

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063



January 09, 2007

RE: LR-07-210
Sales and Use Tax Inquiry

Dear

I am in receipt of your letter dated November 06, 2007 and you have asked for a ruling on several types of transactions for your client's businesses that were started back in September of 2007. You have stated that these businesses are located in the State of Louisiana and they rent tools, equipment, and on occasion personnel into the state of Oklahoma and all the deliveries are made through the use of 3rd party transportation only. If you have not done so, please contact our Taxpayer Assistance Division to register your business and apply for a vendor use tax permit. However, the types of taxes and permits for which you may be required to register may vary depending if you use your own transportation for deliveries into the state of Oklahoma as well as other questions.

If your client uses his own transportation for deliveries into Oklahoma, then he may be required to register for a sales tax permit and post a bond.

Listed below are the responses to your list of charges and services that you provided and they are broken down by the two types of business you gave as well as by sales and purchases:

Rental Business Charges to customers

(1) Rental of pipe and equipment.

Customers are charged on a per day basis for rental of pipes & tools. The charge for each piece of equipment is shown separately on the invoice, description of the equipment, rate per day, number of days, discount, and extended price.

Our response:

Rentals of pipe and equipment are subject to sales and or use tax. As a vendor, you will be required to collect vendor sales or use tax on these items from your customers. (Pursuant to 710:65-1-11, **Rentals and leases of tangible personal property**)

(a) **Rental or lease of tangible personal property taxable.** The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales & use tax.

(2) Transportation of pipe and equipment to & from well site.

Our response:

Transportation is subject to sales tax under the right circumstances and you should examine (710:65-19-70, **Delivery charges**) to determine if your business practices are subject to sales tax.

(a) **Definition. "Delivery charges"** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. "Delivery charges" does not include charges for the delivery of "direct mail" if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

(b) **Separately-stated delivery charges.** In every case where a delivery charge represents the cost of transporting the items sold from the vendor to the consumer, and is separately-stated on the invoice or statement, such charges are not subject to sales tax.

(c) **Delivery charges included in price.** If delivery charges are included in the selling price of the tangible personal property sold, the charges are subject to sales tax.

(d) **Transportation costs of the seller.** Shipping, freight, or delivery charges paid by a seller in acquiring property for sale are considered costs of doing business to the seller and may not be deducted from the gross proceeds of the sale in computing tax liability, even though such costs may be passed on to his customers and regardless of whether they are separately-stated.

(e) **Demurrage.** Demurrage is a charge for detaining a ship, freight car, or truck beyond the time allowed for loading or unloading. This is considered a penalty and is not subject to sales tax.

(3) Inspection of drill pipe.

Our response:

This is a special service charge and you should examine (710:65-19-158, **Installation, alteration and special service charges**) to determine if your business practices are subject to sales and use tax.

(a) Where the vendor engages in the business of selling tangible personal property and such tangible personal property is installed or altered for the purchaser by the vendor (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the vendor on account of his charges for such installation, alteration or other special service must be included in the receipts by which his sales liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold. This is true where the charge for the property which is sold and the charge for installation, alteration or other special services is billed by the vendor to his customers are included in a single billed price.

(b) On the other hand, where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not a part of the "selling price" of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted and billed and need not be included in the figure upon which the seller computes his sales tax liability.

(4) Waste disposal charges.

Our response:

See 710:65-19-158, **Installation, alteration and special service charge.**

(5) Damages.

Our response:

Based on your description as well as your notation "These charges are listed separately on the invoice", damage charges are not subject to sales tax. (Pursuant to 710:65-1-11 paragraph E, **Taxability of charges for damage waivers**) An optional charge for a damage waiver or a similar instrument that acts as a waiver of the lessor's right to collect from the lessee for any damage to the property is not considered part of the gross lease or rental charge, if separately stated.

(6) Lost in hole or damaged beyond repair.

(7) Sale of thread protectors.

Our Response:

See 710:65-1-11 (E), **Taxability of charges for damage waivers.**

(8) Sale of ring gaskets and other supplies.

