OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

September 18, 2001

Re: Our file Number LR-01-141; Sales tax on the charges for geophysical services made to the petroleum industry.

Dear

This is in response to your inquiry concerning the subject referenced above. I have copied your twelve fact situations and related questions into this letter. Each is followed by our response. I have also copied your fact scenario and the specific questions on that scenario concerning your client's billings to its customers. Those questions have also been addressed.

Your 12 fact situations and related questions

1. Before beginning seismic work on a certain parcel of land, our client hires outside personnel to obtain permits from the involved land owners. These permits allow our client access to the land. Is the payment for this service subject to sales tax? Is the payment to the landowner for access and use of the property subject to sales tax?

   RESPONSE: No

2. Before our client performs any work on a certain parcel of land, the land must be surveyed. This survey entails mapping the land to determine the boundaries of what land is to be included in the work and developing a working grid to include the number of shot points and where each shot point is to be located. A shot point would be the positions where explosives would be placed, or the positions where equipment (trucks) would vibrate the ground. The survey would also determine the placement of geophones used to gather information from these activities. Would the payment to a third party for this service be subject to sales tax?

   RESPONSE: No

3. After our client has access to the property, a third party is hired to clear pathways on the property so that client personnel can place equipment and access the total area of the landscape. This often involves the use of heavy equipment to cut brush and trees, the manual movement of fences and/or small improvements. Is the payment to a third party for this service subject to sales tax?

   RESPONSE: No

4. To allow our client to determine how to perform the seismic work on a certain parcel of land, a third party is often requested to supply an aerial photograph. Is the charge for this service subject to sales tax?

   RESPONSE: The sale of an aerial photograph is subject to sales tax in Oklahoma. Please see Oklahoma Tax Commission Rule 710:65-19-260.

5. Depending on the seismic work being performed, our client may use explosives or trucks that "shake the ground". These trucks are often referred to as thumper trucks. If explosives are used (most often dynamite), there has to be holes drilled several feet deep in which to place the explosives. A third party is always engaged to perform the service of drilling these holes. Is this charge for this service subject to sales tax?

   RESPONSE: No

6. During the acquisition of seismic data, our client may have a need to move personnel, supplies and/or equipment into areas that are not accessible by ground travel. In this instance, our client would engage a third party to move such items by helicopter or possibly by boat. Would a third party charge for the use of a helicopter for this purpose be subject to sales tax? Would a third party charge for the use of a boat (may be operated or bare rental) for this purpose be subject to sales tax?

   RESPONSE: There would be no sales tax due on the charges for the transportation by helicopter due to the Federal preemption of state taxation of air commerce. There would be a charge for transportation by boat of persons if the transportation company was a common carrier. The rental of a boat would be subject to sales tax.

7. Our client uses diesel fuel or gasoline in certain equipment at the job site. Most of this equipment is used mainly off-road, but not exclusively. Would the purchase of this fuel be subject to sales tax?

   RESPONSE: The purchase of dyed diesel which is used off the road is subject to sales tax. No exemption exists for your clients usage. If motor fuel excise tax has been paid on the diesel fuel that is used off the road, no sales tax is due. However, if a refund of the motor fuel tax paid on fuel that was used

off the road is requested, the refund will be given only after the sales tax that would have been due has been deducted from the motor fuel tax to be refunded. Please see Oklahoma Tax Commission Rule 710:65-13-180.

8. Our client may need to hire a trucking company to bring in certain pieces of equipment and to move them around on location. Would this charge be subject to sales tax?

   RESPONSE: No

9. Since our client may be on location for several months, there is a need for personnel accommodations. Are temporary apartment rentals, office space rentals, or motel room charges subject to sales tax? Would telephone bills from such offices or apartments be subject to sales tax?

   RESPONSE: The gross receipts from the furnishing of rooms by hotels, motels or similar facilities are subject to sales tax, regardless of the length of stay. The leases of apartments or office space are not subject to sales tax. The provision of telecommunications services is subject to sales tax. Please see Oklahoma Tax Commission Rules 710:65-19-143 and 710:65-19-330.

