

# OKLAHOMA TAX COMMISSION

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July 10, 2008

FAX

Re: Sales Tax Exemption Afforded Manufacturers; Our File No. LR-08-80

Dear

I am writing in response to your request for information regarding the sales taxability of purchases by a manufacturer of certain items. I have set forth the questioned purchases along with the determination regarding the taxability thereof. All the responses assume that the manufacturer in question possesses a manufacturer sales tax exemption permit.

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.<sup>1</sup> Manufacturing operations, pursuant to 68 O.S. 1352(14), 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. 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.

1. Pallets shipped out with finished product and NOT returned to manufacturer.

A manufacturer may purchase non returnable pallets to be shipped with the finished product exempt from tax. OAC 710:65-13-150.1(b)(6)

2. Pallets used at the plant site for maintenance purposes.

<sup>1</sup> 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."

A manufacturer may make exempt purchases of pallets for use in maintenance of manufacturing equipment but not for use in manufacturing site maintenance. OAC 710:65-13-150.1(b)(2)(B)

3. Dunnage lumber, dunnage bags used in shipping in railcars and trucks to prevent load from shifting during transit; dunnage is not returned to manufacturer.

A manufacturer may purchase non returnable dunnage lumber and dunnage bags to be shipped with the finished product exempt from tax. OAC 710:65-13-150.1(b)(6)

4. Assuming manufacturer has a co-generation plant on site to produce steam and electricity to be used in or by manufacturing equipment I have the following issues:

- turbine and boiler ( and other cogeneration machinery) repair and replacement parts
- chemicals used in boilers to prevent corrosion

A manufacturer may purchase repair and replacement parts along with chemicals to prevent corrosion for the turbine, boiler and other cogeneration machinery exempt from tax, as long as, the machinery in question retains its identity as tangible personal property and therefore is not considered a fixture which becomes part of the realty. OAC 710:65-13-150.1(b)(2)(B) & (D)

5. Chemicals/catalyst used directly in the manufacturing process that are fully consumed and do NOT become an ingredient of the manufactured product.

Purchases of chemicals and catalysts by a manufacturer for use in the manufacturing operation at a manufacturing site are exempt from sales tax. OAC 710:65-13-150.1(b)(2)(A)(iii)

6. Chemicals used to purify water to be used in the manufacturing process that are fully consumed and do NOT become an ingredient of the manufactured product.

Purchases of purification chemicals for use in the manufacturing operation at a manufacturing site are exempt from sales tax. OAC 710:65-13-150.1(b)(2)(A)(iii)

7. Chemicals used to clean manufacturing machinery during annual maintenance outages.

Chemicals used to service and maintain machinery in the manufacturing operation may be purchased exempt from sales and use tax by the manufacturer. OAC 710:65-150.1(b)(2)(B)

8. Computer hardware and software which is an integral part of the manufacturing process and in fact controls the manufacturing process.

Purchases of goods and equipment 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)

9. Cooling towers that are necessary to cool processing machinery and equipment and prevent it from overheating.

A manufacturer may purchase exempt cooling towers necessary to cool processing machinery and equipment exempt from tax, as long as, the cooling towers in question retain their identity as

tangible personal property and therefore are not considered a fixture which becomes part of the realty. OAC 710:65-13-150.1(b)(2)(D)

10. Process piping that is located between different manufacturing stages.

Purchases of equipment which is 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)

11. Mixing and agitating tanks that are used to blend raw materials during the production process.

A manufacturer may purchase exempt, mixing and agitating tanks to used in the manufacturing operation at a manufacturing site. OAC 710:65-13-150.1(b)(2)(D)

12. Raw material storage tanks

A manufacturer may purchase exempt, items to be used in the manufacturing operation at a manufacturing site. A manufacturing operation begins at the point where the raw materials enter the site and ends where the manufactured items leave the site. Therefore, a manufacturer may purchase tanks to store raw materials exempt from sales and use tax. OAC 710:65-13-150.1(b)(5)(C)

13. Machinery and equipment used at the manufacturing site in fire prevention and protection such as sprinklers and halon gas systems (assume materials only and not installed by a contractor).

A manufacturer may make exempt purchases of equipment and materials for use in maintenance of manufacturing equipment but not for use in manufacturing site maintenance. OAC 710:65-13-150.1(b)(2)(B) &(D)

14. Air compressors that supply compressed air to manufacturing machinery and equipment.

Purchases of equipment 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)

15. Welding equipment that is used to repair manufacturing machinery and equipment.

Purchases of tools or equipment for maintenance of machinery used in the manufacturing operation, at a manufacturing site, are exempt from sales and use tax. OAC 710:65-13-150.1(b)(2)(C)(iii).

16. Welding gases for the equipment in item #15.

Gases used in the welding equipment to service and repair equipment in the manufacturing operation can be purchased exempt by a manufacturer. 710:65-13-150.1(b)(2)(B)

17. Are portable toilet rental/services taxable rentals or exempt services?

Sale Tax is due on the gross receipts of each sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma sales tax code. 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(22). The term "sale" includes but is not limited to "the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property." 68 O.S. §1352(22)(a). Therefore, since the rental of portable toilets would not fall within the exemption afforded manufacturers, sales tax should be charged, collected and remitted on the lease payments as they become due. See OAC 710:65-1-11.

18. Are scaffolding equipment rentals/services where the vendor erects, manages, and dismantles the scaffolding taxable rentals or exempt services?

Based upon the facts presented where the provider of scaffolding equipment retains exclusive control thereof by erecting, managing and dismantling same, the transaction would constitute a nontaxable service in Oklahoma. OAC 710:65-1-11(g).

19. Are payments to UPS, Fedex, Yellow Freight, etc. exempt transportation charges? (I am trying to determine if the tax on "transportation for hire" applies to transporting people only).

Separately agreed to and separately stated charges for freight and trucking are not subject to sales tax in Oklahoma. OAC 710:65-19-70.

20. Is stretch wrapping and other packaging machinery exempt?

Purchases of packaging machinery by a manufacturer, which are used in the manufacturing operation, at a manufacturing site, are exempt from sales tax. OAC 710:65-13-150.1(b)(6)

This response applies only to the circumstances discussed in your telephone request of April 16, 2008. 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



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