Our response:

(Pursuant to 710:65-1-11 (I), **Purchases of repair parts**) Purchases of repair parts made by a vendor, who is engaged in renting or leasing tangible personal property, where the parts are to be incorporated into the tangible personal property subsequently rented or leased, are considered purchases for resale and may be purchased exempt from sales tax. Items such as oil, filters, and the like, which are purchased by the lessor, and are incorporated into the property transferred to the lessee, whether as part of the rental or lease agreement, or as separately billed items, are also included in the exemption described in this subsection.

(9) Furnishing of Service personnel.

Our Response:

The furnishing of service personnel is not subject to sales tax (Pursuant to 710:651-11 paragraph G, **Furnishing equipment with an operator**). The furnishing for a charge of equipment with an operator shall be considered a service and not subject to sales tax. Persons purchasing equipment for the purpose of furnishing said equipment with an operator must pay sales or use tax at the time the equipment is purchased.

RENTAL BUSINESS

Purchases Incurred

Since you have stated that you are located in Louisiana, Oklahoma sales and use tax rules may have little or no bearing on many of the items on your list. Instead they may be subject to the laws of the state of Louisiana unless you are purchasing some of these items inside the state of Oklahoma. Also many of the items are services that are not taxable inside the state of Oklahoma.

(1) Purchase of rental tools and pipe.

Our response:

If you purchase rental tools and pipe from a vendor within the state of Oklahoma for resale, your Oklahoma vendor use tax permit or sales tax permit (depending on how you have registered or intend to register with the Oklahoma Tax Commission) will allow you to purchase these tax exempt. (Pursuant to 710:65-7-8, **Vendors' responsibility - sales for resale**)

In the case of sales for resale, items set out in this Section are required to establish **properly completed documentation:**

(1) A copy of the purchaser's sales tax permit, or if **unavailable**, the purchaser's name, address, sales tax permit number, and its date of expiration. If a copy of the sales tax permit is unavailable, and if the information provided has not been previously verified, it

must be verified by either calling the Taxpayer Assistance Division or by reference to the sales tax permit list obtained pursuant to *OAC 710:65-9-6*;

- (2) A statement that the articles purchased are purchased for resale;
- (3) The signature of the purchaser or a person authorized to legally bind the purchaser;
- (4) Certification on the face of the invoice, bill or sales slip or by a separate document, that says the purchaser is engaged in reselling the articles purchased; and,
- (5) In cases where purchases are made on regular basis, and the certification indicates that all purchases are for resale, then subsequent purchases may be made without further certification until the expiration date of the permit.

(2) Purchase of support equipment (non-rental) from an individual or company not in the business of selling equipment.

Our response:

Your vendor's use tax or sales tax permit will only allow you to purchase items exempt from sales tax that are for resale or items that are considered exempt (i.e. repair parts or items that are incorporated into tangible personal property that you lease or sell from other vendors in the state of Oklahoma). Any other items that you purchase to consume from an Oklahoma vendor will not be exempt from sales tax. (Pursuant to **710:65-1-10, Initial use of property**)

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item may be resold later in either its original or altered form. Any exempt purchase is taxable in full at the time the purchaser first uses the item for a nonexempt purpose. For example, a rental company purchases a tractor exempt from sales tax for the purpose of renting the tractor to another person. If the rental company at some point determines it will withdraw the tractor from its inventory of items held for rental, and instead, will use the tractor for its own use in providing services, the "sales value" of the tractor is taxable at that point. The rental company must report the "sales value" of the tractor as a withdrawal from inventory on Line Two (2) of the sales tax report filed for the period when the determination was made and remit the applicable sales tax.

(3) Purchase of parts or supplies to repair rental tools and pipe (repairs performed at your location)

Our response:

See 710:65-1-11 (I), **Purchases of repair parts.**

(4) Purchases of parts and supplies to sell to customers.

Our response:

Your vendor's use tax or sales tax permit, will allow you to sell to Oklahoma vendors tax exempt items that they plan to resell or items that they may be exempt from if they have a Manufactures exemption permit. Your requirements are:

710:65-7-6. Vendors' relief from liability and duty to collect sales tax

(a) **Presumption of taxability.** All sales are presumed to be subject to sales tax unless specifically exempted by the Sales Tax Code. Vendors are liable for the sales tax collected as well as for tax that should have been collected.

(b) **When vendor may be relieved of liability.** A vendor shall be relieved of any liability for the tax and of the duty to collect imposed by Section 1361 of Title 68 of the Oklahoma Statutes if the vendor, in good faith, timely accepts from a consumer, properly completed documentation certified by the Oklahoma Tax Commission that such consumer is exempt from the taxes levied by the Oklahoma Sales Tax Code.

