

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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

September 28, 2004

Re: Our File Number LR-04-139; Sales Tax on the installation and servicing of fuel storage and dispensing facilities

Dear

This is in response to your inquiry concerning the sales tax due on the new installation and the servicing of existing fuel storage and dispensing facilities.

The sales and use tax consequence of the installation and servicing of the facilities is dependent on whether the facilities are real property or whether they have retained their identity as tangible personal property.

If _____ is contracting to install an underground storage tank and delivery system, the owner of the property may hold that the underground storage tank and the equipment associated with it are going to become part of the real property and will remain with the real property if it should ever be sold. In this case, _____ will be acting not as a vendor of tangible personal property, but as a contractor acting to improve the real property.

As a contractor, _____ is the taxable consumer user of the items used to complete the job. It would not charge sales tax to the owner of the property, instead, it would either pay sales tax on the materials used to complete the contract when they are purchased or accrue sales or use tax on the items used in the job as they are used if _____ has not been charged tax on them when they were purchased. The sales or use tax due would be figured into the contract amount when the job was bid.

On the other hand, when _____ is working and repairing items that have not become part of real property, such as the fuel pumps which would be taken up if the facility was no longer to be used as a fuel dispensing facility, _____ is selling the repair parts used in the repair and must charge sales tax on the selling price of the parts. Separately stated labor charges would not be subject to sales tax.

This response is based in part on the results of a 1992 Oklahoma Supreme Court case which is discussed in the attached redacted Oklahoma Tax Commission Order 98-12-03-005.

This response applies only to the circumstances set out in your request of July 2, 2004. 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", written in a cursive style.

Michael G. Pillow
Tax Policy Analyst