

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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June 14, 2001

Re: Our file Number LR-01-065; Sales tax on the sale of manufacturing machinery and equipment.

Dear

This is in response to your inquiry concerning the sales tax consequences of the construction and equipping of a plant that will produce electricity. I have scanned your fact situation and questions into this letter. Each question is followed by our response.

FACTS

A. joint venture (prime contractor) will be formed to build the project and in turn will bill the project owner for the engineering and construction of the power plant. Two partners will make up the joint venture. One partner will perform the engineering and the other partner will perform the procurement and construction..

QUESTIONS

1. Is a power plant considered by the Tax Commission to be a "manufacturer"?

RESPONSE: *Yes, electric generating plants have been recognized as being manufacturing plants since 1947.*

2. If the answer to question one is "yes", what exemption(s) are available to the all the parties (owner, joint venture contractor, subcontractors) for the purchase of "exempt manufacturing equipment"?

RESPONSE: *The only exemptions available to the persons engaged in the transactions contemplated are the right of a manufacturer to make purchases of tangible personal property for use in manufacturing, exempt from sales tax and the right of a vendor of tangible personal property to make purchases for resale exempt from sales tax. To be exempt, the purchase of the machinery and equipment must be made by the manufacturer from a vendor that holds an Oklahoma sales tax permit. The vendor in turn may purchase the machinery and equipment it will sale to the manufacturer, exempt from sales tax, using its Oklahoma Sales Tax Permit number, for resale. If, instead, the purchases of machinery and equipment are made by a*

contractor or subcontractor, there is no exemption available when they purchase the items that are used in completing the contract.

3. How are the available exemptions (if any) obtained by the participating parties (owner, joint venture contractor, subcontractors)?

RESPONSE: *See the response to question number two above.*

4. What document does the contractor and the contractor's subcontractors give vendors selling exempt manufacturing equipment?

RESPONSE: *There is no document that a party to the transaction that is acting as a contractor may give to a vendor to obtain exemption. Rather, as stated in the response to question number two above, the purchaser must hold an Oklahoma Sales Tax Permit and be buying for resale to a manufacturer.*

5. Will the Tax Commission statute, law and code be satisfied if the billings from the prime contractor (joint venture) to the owner clearly "separate" the charges for the exempt manufacturing equipment?

Response: *No. A contractor may not purchase tangible personal property exempt, even if the real property owner for which the contractor is doing the work is a manufacturer who could make direct purchases of tangible personal property exempt from sales tax. The transaction, to be exempt, must be set up as the purchase of the equipment by a vendor and the subsequent resale and installation of the equipment by that vendor to a manufacturer.*

6. Does the Tax Commission statute, law and code require a special contract type to be executed between the joint venture and the owner (lump sum, separated, cost plus, etc) for the manufacturing equipment exemption to be valid?

RESPONSE: *The documents regarding the building of the plant need to indicate that the entity that purchases the machinery and equipment and re-sales it to the power plant operator is acting as a vendor and holds an Oklahoma Sales tax permit.*

This response applies only to the circumstances set out in your request of May 17, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION


Michael G. Pillow
Tax Policy Analyst