(c) **General requirements.** Three requirements must be met before the vendor is relieved of liability.

(1) **Vendor good faith.** Good faith requires that the vendor strictly comply with statutory requirements.

(2) **Timely acceptance from a consumer.** Timely acceptance from a consumer requires that documentation be in the possession of the vendor at the time the exempt transaction occurs. In the case of continued sales to the same purchaser, the vendor must have, on file, a sales tax permit, card, or exemption letter for each renewal interval. If no renewal interval is provided by statute, the renewal period will be deemed three (3) years, except in the case of entities with specific statutory exemptions who have established eligibility as set out in 710:65-7-15.

(3) **Properly completed documentation certified by the Oklahoma Tax Commission.** Examples of properly completed documentation certified by the Oklahoma Tax Commission are described in 710:65-7-8 through 710:65-7-15.

(d) **Specific applications.** The items of information described in 710:65-7-8 through 710:65-7-15 shall constitute minimum requirements to establish "**properly completed documentation certified by the Tax Commission**" for each respective category of purchasers.

710:65-7-8. Vendors' responsibility - sales for resale

In the case of sales for resale, items set out in this Section are required to establish **properly completed documentation**:

(1) A **copy** of the purchaser's sales tax permit, **or if unavailable**, the purchaser's name, address, sales tax permit number, and its date of expiration. If a copy of the sales tax permit is unavailable, and if the information provided has not been previously verified, it must be verified by either calling the Taxpayer Assistance Division or by reference to the sales tax permit list obtained pursuant to *OAC* 710:65-9-6;

(2) A statement that the articles purchased are purchased for resale;

(3) The signature of the purchaser or a person authorized to legally bind the purchaser;

- (4) Certification on the face of the invoice, bill or sales slip or by a separate document, that says the purchaser is engaged in reselling the articles purchased; and,
- (5) In cases where purchases are made on regular basis, and the certification indicates that all purchases are for resale, then subsequent purchases may be made without further certification until the expiration date of the permit.

710:65-7-9. Vendors' responsibility - sales to a manufacturer

In the case of sales to purchasers claiming exemption for manufacturing, the vendor must obtain a **copy** of the purchaser's manufacturer's exemption permit issued pursuant to 68 O.S.Supp.1998, § 1359.2 (hereafter referred to as "Sales/Manufacturers Permit"), **or if unavailable**, the name, address, and Sales/Manufacturers Permit Number of the purchaser **or**, a statement that contains the information that would appear on the Sales/Manufacturers Permit. If a copy of the Sales/Manufacturers Permit is unavailable and if the information provided has not been previously verified, it must be verified by either calling the Taxpayer Assistance Division or by reference to the sales tax permit list obtained pursuant to *OAC* 710:65-9-6.

- (5) Cost to repair rental tools and pipe via services by outside repair facilities.

Our response:

The actual charge for the repairs would be considered a non taxable service in the state of Oklahoma so long as the repair parts and services are billed separately.

- (6) Cost to repair non-rental equipment by outside repair facilities.

Our response:

The repair cost would be considered a non-taxable service in Oklahoma so long as it would be charged separately from any other items. Any parts that you were to purchase for non-rental equipment would not be exempt from use or sales tax.

- (7) Cost to dispose of industrial waste via licensed disposal facilities.

Our response:

This service is not subject to sales or use tax in the state of Oklahoma.

- (8) Cost of major repairs (capitalized) to rental pipe and tolls, performed by outside repair facilities.

Our response:

See 710:65-1-11 (I), **Purchases of repair parts.**

(9) Freight (3rd party transportation) cost of freight to ship rental tools and pipe to customer location. Cost passed on to the customer.

Our response:

See 710:65-19-70, **Delivery charges.**

(10) Cost of contract welder to fabricate rental equipment at our location.

Our response:

This is a service that is not subject to sales or use tax in the state of Oklahoma.

(11) Cost of contract welder to repair rental equipment at our location.

Our response

This is a service that is not subject to sales or use tax in the state of Oklahoma, but as previously mentioned, any repair parts that are incorporated into tangible personal property that is to be sold or leased may be purchased exempt from sales or use tax.

