

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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May 16, 2007

Re: Our File No. LR-07-040; Application of sales and use tax to maintenance parts utilized under Long Term Service Agreement for repair of manufacturing machinery and equipment.

Dear

I am writing in response to the request made on behalf of your client, for clarification regarding the application of sales and use tax to parts utilized under a Long Term Service Agreement for repair of manufacturing machinery and equipment. A Long Term Service Agreement along with the fourth amendment thereto which documents the agreement between [redacted] and its customers for the provision of certain parts and long term maintenance services for combustion turbines, steam turbines, generators, and other equipment was provided for review. The response to your request is set forth as follows:

The sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma sales tax code, is subject to the levy of sales tax. 68 O.S. §1354(A)(1). "Sale" is defined to mean, "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state. . . ." 68 O.S. § 1352(21). A sale of repair and replacement parts shipped into Oklahoma and installed by [redacted] in Oklahoma would be subject to sales tax, unless otherwise exempt, because the point of sale of the repair parts from [redacted] to its customers is the point of installation in Oklahoma. 68 O.S. § 1354.27(A)(2) and Oklahoma Administrative Code 710:65-15-1.

The Oklahoma Sales and Use Tax Codes exempt manufacturers from the payment of sales and use tax on certain purchases. Section 1359 of Title 68 affords a manufacturer a sales tax exemption on its purchases of goods, wares, merchandise, tangible personal property, machinery and equipment for use in a manufacturing operation.¹ Manufacturing operations, pursuant to 68 O.S. 1352(14), consist of the designing, manufacturing, compounding, processing, assembling;

¹ Section 1404(4) of Title 68 provides that use tax shall not apply to "the use of tangible personal property . . . specifically exempted from taxation under the Oklahoma Sales Tax Code."

warehousing, or preparing of articles for sale as tangible personal property and start at the point where the materials enter the manufacturing site and end at the point where a finished product leaves the manufacturing site. Subsection (b) of Oklahoma Administrative Code 710:65-13-150.1 sets forth the activities encompassed in a manufacturing operation and gives examples of the machinery, equipment, tools, and supplies utilized in these areas which are eligible for exemption when purchased by a manufacturer. Purchases of associated repair and replacement parts to manufacturing equipment and machinery by a manufacturer, which holds an Oklahoma Manufacturer Exemption Permit, which are used in the manufacturing operation, at a manufacturing site, are exempt from sales and use tax. OAC 710:65-13-150.1(b)(2)(D)(i). The areas of administration, sales, distribution, transportation, site construction, or site maintenance are not included in a manufacturing operation. 68 O.S. § 1352(14)

Based on the foregoing, as manufacturers, holding manufacturer exemption permits, customers may purchase repair and replacement parts used in the maintenance of machinery and equipment in the manufacturing operation at manufacturing facilities exempt from sales and use tax. These same customers may not make exempt purchases for use in the areas of sales, administration, site maintenance, site construction, transportation or distribution. In order to document the exempt transaction and be relieved of liability from collecting the tax, must obtain a copy of its customer's manufacturer exemption permit as required by OAC 710:65-7-9.

In accordance with 68 O.S. § 1404 and OAC 710:65-21-20, may bring goods into Oklahoma for resale exempt from use tax. customers, as manufacturers holding manufacturer exemption permits, may purchase goods from outside Oklahoma for use in Oklahoma, exempt from use tax, for utilization in their manufacturing operations. OAC 710:65-13-150.1.

Consequently, is not required to collect sales or use tax on sales to manufacturer customers purchasing, pursuant to a manufacturer exemption permit, repair and replacement parts for use in a manufacturing operation at their respective manufacturing sites.

Since is making sales in this State it should hold an Oklahoma sales tax permit. 68 O.S. §§ 1363 and 1364.

This response applies only to the circumstances discussed in your telephone request of February 23, 2007. 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION



Christy J. Caesar
Tax Policy Analyst