items

Dear

This is in response to your inquiry requesting a determination of the taxability of the items and services listed in your correspondence. I have set out below the transactions enumerated, followed by our responses as to their sales/use taxability and have referenced the related Oklahoma Tax Commission Rules and Oklahoma Statutes.

Question 1: Is the labor on installing equipment taxable?

Response: Labor charges for installation, repairs or other special 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. See Commission Rules OAC 710:65-19-158, 710:65-19-159 and 710:65-1-11(c).

Question 2: Is the labor to repair equipment taxable?

Response: Refer to the above response.

Question 3: Is time and material labor on repair service calls taxable?

Response: Refer to response number 1.

Question 4: Are parts used on warranty repairs taxable?

Response: Please refer to Commission Rules 710:65-19-365 and 710:65-19-371.

Question 5: Are parts used during installations of equipment taxable?

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Response: Taxability is dependent upon agreement. Generally, any tangible personal property used in connection with the labor services performed under the contract which are not covered under the contract and which are billed/sold to the customer are subject to sales tax.

Question 6: Are travel charges based on mileage taxable? Ex: \$.40 per mile. This travel time to and from site of repair or installation.

Response: The travel charges based on mileage are not taxable if they are stated separately on the invoice or bill.

Question 7: Are travel charges based on time, taxable? Ex: \$40 per hour of travel.

Response: The travel charges based on time are not taxable if they are stated separately on the invoice or bill.

Question 8: Are restocking charges taxable?

Response: Restocking charges are taxable, see Commission Rule 710:65-19-89 subsection (b) (amended copy).

Question 9: Are special charges taxable? Ex: a) priority upgrade charges b) finance charges

Response: The priority upgrade charges would be considered as part of gross receipt or gross proceed which is defined as "the total amount of consideration for the sale of any tangible personal property or service taxable under Oklahoma Sales Tax Code, whether the consideration is in money or otherwise, 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... 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. § 1352(7).

For the taxability of finance charges see Commission Rule 710:65-19-103.

Question 10: Are freight charges taxable?

Response: Since November 1, 1998, the cost of transportation, i.e. shipping and handling charges, from a point outside Oklahoma to a point inside this State has not been subject to **use tax**.

The sales tax treatment of transportation and delivery charges is governed by Oklahoma Tax Commission Rule 710:65-19-70 and Title 68 Oklahoma Statutes Section 1354(1)(C). Charges that result from shipping merchandise to vendor's

customers, i.e. the costs of transportation from the vendor's inventory to the customer, are not subject to sales or use tax, if they are separately stated. This exemption applies to all sales, taxable and non taxable.

Additionally, handling charges associated with the sale of tangible personal property, if they represent an element of cost to a seller, should be included in gross receipts or "gross proceeds", the total amount of consideration for the sale of any tangible personal property or service. See Title 68 Section 1352 (7).

Question 11: Are handling fees taxable?

Response: Refer to the above response.

Question 12: Are service contracts taxable?

Response: Service or maintenance contracts which only cover the provision of labor services or maintenance services are not subject to sales tax provided the contract is agreed to and billed separately from the sale of any article of tangible personal property with which the contract is associated. Any tangible personal property used in connection with the labor services performed under the contract which are not covered under the contract and which are billed/sold to the customer are subject to sales tax.

Question 13: Is self-assessed use tax at cost or price?

Response: Purchase price.

Question 14: Is warranty activity taxed at cost or price?

Response: Please refer to Commission Rule 710:65-1-2 for "Sales value"

Please find enclosed Statutory and Commission Rules referenced in the above. If I can be of further assistance, please feel free to contact me.

Sincerely,



Brenda J. Sullivan
Tax Policy Analyst

Enclosure