(12) Cost of contract labor to assist our crews to clean rental equipment at our location.

(13) Cost of contract clerical help to perform office duties

Our response:

These are services that are not subject to sales or use tax in the state of Oklahoma.

(14) Cost of renting equipment from a competitor in order to re-rent to a customer.

Our response:

If you lease equipment from an Oklahoma vendor, you will be exempt from sales or use tax on the lease. However, you must collect sales or use tax from your customer when you sub lease those same items. (Pursuant to 710:65-13-200, **Exemption on sales for resale**)

The gross proceeds derived from sales of goods, wares, merchandise, and telecommunications services by vendors, for resale, to persons having a valid sales tax permit who are regularly engaged in reselling the articles or services purchased are exempt from sales tax. If the purchaser is an Oklahoma resident, he must provide the vendor with his Oklahoma sales tax permit number if the sale is made in Oklahoma. In addition to furnishing his sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that said purchaser is engaged in the business of reselling

the articles purchased. Failure to so certify, or to falsely certify, with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Commission may cause the purchaser's sales tax permit to be canceled. The seller will be held liable for sales tax due on any sales where an exemption certificate is found to be invalid, for whatever reason. [See: 68 O.S. § 1365(D)]

(1) The required certification may be made on the bill, invoice or sales slip retained by the vendor or by furnishing a certification letter to the seller. The Multi-State Tax Commission Certificate, an Oklahoma Exemption Certificate, BT107, or a reasonable facsimile may be used.

(2) The vendor should obtain the information set out in 710:65-7-6 and 710:65-7-8.

(15) Miscellaneous----cost for outside vendors.

Our response:

Landscaping, weed control spraying, dust control, plumbing services, electrical repairs, and, janitorial services are all services that are not subject to sales or use taxes in the state of Oklahoma. However, advertisement is a service that is subject to sales or use tax in the state of Oklahoma, and as a vendor, you are not exempt.

Fishing Tool Business

Charges to customers

You have requested clarification on the following types of services and sales you provide to your customers based on the different types of job categories you offer.

In jobs A and B, you provide operators or employees with your goods and services to your customers and they actually are in control of the fishing operation. In jobs C and D, you do not provide employees, only the equipment to customers for their use and to other fishing operations for their use.

In short, for Jobs A & B, you are providing an employee with the equipment who is supervising at one stage of the fishing operation. So long as all of the billing is done separately, the transportation of tools and equipment, inspection of tools, waste disposal charges, damages, lost in hole or damaged beyond repair, sale of wearable parts and other supplies, and is furnishing of a supervisor are all not subject to sales tax. However, the rental of specialized fishing tools and associated equipment will be subject to sales tax.

Listed below are answers for Jobs C & D:

Job C "The Company furnishes bare equipment rentals to customers for their use and control."

Job D "The Company furnishes bare equipment rentals to competitors for their use in performing fishing services."

(1) Rental of specialized fishing tools and associated equipment.

Our response:

For job C, renting of specialized fishing tools and associated equipment is subject to sales and use tax. (Pursuant to 710:65-1-11, **Rentals and leases of tangible personal property**)

For job D, if the companies that you are renting to have Oklahoma vendor's permits for sales or resale, then they are responsible for the collection of the sales or use tax on the equipment they rented from you. If they do not have an Oklahoma vendor's permit for sales or resale, then you must collect the tax from them. (Pursuant to 710:65-13-200, **Exemption on sales for resale**)

(2) Transportation of tools and equipment to and from the well site.

Our response for both jobs C & D:

See 710:65-19-70, **Delivery charges.**

(3) Inspection of tools:

Our response for jobs C & D:

This is a special service charge and you should examine (**710:65-19-158, Installation, alteration and special service charges**) to determine if your business practices are subject to sales or use tax.

(4) Waste Disposal Charges:

Our response for jobs C & D:

See 710:65-19-158, **Installation, alteration and special service charges.**

(5) Damages,

Our response for jobs C & D:

Based on your description as well as your notation "These charges are listed separately on the invoice", damage charges are not subject to sales tax. (Pursuant to 710:65-1-11, paragraph E, **Taxability of charges for damage waivers**) An optional charge for a damage waiver or a similar instrument that acts as a waiver of the lessor's right to collect from the lessee for any damage to the property is not considered part of the gross lease or rental charge, if separately stated.

