

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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October 30, 2009

Re: LR-09-134; Sales Tax Inquiry

Dear

This is in response to your request for a ruling regarding the sales tax treatment of paint spray booths. The facts as presented in your correspondence dated August 3, 2009 and September 24, 2009 are set forth below along with the questions posed and the responses thereto.

We are manufacturers of Paint Spray Booths used in the Auto, Truck, and Manufacturing Industries. Depending on the customer's situation, we also contract to have this equipment installed into their premises. The paint booth's I-beam structure is attached to the floor and the building structure. The paint booth is attached to this framework. Both the paint booth structure and panels can be removed without damage to the structure of the building. We have in multiple cases moved paint booths from one location to another when a company has relocated for some reason.

QUESTION

Would this equipment be regarded as TPP or Real Property in the following situations and how does OK State tax these situations?"

Sale of Equipment Only

RESPONSE

The equipment in question retains its identity as tangible personal property and therefore is not considered a fixture which becomes part of the realty and as such is subject to sales and use tax in Oklahoma. If the item is shipped into Oklahoma via common carrier from a point outside the state you will be required obtain an Oklahoma vendor use tax permit and collect and remit Oklahoma state and any local use taxes due on the equipment charges.¹ If the item is brought

¹ A retailer or vendor maintaining places of business both within and without this state and making sales of tangible personal property from a place of business outside this state for use in Oklahoma must at the time of sale collect use tax from the purchaser. "Maintaining a place of business in this state" is defined at Section 1401(10) of Title 68 and includes "any person having agents operating in the state under authority of the retailer or subsidiary. . . ."

into Oklahoma for delivery in your own vehicles or is shipped or delivered from a point inside the State then the transaction is subject to sales tax requiring you to obtain an Oklahoma sales tax permit and collect and remit state and applicable local sales tax on the gross receipts derived from the equipment sales.

QUESTION

Sale of Equipment with Installation

RESPONSE

See response to Question 1. Under the circumstances where the equipment is shipped into Oklahoma by common carrier for installation in Oklahoma by you or your agents, the gross receipts² derived from the equipment sales would be subject to sales tax. See OAC 710:65-15-1. Generally, installation charges which are separately stated on the bill or invoice are not included in gross receipts for sales tax calculation purposes.³ 68 O.S. § 1352(12)

QUESTION

Is the Install Labor Taxable?

RESPONSE

Except as previously noted, labor charges for installations which are separately stated on the bill or invoice would not be included in gross receipts for sales tax calculation purposes. 68 O.S. § 1352(12)

QUESTION

Is the Freight Taxable?

² The terms gross receipts, gross proceeds and sales price are synonymous and are defined as "the total amount of consideration . . . for which personal property or services are sold . . . whether received in money or otherwise. . . without any deduction for the following:

1. the seller's cost of the property sold,
2. the cost of materials used, labor or service cost,
3. interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
4. charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
5. delivery charges and installation charges, unless separately state on the invoice, billing or similar document given to the purchaser, and
6. credit for any trade-in" 68 O.S. § 1352(12)(a).

³ A limited exception to the general rule is that amounts billed for installation, connection, change or initiation of certain telecommunication services, regardless of whether such charges are separately stated, are taxable as a telecommunications nonrecurring charge. 68 O.S. § 1354(5).

RESPONSE

Separately stated delivery or freight charges are not subject to sales tax unless they represent amounts paid by the seller in acquiring the property for sale. Oklahoma Administrative Code 710:65-19-70(d).

QUESTION

Does it change the tax type if we invoice the equipment separately from the install?

RESPONSE

No, the tax type (sales vs. use) is not affected if the equipment is invoiced separately from the installation labor.

This response applies only to the circumstances discussed in your request of August 3, 2009. Pursuant to Oklahoma Administrative Code 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

A handwritten signature in cursive script, appearing to read "Brenda J. Sullivan for".

Brenda J. Sullivan
Tax Policy Analyst