OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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August 29, 2006

RE: Our file Number LR-06-090; Application of sales/use tax law to a business operation

Dea

This is in response to your request for a letter ruling regarding the application of sales/use tax law to the operations of your client as described in your correspondence. I have scanned (*Italic*) your fact scenario into this letter, followed by our response.

"We would like to confirm the following:

A) Our client, based on the description of its operations in Oklahoma, is manufacturing tangible personal property for sale;

Our Response: It appears that the below description of your client's operations meet the definition of "Manufacturing" and "Manufacturing operation" as contained in O. S. 68 Section 1352 (13) and (14) respectively and as set out in Oklahoma Tax Commission Rule 710:65-13-150.1. Also, as you indicated that your client's operations are described and listed in the NAICS, reference number 332313Plate Work Manufacturing.

B) Our client is entitled to a manufacturing exemption for sales and use tax on equipment, repairs to/maintenance of the equipment, utilities, and/or supplies used to flame-cut/plasma-cut steel plates purchased for resale;

Our Response: Upon your client's operation qualifying as a manufacturer, it would be entitled to a manufacturing exemption as provided in O. S. 68 Section 1359. In order for your client to be recognized as a manufacturer, a review by the Audit Division of the Oklahoma Tax Commission will result in a determination once your client has submitted an application to the Taxpayer Assistance Division of the Oklahoma Tax Commission. Additionally, as part of the review, a determination as to the taxability of the utilities purchased for use in the operation will be made and a letter will be sent to each of the utilities if it is determined that they may be purchased exempt from sales tax. A Business Registration form for use in applying for the Sales/Manufacturers Permit is enclosed.

C) Our client's manufacturing process begins when plates are unloaded and ends when plate packaging is complete; and

Our Response: This determination will be made when our Audit Division conducts the review of your client's operation.

D) Our client may seek sales/use tax refunds within the statute of limitations period for taxes previously paid for goods and services used in manufacturing.

Our Response: To claim the exemption allowed manufacturers on purchases of supplies, machinery and equipment, a manufacturer must provide its vendor the certifications and documentation listed in Rule 710:65-7-6 and 710:65-7-9 at or before the time of purchase. Copies of the rules are enclosed. Additionally, the statute of limitations for refund of taxes paid in error is three (3) years. Please See Commission Rule 710:65-11-1 for the proper procedures for refund requests and Section 227 of Title 68 O.S. which deals, generally with refunds. See copies enclosed. Requests for refunds should be addressed to Jerry Statton, Account Maintenance Division, 2501 Lincoln Blvd. Oklahoma City, OK 73194, and (405) 521-3270.

Our client is in the business of purchasing steel plates without paying sales tax based on the resale or manufacturing exemptions, The Company also purchases machines/equipment and incurs utility expenses to flame-cut/plasma cut steel. The Company, then, custom flame-cuts/plasma-cuts the steel it purchases to meet the specifications of its customers, Plates are cut using machinery that makes the cuts via burning gases, In addition, supplies are consumed in the operation of the machine, The machine periodically requires repairs and maintenance.

Description of Operations:

All plates (non-taxable) are unloaded by a forklift (non-taxable) and put on the ground or on racks (nontaxable), The subsequent transfer of plates is performed using overhead cranes (non-taxable), The plates are spray-painted (non-taxable) for inventory purposes, All plates are marked with a metal marker (nontaxable) to indicate the grade, heat, slab, "ship to" address, etc, All plates over 1/4" are stamped with a steel-stamp (non-taxable) and hammer (non-taxable.

During the flame-cutting process torch machines (non-taxable) are used and sometimes chalk (nontaxable as it is not a tool and is consumed during the process) is used to mark the measurement of the cut. Oxygen and propylene gas (non-taxable) are used during the flame-cutting process,

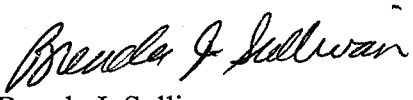
During the inspection process, small parts are strapped to wooden pallets (non-taxable) using metals bands (non-taxable), All small parts are grinded using electrical grinders (non-taxable), Sometimes small chipping hammers (non-taxable) are used, if necessary, Some parts are packaged in cardboard (nontaxable) and taped (non-taxable), Sometimes, if pallets are used, the pallets (non-taxable) have to be shrink-wrapped (non-taxable) for overseas or air shipments, Paper address tags (non-taxable) are attached to the pallet or package.

Based on our research, we would like to request a favorable private letter ruling on the above-listed tax issues (items A through D) so that our client may obtain a refund for taxes previously paid within the statute of limitations on goods and services used in production, Also, please confirm the tax determinations parenthetically indicated throughout the "Description of Operations," Do not hesitate to contact Jennifer Rex at 713-407-3997 or me directly at 713-407-3875 if you have any questions regarding this matter."

Our Response: Should the determination qualify your client's operations as a manufacturing process in Oklahoma, this would allow your client to purchase items used in its manufacturing process as described parenthetically in the "Description of Operations" exempt from sales/use tax as a manufacturer.

This response applies only to the circumstances set out in your request of June 8, 2006. 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,



Brenda J. Sullivan
Tax Policy Analyst

Enclosure