10. Our client typically brings in or purchases locally various consumable items. Please note if these items are subject to sales tax. Explosives for the job, feed for livestock on the property, ice and food for personnel, batteries, flashlights and small hand tools.

    RESPONSE: The items listed are subject to sales tax if purchased in Oklahoma. If purchased outside of Oklahoma and brought into Oklahoma for use, they would be subject to Oklahoma use tax. A credit may be taken against any Oklahoma use tax due for sales tax paid in another state. Local sales and use taxes may also apply. Feed to be fed to livestock may be purchased exempt from sales or use tax provided your client holds an agricultural exemption permit. Please refer to 68 O.S. Section 1358.1(E). Please see Oklahoma Tax Commission Rules 710:65-15-1, 710:65-17-1, 710:65-21-3 and 710:65-21-4.

11. After the work is completed, our client places the land back in the same condition as before the work. However, if certain property cannot be restored or if there has been some destruction of property, our client makes a payment to the landowner for the damages. Would this payment for property damages be subject to sales tax?

    RESPONSE: No

12. Our client maintains an inventory of equipment that is moved from job to job and often from state to state. It is our client's procedure to pay sales tax on this

equipment in the state where it first takes possession. Is there any additional state and or local sales tax due if this equipment is later moved into the State of Oklahoma?

RESPONSE: If the state or local tax rates that has been paid on the equipment are less than the corresponding Oklahoma sales tax rates, the difference in the rates would be due, based on the value of the equipment when it is brought into Oklahoma.

Your Fact Scenario and specific questions

As the seismic data is being recorded, our client invoices the customer for the data if this data is being acquired for a specific customer. These invoices are broken into several separate charges. There is a charge for recording the data. There may be a charge for mobilization of the crew (the cost of getting the crew and equipment to the location), and there is often a charge for weather standby (being at the jobsite but unable to work because of inclement weather). There is a charge for each item of equipment used on the job and a charge for the crew and supervisory personnel. There will also be a charge for the survey and any drilling of holes for explosive placement, third party property clearing and third party transportation (helicopter, trucking, boats). Sample copies of invoices are attached for your information. Please note the taxable status of these charges being billed to the customer.

- Recording
- Mobilization of equipment and crew
- Weather Standby and Statutory Holiday
- Equipment
- Supervisor or Project Manager (personnel)
- Survey

Third Party Recoverables:
- Helicopters
- Lodging
- Trucking
- Drilling
- Plugging Holes
- Permitting
- Consumables and Supplies used

If our client acquires seismic data for a specific client, the above situations in this letter all apply. However, our client also acquires data for its own data library. This data is then made available for sale to the entire petroleum industry. The same data could be sold to numerous customers. In this situation, questions 1 -12 would still apply, but the customer billings would be different. There would be a simple billing for the seismicdata and a computer tape delivered to the customer. Would the sale of this seismic data be subject to sales and use tax in the State of Oklahoma? If so, what

conditions would determine if the sale was taxable? If the data was acquired in the State of Oklahoma (data recorded on a parcel of land in the State), but delivered to a customer located in another state, would this sale be subject to Oklahoma Sales Tax? If the data was acquired in another state (data recorded on a parcel of land outside the State of Oklahoma), but sold and delivered to a customer located in Oklahoma, would this sale be subject to sales tax?

RESPONSE TO YOUR QUESTIONS: Where your client is acquiring seismic data for a specific customer, they are providing a service that is not subject to sales tax in Oklahoma and therefore, they are not required to charge sales tax to their customer.

However, where they are selling data from their library and may sell it to the industry, the sale of the computer tape with the seismic data on it would be subject to sales tax. The taxable event would be the transfer of either title or possession of the tape. Whether the sale was taxable in Oklahoma would depend on the terms of the sale. Please refer to Oklahoma Tax Commission Rule 710:65-15-1 for guidelines for sales made in interstate commerce. Since the taxable event is the sale of the tape, the place the data was acquired is not relevant to the taxability of the sale.

A copy of the sales tax rules has been mailed to you. You can also view them at our website:

http://www.oktax.state.ok.us

This response applies only to the circumstances set out in your request of August 28, 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