November 2, 2004

Re: Our File Number LR-04-209; Sales tax consequences of various scenarios

Dear

This is in response to your inquiry concerning the various scenarios contained in your email of October 6, 2004. I have copied into this letter which will be sent by email, your four sets of "FACTS", and your four questions labeled "INQUIRY", followed by our response to each.

YOUR FACTS:
Company A is a Process and Pipeline Services provider. In general, company A provides maintenance, repair, cleaning and testing services. Specifically, company A provides the following services*:
1)Process Services-Flushing, chemical cleaning, hydraulic and lube oil flushing, nitrogen foam inerting, nitrogen cooldowns, nitrogen helium leak testing, nitrogen purging, hot oil flushing, compressor run tests, temporary fuel gas supply, bolt tensioning, refrigerant recovery and transfer, pipe freezing, retro jetting, air blows and clearshot services.
2)Pipeline Services-Flooding, cleaning, gauging, hydrostatic testing, dewatering, air drying, vacuum drying, nitrogen inerting, nitrogen packing, pigging, product transfers, product filtration, gel services, product displacement, pneumatic testing, pump rental, mechanical pigging, intelligent pigging and decommissioning.
3) Pipeline Inspection Services
*These services are addressed in detail in attached Addendum A.

YOUR INQUIRY NUMBER 1:
Should Company A be charging tax for such services? Does the nature of the service make a difference in taxability treatment, i.e. testing, repair, inspection, cleaning, maintenance?

Our Response to Inquiry Number 1:
The provision of Process and Pipeline Services are not subject to sales tax in Oklahoma. Instead, the service provider is the taxable consumer user of whatever tangible personal property it uses to provide those services. This is true without regard to whether the service being provided

would be classified as testing, or as repair, inspection, cleaning or as maintenance. However, as noted in detail below, the manner of invoicing may lead to an incorrect conclusion that tangible personal property is being sold or that it is being collected, and that therefore, the service provider has a responsibility for collecting and /or remitting sales tax.

YOUR FACTS:
In addition, Company A may provide materials with these services. Company A uses the following materials in conjunction with above-mentioned services:
Various Chemicals, mechanical pigs, foam pigs, caliper pigs, various gels, nitrogen, helium, leak test tape, bolts, gaskets, flanges and various tanks.
Materials are intended to be consumed during service. Company A generally breaks out costs on the invoice. Under certain situations, Company A invoices under a lump-sum contract.

YOUR INQUIRY NUMBER 2:
Since Company A is the consumer of the materials, must Company A pay tax to their vendors when purchasing the materials to be used in conjunction with the services they provide? Must Company A charge tax to their customers for such materials upon completion of their services? Does invoicing change taxability; i.e. separately stated versus lump-sum?

Our Response to Inquiry Number 2:
Company A is the taxable consumer user of the items used to provide the nontaxable services to its customers pursuant to Oklahoma Tax Commission Rule 710:65-19-309. Since the goods are used by Company A in the performance of the services, the goods are not being sold to Company A's customers so Company A is not required to charge sales tax to those customers. A sale is defined in the Sales Tax Code at Section 1352 as the transfer of title or possession of tangible personal property for a valuable consideration or the performance of a taxable service. However, if the method of invoicing results in the transfer of title of the materials from Company A to Company A's customer, sales tax must be charged. If the invoicing makes it appear that a sale has occurred between Company A and its customer, it may be held that sales tax is due from the customer to Company A. It is therefore important that if the charges for the tangible personal property are separately stated, it is clear that what is being shown is the basis for the cost of the services that were performed, not a charge representing the sale of articles of tangible personal property.

YOUR FACTS:
Company A rents equipment for use in performing the above-mentioned services. Equipment rentals may or may not be accompanied with an operator. Company A charges the use of the equipment in one charge (including any operator charges).

YOUR INQUIRY NUMBER 3:
If a rental includes an operator, is the charge taxable as a rental or is it treated as a service? Must the charge show a breakout of rental and operator charges on the invoice to qualify for an exemption?

Our Response to Inquiry Number 3
A portion of a billing for a service which arises from the cost to Company A of renting an item of equipment and/or a charge for the use of the item in the performance of the services provided by Company A, without regard to whether Company A was charged for an operator or not, is not taxable when billed to Company A's customer. Again however, the invoice needs to clearly delineate the basis for the charge so it is clear that Company A is not charging for a rental where possession of the equipment is being transferred to Company A's customer, since that would result in a taxable sale.

YOUR FACTS:
Company A provides such process and pipeline services to refineries, petrochemical plants, power plants, gas process facilities, LNG facilities, compressor stations, pump stations, pipelines (onshore& offshore), offshore platforms, construction yards, steel plants, paper mills, floating production and storage vessels.

YOUR INQUIRY NUMBER 4:
If sales tax is applicable, under what circumstances (if any) may Company A's customers provide them with a valid exemption certificate?

Our Response to Inquiry Number 4:
While, if properly invoiced, the charges for the provision of the services about which you have inquired are not subject to sales tax, as a matter of information, for any potentially taxable transaction, the exemption that may apply and the documentation that a vendor must obtain to be relived of liability from having to charge sales tax is set out in Subchapter 13 of the Sales Tax Rules, Chapter 65 of Title 710.

This response applies only to the circumstances set out in your request of October 7, 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

Michael G. Pillow
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