OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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July 18, 2011

Re: Our File No. LR-09-186

This is in response to your request regarding the sales tax treatment of renewable energy projects. Set forth below are the questions posed and our responses thereto.

Question 1

If we are building a new wind farm or solar plant in your state, how do we apply sales tax to our bid?

If the contract is one to make improvements to real property in Oklahoma, the Oklahoma Sales Tax Code provides that the contractor is the taxable consumer/user of all items of tangible personal property and taxable services used to complete the contract, therefore a contractor should not charge and itemize tax. The contractor would owe state sales or use tax and any local tax as applicable on the items purchased for use to make the improvements. If a contractor makes purchases from outside Oklahoma, from a vendor that is not required to collect Oklahoma sales or use tax, the contractor is required to accrue and remit Oklahoma state and any local use tax on the materials purchased. Attached are copies of OAC 710:65-1-7, OAC 710:65-19-55 and 710:65-19-56.

If is not improving real property but is acting as a vendor of tangible personal property responsible for installation of these items, may sell to an entity, holding a manufacturer sales tax exemption permit "MSEP", tangible personal property e.g., goods, machinery and equipment for use in its manufacturing operation exempt from sales tax. Items for use in the areas of sales, administration, site maintenance, site construction, transportation or distribution may not be sold to the holder of an MSEP exempt from sales tax. OAC 710:65-13-150.1(c). would be required to report sales tax on

the gross receipts[1] attributable to these items and report and remit same to the Oklahoma Tax Commission. Separately stated installation charges are not subject to sales tax.

Question 2

Do you classify these projects as "manufacturing" and are these special manufacturing construction laws that would apply to this work accordingly? Is manufacturing construction exempt from sales tax in your state? Or is this work classified as utility construction and is there special utility construction laws in your state that would apply to this work? Is utility construction exempt from sales tax in your state?

Generally, neither a manufacturer nor a person to whom a manufacturer has entered into a construction contract may make purchases of tangible personal property or services exempt from sales and use tax for use in site construction of a manufacturing facility. Site construction is the "construction of buildings and other structures and improvements to real property" and "includes land preparation, new construction, reconstruction, remodeling, renovation, repair, upgrading and making alterations and additions to the real property, whether the work is done by the manufacturer or by other firms." Oklahoma Administrative Code 710:65-13-150.1(a)(9). An exception to this rule is the provision found at Section 1359(7) of Title 68 which exempts from the sales tax levy sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of Section 1359(7) sales made to a contractor or subcontractor who has previously entered into a contractual relationship with the qualified manufacturer for construction or expansion of a manufacturing facility are considered sales made to a qualified manufacturer. A qualified manufacturer is defined by this Section as a manufacturing enterprise that meets certain requirements involving total costs of facility construction or expansion, construction material costs, and added and maintained full-time-equivalent employees. This exemption is administered as a refund and in order to obtain a refund of sales and use tax under Section 1359(7) of Title 68 certain procedural requirements must be met by the manufacturer in accordance with Section 1359.1 of Title 68. See also OAC 710:65-13-153.

Question 3

Are materials taxed differently than labor?

See response to Question 1.

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[1] 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).

Question 4

Are consumables taxable? (Our understanding of consumables are materials that are not incorporated into the work, but are consumed in doing the work like the marking tape and drill bits listed below.)

Rental Equipment
Marking Tape
Hole saws
Drill bits
Spray paint, etc.

Whether acting as a contractor or installer of tangible personal property, would be required to pay tax on its purchases of the described consumables.

Question

If there is a maintenance building as part of the contract, since this building is not directly associated with the production of energy, would this portion be treated differently? Can you please tell us how to tax this portion.

See response to Question 1.

This response applies only to the circumstances discussed in your request of November 6, 2009. Pursuant to Oklahoma Administrative Code 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the person to whom it is issued and any other persons purchasing the vehicle referenced herein, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Marc Morrison
Tax Policy Analyst