

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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August 13, 2001

Re: Our file Number LR-01-116; Sales tax exemption for manufacturers.

Dear

This is in response to your inquiry concerning the subject referenced above. I have scanned your background information and your questions and analysis into this letter and each question is followed by our response:

BACKGROUND

We have a client that was a manufacturer in your state from approximately to at which time the plant was closed. Recently the client has been working with the Environmental Protection Agency and the Department of Environmental Quality to cleanup the hazardous waste from the original site. The client has been developing new equipment and processes that will aide in their cleanup efforts. The equipment will recover these various hazardous waste chemicals to produce a product that can be sold on the open market.

QUESTIONS

1. Would the machinery, equipment, chemicals and other materials be exempt under manufacturing or pollution control?

Your Analysis

Section 1359 provides an exemption for machinery, equipment and other tangible property used in a manufacturing operation. It also provides an exemption for machinery, equipment, fuels, chemicals and other materials used in the treatment of hazardous waste, including the cleanup of site contamination. Section 1352 indicates that manufacturing will not include extractive industrial activities but may include processes subsequent to the extraction. As indicated above, the equipment and other materials are being used to recover minerals and other by products from the hazardous waste created by the prior manufacturing operations.

Our Response: *You are correct in stating that either or both of the exemptions may apply to your client's operations. The exemption found in paragraph one of 68 O.S. Section 1359 may apply to the operations involved in the processing of raw materials into a saleable product. The operations must be generally regarded as manufacturing for this exemption to apply. If the process involves only extraction of the material from the earth, the exemption set out in paragraph one will not apply. However, if the operations meet the criteria set forth in paragraph six of the same section, that exemption would apply. Please refer to Oklahoma Tax Commission Rules 710:65-13-80 and 710:65-13-150.1.*

2. Are the procedures for obtaining a sales tax exemption permit different depending upon the answer to question I above? Please provide details of the required procedures.

Our Response *The procedures for obtaining a letter stating that your client qualifies for the exemption found at paragraph six of 68 O.S. 1359, is set out in the first rule referenced above. A bona fide manufacturer obtains a Manufacturer's Sales Exemption Permit by filing a Business Registration Form and stating that the purpose for filing the form is to be recognized as a manufacturer.*

3. Can the client obtain a refund of sales taxes already paid to its vendors?

Your Analysis

It appears that based on section 1359.1, refunds of taxes paid to vendors in error must be filed directly with the Tax Commission. Your auditor could not confirm whether our client would qualify for a refund of the sales taxes paid on its prior purchases because they were not the holder of a valid manufacturer's sales tax permit at the time of initial purchase as required by 1359.2.

Our Response *The refund authorized by 68 O.S. Section 1359.1 is solely for those particular manufacturers that meet the requirements set out in 68 O.S. Section 1359, paragraph seven. The refunds involve the refund of the sales tax on building material for those manufacturers that qualify based on the investment in the project and the number of new jobs that are set out in the statutes. As you are aware, the language of Section 1359.2 does require that a manufacturer claiming exemption under Section 1359, paragraph one hold a Manufacturers Sales Exemption Permit. The exemption under Section 1359, paragraph six, dealing with hazardous waste, is not conditioned on the person claiming a refund having a permit at the time the sale was made.*

4. If the client is able to obtain a refund from the Commission of the sales taxes it previously paid to its vendors, what is time frame for which the client could still obtain the refund. Is it 36 months from the date of purchase or some other date?

Our Response *The statute of limitations for requesting a refund of taxes paid in error is three years from the date the taxes were due to be paid or three years from the date they were paid, which ever is later. Presuming that your client's vendors reported*

and paid their sales tax on time, a claim for a refund on sales made in August 1998 would have to be submitted by September 15, 2001.

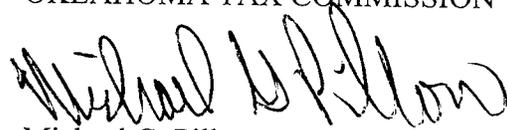
Copies of the rules cited are enclosed. A complete set of the Oklahoma Tax Commission Rules may be viewed at:

<http://www.oktax.state.ok.us/ruleindex.html>

This response applies only to the circumstances set out in your request of July 24, 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

A handwritten signature in black ink, appearing to read "Michael G. Pillow". The signature is written in a cursive style with a large, stylized initial "M".

Michael G. Pillow
Tax Policy Analyst