OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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November 2, 2009

Re: LR-09-84; Sales Tax Inquiry

Dear

I am writing in response to your request for guidance regarding the taxability of warehousing and shipping supplies purchased for warehousing and logistics services provided exclusively to Set forth verbatim are the facts presented along with the questions posed and the responses thereto.

FACTS

provides sub-contracted manpower services to its sole customer in Oklahoma, personnel perform their services on location at in is a manufacturer of computer data storage devices and systems. has sub-contracted to provide material handling, supervision, and management of warehousing, storage, and shipping operations; more specifically, services include:

Managing the storing/warehousing of raw materials and completed products; wrapping and packaging manufactured units into individual product containers along with warranty cards and instructions; packing several units into bulk-boxes, sealing, shrink-wrapping and labeling for shipment; and arranging shipping to distribution center in The wrapping, packing, boxing materials and supplies are purchased by according to unique specifications (sizes, types of material, quality, printed labeling, logos, trademarks, etc.).

currently pays Oklahoma sales tax to its suppliers for purchases of shipping supplies and warehousing supplies and equipment that it buys for its services to invoices for its warehousing and logistics services based on units shipped, but does not separately line item any warehousing, shipping, wrapping and packing supplies in its invoices.

QUESTIONS AND RESPONSES

1. Can purchase shipping supplies and warehousing supplies and equipment without paying Oklahoma sales/use tax to its suppliers in providing sub-contracted services to based on the foregoing facts?

A. As sub-contracted manufacturing operations? Or,

B. As sales for resale with regards to its purchases of wrapping, packing, labels, and shipping supplies?

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). The Oklahoma Sales and Use Tax Codes specifically 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] Pursuant to Section 1352(14) of Title 68 manufacturing includes "the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use." A manufacturing operation, pursuant to 68 O.S. § 1352(15), consists of the "designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property" and starts "at the point where the materials enter the manufacturing site and ends 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: product development, production, testing or quality control, production waste disposal, warehousing supplies and equipment, and shipping, and gives examples of the machinery, equipment, tools and supplies utilized in these areas which are eligible for exemption when purchased by a manufacturer. OAC 710:65-13-150.1(b) further provides that "operations performed by a sub-contractor to the manufacturer may also qualify as a manufacturing operation if the contractor is performing sub-assembly work leading to completion of the finished product."

Here, the products being manufactured by include computer data storage devices and systems. Even though is performing functions included within a manufacturing operation, itself is not a manufacturer for purposes of exemption under the Oklahoma Sales and Use Tax Codes since the activities performed by for do not involve the manufacture or production of any part or component of the subject devices or systems. Therefore, may not purchase tangible personal property needed to perform its warehousing, storing, and shipping functions exempt from sales and use tax pursuant to 68 O.S. §§ 1359(1) and 1404(4).

Further, in accordance with Section 1357(3) of Title 68, the gross proceeds derived from sales of tangible personal property or 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. OAC 710:65-13-200

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[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."

Under the above-referenced facts, is not acting as a vendor, purchasing the subject shipping supplies for resale purposes, and therefore may not purchase these items exempt from sales tax pursuant to Section 1357(3) of Title 68.

2. currently does not have a Sales Tax Permit, is allowed to purchase wrapping, packing, shipping supplies, etc. free of tax, should it complete the **Business Registration Packet For Manufacturers?**

No, please see response to question No. 1.

3. Is required to collect tax from for its warehousing, logistics, shipping services as describe above.

No, is performing a nontaxable service fo . The material and supplies used or consumed to provide the services are taxable when sold to or purchased by

4. Would be required to collect tax fron if it should separately itemize shipping and warehousing supplies on its invoices?

Becaus is performing a nontaxable service, it should not separately itemize shipping and warehousing supplies on its invoices.

5. If is not required to pay tax on its purchases of warehousing supplies and equipment and shipping supplies in performing sub-contract manufacturing operations, or for resale, what type of Certificate should be issued to the Oklahoma suppliers to buy tax free?

N/A

6. If the foregoing purchases are exempt, can claim a refund for taxes previously paid? How many years back?

N/A

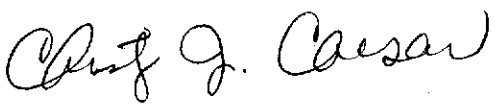
7. To whom should the claim for tax refund be submitted, if applicable?

N/A

This response applies only to the circumstances discussed in your request of May 27, 2009. Pursuant to Oklahoma Administrative Code 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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