(6) Lost in hole or damaged beyond repair.

Our response for jobs C & D:

See 710:65-1-11 (E), **Taxability of charges for damage waivers.**

(7) Sale of rubber thread protectors, ring gaskets, various grapples, seal kit and other supplies.

Our response for jobs C & D:

710:65-1-11 (I), **Purchases of repair parts**) Purchases of repair parts made by a vendor, who is engaged in renting or leasing tangible personal property, where the parts are to be incorporated into the tangible personal property subsequently rented or leased, are considered purchases for resale and may be purchased exempt from sales tax. Items such as oil, filters, and the like, which are purchased by the lessor, and are incorporated into the property transferred to the lessee, whether as part of the rental or lease agreement, or as separately billed items, are also included in the exemption described in this subsection.

(8) Furnishing of a supervisor.

Our response for jobs C & D:

(710:651-11, paragraph G, **Furnishing equipment with an operator**) The furnishing for a charge of equipment with an operator shall be considered a service and not subject to sales tax. Persons purchasing equipment for the purpose of furnishing said equipment with an operator must pay sales or use tax at the time the equipment is purchased.

Fishing tool Business

Purchases incurred

(1) Purchase of fishing tools and equipment that are rented to customers.

Our response:

If you purchase fishing tools and equipment that you lease from an Oklahoma vendor, your vendor's use or sales tax permit will allow you to purchase these items tax exempt. (Pursuant to 710:65-1-11, paragraph H, **Purchases by a vendor for renting or leasing** & 710:65-13-200, **Exemption on sales for resale**)

(2) Purchase support equipment (non-rental) from an individual or company not in the business of selling equipment.

Our response:

If you purchase tangible property that you do not plan to lease or for re-sale, then you will be charged sales or use tax from an Oklahoma vendor. (Pursuant to 710:65-1-10, **Initial use of property**)

(3) Purchase of parts or supplies to repair fishing tools and equipment.

Our response:

If you purchase repair parts and supplies from an Oklahoma vendor, for the property that you lease or sell, your vendor's use or sales tax permit will allow you to purchase those items tax exempt. (Pursuant to 710-1-11 (I), **Purchases of repair parts & 710:65-13-200, Exemption on sales for resale**)

(4) Purchase of parts and supplies to sell to customers.

Our response:

If you purchase parts and supplies for resale from an Oklahoma vendor, your vendor's use or sales tax permit will allow you to purchase these items tax exempt. (Pursuant to 710:65-13-200, **Exemption on sales for resale**)

(5) Cost to repair fishing tools and equipment via services by outside repair facilities.

(6) Cost to repair non-rental equipment-work performed by outside repair facilities

(7) Cost to dispose of industrial waste via licensed disposal facilities.

Our response,

In the state of Oklahoma, these services are not subject to sales or use tax.

(8) Cost of major repairs performed by outside facilities.

Our response:

Only the parts that you purchase for the repairs on the items that you rent would be exempt from sales or use tax. The actual charge for the repairs would be considered a non taxable service in the state of Oklahoma so long as the items and services are billed separately. (Pursuant to 710:65-1-11 paragraph (I), **Purchases of repair parts**)

(9) Freight (3d party transportation), cost of freight, cost passed on to customer.

Our response:

See 710:65-19-70, **Delivery charges.**

- (10) Cost of contract welder to fabricate fishing equipment at your location.
- (11) Cost of contract welder to repair fishing equipment at your location.
- (12) Cost of contract labor to assist our crews to clean fishing equipment at your location.
- (13) Cost of contract clerical help to perform office duties.

Our response to these items,

These services are not subject to sales or use tax in the state of Oklahoma.

- (14) Cost of renting fishing equipment/tools from a competitor in order to use on a fishing job with our customer.

Our response:

If you lease equipment from an Oklahoma vendor, you will be exempt from sales or use tax on the lease. However, you must collect sales or use tax from your customer when you sub lease those same items. (Pursuant to 710:65-13-200, Exemption on sales for resale)

This response applies only to the circumstances discussed in your written request of November 06, 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.

If you should have any questions, please feel free to contact me.

Sincerely,

Oklahoma Tax Commission



Marc Morrison

Tax Policy & Research Division