

July 25, 2007

FAX

Re: Oklahoma Sales and Use Tax; Our File No. LR-07-088

I am writing in response to your inquiry regarding the sales tax implications for contract bidding purposes of certain transactions. A restatement of the facts, the scenarios posed and the responses thereto are set forth below:

Our Company is bidding a contract in Oklahoma to supply power plant equipment (typically, turbines, boilers, generators, air pollution equipment) to build a power plant in Oklahoma.

1) Bid the contract where we sell our equipment to a construction contractor/installer where the contractor/installer signs a turnkey contract to sell and install the equipment as a part of an overall contract to build a power plant for [Company A].

If the contract is one to make improvements to real property in Oklahoma, the contractor would owe sales or use tax on the items purchased for use to make the improvements. If the contractor/installer is not improving real property but is acting as a vendor of tangible personal property responsible for installation of these items, it could purchase the equipment exempt from sales tax as a sale for resale if it holds a valid Oklahoma sales tax permit.

2) Bid the contract to sell the equipment directly to [Company A] where [Company A] owns the material prior to installation of the equipment by the contractor/installer.

If Company A is a manufacturer holding a manufacturer exemption permit, it could only purchase tangible personal property e.g., goods, machinery and equipment necessary to install and run the manufacturing operation<sup>1</sup> at the power plant exempt from sales and use tax. See 68

---

<sup>1</sup> Manufacturing operations consist of the designing, manufacturing, compounding, processing, assembling, 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. The areas of administration, sales, distribution, transportation, site construction, or site maintenance are not included in a manufacturing operation. 68 O.S. § 1352(14)

O.S. § 1359 and Oklahoma Administrative Code 710:65-13-150.1(b). Company A may not make exempt purchases of tangible personal property for use in the areas of sales, administration, site maintenance, site construction, transportation, or distribution. Oklahoma Administrative Code provision OAC 710:65-7-9 sets forth the properly completed documentation that must be accepted from a purchaser claiming a manufacturing sales tax exemption and retained by the vendor in order for the vendor to be relieved of any liability for the sales tax and the duty to collect imposed by 68 O.S. § 1361 of Title 68.

3) Bid the contract where we sell our equipment to a construction contractor/installer where the contractor/installer attempts to obtain legislative exemption. Should they fail in their attempt to obtain legislative exemption, they would assign the contract for equipment procurement to [Company A].

Please see the above. The later assignment of the contract to an exempt entity should not affect the taxability of the sales of the enumerated items.

This response applies only to the circumstances discussed in your request of July 5, 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