December 2, 2011

Re: LR-11-062 (Sales Tax and Oklahoma Environmental Fee) pertaining to the sale of dyed diesel fuel.

Dear

This letter is in response to your inquiry regarding the tax liability associated with the purchase of dyed diesel fuel in Oklahoma for use to power a drilling rig.

The sale of dyed diesel fuel in Oklahoma is specifically exempt by statute from the levy of motor fuel tax. However, the sale of dyed diesel fuel then becomes subject to Oklahoma Sales Tax unless the dyed diesel is being used for agricultural purposes or is specifically exempt. In this case where dyed diesel is being purchased to power a drilling rig, the Oklahoma Statutes do not recognize such use as being exempt and therefore is subject to sales tax.

As provided in 17 O.S. Section 354, the sale of motor fuel\(^1\) is subject to the Oklahoma Environmental Fee ("Fee") which is assessed at one cent ($0.01) per gallon upon each gallon sold. The Fees shall be deposited into the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund ("Fund"). By statute, if the Fund is above the required maintenance level, then certain sales including diesel fuel sales for off-road purposes will be exempt from imposition of the Fee. The Fund has been below the required maintenance level since May of 2008.

Therefore, in reviewing the copied invoice you provided, it appears that the sales tax and the environmental fee are being properly billed to your company upon the purchase of dyed diesel fuel.

If you should have any questions or need additional information you may contact me at 405-521-3133.

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\(^1\) "Motor fuel" includes gasoline, diesel fuel and blended fuel.

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IT IS OUR MISSION TO SERVE THE PEOPLE OF OKLAHOMA BY PROMOTING TAX COMPLIANCE THROUGH QUALITY SERVICE AND FAIR ADMINISTRATION
This response applies only to the circumstances set out in your request of May 10, 2011. 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 that there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Mark J. Hendrix
Tax Policy Analyst