OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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September 7, 2007

Re: Sales Tax Inquiry; LR-07-131

Dear

I am writing in response to your inquiry regarding whether a charge for the rental of certain tanks is subject to sales tax. The documents provided pursuant to your inquiry include an invoice from to , , a picture of the storage tanks, a description of the manner in which the tanks are affixed to the realty and other information indicating as follows:

for a monthly fee rents tanks from in which to store for subsequent sale, ceramic pellets used in oil and gas production. The rental contract between ; and is for 3 year terms and at no time does title of the tanks transfer to renter. The rental charge includes "usage of scale, yard space, warehouse, utilities and ground maintenance and tanks." The tanks are each 3,000 cubic feet, 11 feet in diameter by 35 feet tall. The storage tanks are located on land owned by and physically rest on concrete pads and are welded to steel hooks that are concreted into the pads. In correspondence, you indicated that , Plant Manager, , represented that since ; built their facility approximately six years ago the tanks in question have not been moved.

The sale of tangible personal property is subject to the levy of sales tax. 68 O.S. § 1354(A)(1). The phrase tangible personal property includes "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses." 68 O.S. § 1352(23). Whether an article of personal property has become a fixture and therefore part of the realty or is a chattel subject to sales tax is determined by a three part test as follows:

1. The actual or constructive annexation of the item to realty or to something appurtenant to realty;

2. The appropriateness of the particular article's use to the purpose or actual use of the realty;

3. The intention of the party placing the article on the realty to make the article a permanent and integral part of that realty.[1]

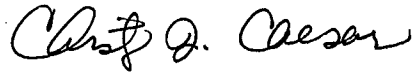
The three part test is basically a test of intent and that test is further condensed in part by an analysis of whether the item to be classified has directly enhanced the realty. K & A Servicing, supra, at 811. Neither the manner of attachment nor existence of an easement is solely determinative in classifying an article as a fixture. Kay County Gas Co. v. Bryant, 135 Okl. 135, 276 P. 218 (1928). The attendant circumstances, however, must clearly show an intent to affix the article permanently to realty. Id., at 222. Any uncertainty regarding that intent would warrant denomination as chattel. Id.

Here the evidence shows an intent to permanently affix the storage tanks to the realty based on the following: (1) the sheer size and bulk of the storage tanks; (2) that they are attached to the realty by welded steel hooks and concrete; and (3) that they are appropriate for the purpose and actual use of the real property. Therefore, unless the contractual agreement for the rental of the tanks sets forth or otherwise indicates that the tanks are to remain tangible personal property, the tanks have become a part of the realty and therefore charges for the rental thereof are not subject to sales tax.

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

[1] Waterford Energy, Inc. v. Oklahoma Tax Commission, 845 P. 2d 198, 200 (Okl 1992) citing In re K & A Servicing, Inc., 47 B.R. 807 (Bankr. N.D. Texas 1985); Accord, United Benefit Life Ins. Co. v. Norman Lumber Co., 484 P. 2d 527 (Okla. 1971); Hartford Fire Ins. Co. v. Balch, 350 P. 2d 514 (Okla. 1960).