OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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August 17, 2011

RE: LR-10-062; Sales Tax Inquiry

Dear

This is in response to your request regarding the applicability of sales tax to your client's business practices. Set forth verbatim are the facts presented along with the questions posed and responses thereto.

Facts:

Our Client provides refuse collection services for residential, commercial, industrial, and municipal customers. In order to provide refuse collection services our Client provides a refuse container or compactor to its customers when the customers do not have their own container or compactor. Contracts between our Client and its customers provide that all bins, containers, and any other equipment that the Client provides to the customer shall remain our Client's property. Our Client does not provide any container or compactor to a customer where it does not also provide refuse collections services/ however, there are instances where our Client provides refuse collection services to customers that have their own containers or compactors.

Our Client has paid sales tax or self-accrued and remitted use tax on all of the containers and compactors it has purchased for use in its refuse collection service business. Pursuant to the contracts, the use of the supplied containers and compactors is restricted so that the equipment may only be used for its proper and intended purposes. Furthermore, under the contracts our Client always expressly retains title to all containers and compactors that its customers use as part of the refuse collection services. Our Client provides its refuse collection services to permanent customers on a regularly scheduled basis, and also to "on-call" permanent and temporary customers.

Invoices for residential customers separately state the basic service fee, City flow fee, and a fuel/environmental recovery fee. The invoices for commercial, industrial, and municipal customers contain the basic service fee, City flow fee, fuel/environmental recovery fee, and a separate fee for use of the containers or

compactors. The separately stated use fee for the commercial, industrial, and municipal customers' containers is currently labeled as a "rental" fee. The residential customer invoices do not separately state a rental fee charge.

The separately stated fee applies to containers and compactors that are used for refuse collection services. The typical charge for a roll-off containers ranges from $90 to $150 per month. The typical fee for compactors ranges from $300 to $400 per month. The fee charged with the compactors is higher than the roll-off container fee due to the high repair costs associated with the compactors. The fees charged for container and compactor use are usually an insignificant percentage of the overall cost paid for refuse collection services.

Issues

1. Are all of our Client's receipts from refuse collection services exempt from sales tax?

Based upon the stated facts, the refuse collection services are not one of the enumerated transactions subject to sales tax in Oklahoma pursuant to Section 1354 of Title 68 of the Oklahoma statutes. The separately stated charges [rental fees] billed customers for the compactors and roll-off containers are subject to sales tax in Oklahoma.

2. If the Client's receipts are taxable due to the separately stated rental charges is the tax base limited to the separately stated rental charges?

Response

Yes, as previously stated only the separately stated rental fee billed for the compactors and roll-off containers would be subject to Oklahoma sales tax.

3. If the Client is subject to tax on receipts from commercial, industrial and municipal customers would the Commission conclude that no tax would be due if there was no separately stated rental charge on the invoices.

Response

If your Client acts wholly as a provider of a nontaxable service, it would be the taxable consumer/user of all items of tangible personal property and taxable services used to provide the service. Oklahoma Administrative Code 710:65-19-309. As such, your client would not separately state the rental fee or charge and itemize tax but would owe state sales or use tax and any local tax as applicable on the items purchased to provide the refuse collection service. If your client makes purchases from outside Oklahoma, from a vendor that is not required to collect Oklahoma sales or use tax, it is required to accrue and remit Oklahoma state and any local use tax on the items purchased. OAC 710:65-1-7

If your client acts as a vendor making sales/rentals of tangible personal property along with the provision of a nontaxable service, it must collect sales tax on the gross receipts[1] attributable to

[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:

these sales/rentals in Oklahoma and report and remit same to the Oklahoma Tax Commission. Separately stated charges for the refuse collection service are not subject to sales tax. In addition, vendors can make purchases of tangible personal property exempt from sales tax for resale or rental purposes pursuant to an Oklahoma sales tax permit. 68 O.S. § 1357(3).

This response applies only to the circumstances discussed in your written request of April 26, 2010. 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

Marc Morrison
Tax Policy Analyst

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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).