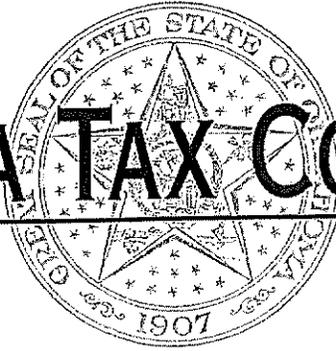


OKLAHOMA TAX COMMISSION

COPY



TAX POLICY DIVISION

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

January 30, 2011

[REDACTED]

RE: LR-11-115 (Sales Tax Inquiry)

Dear [REDACTED]:

This is in response to your inquiry of October 10, 2011. Set forth are the facts presented along with the response thereto.

FACTS

We have recently been informed that [REDACTED] does not qualify for a manufacturer's Sales Tax Exemption Permit. On the application we indicated that 100% of our fabrication in the shop is custom work. This is because we order natural stone or granite slab in, fabricate the material per the customers' specific measurements and edge detail instructions & install the material. No jobs for customers are identical once the fabrication work is completed because this is custom work performed. The company we bought, [REDACTED] operated under a manufacturer's sales permit the entire time they were in business. [REDACTED] is performing the same work as [REDACTED] did while operating under a manufacturers permit. When [REDACTED] called inquiring, they were told that the fabrication on the material was taxable because when the fabrication was performed, it changed the finished product. [REDACTED] was told that fabrication and install are considered labor and therefore non-taxable because 100% of the work being performed as custom work does not qualify us to operate under the manufacturers permit.

RESPONSE:

As an entity which wholly produces custom or made to order products for its customers, [REDACTED] does not qualify for the exemption afforded manufacturers pursuant to Section 1359(1) of Title 68. OAC 710:65-19-60 (copy enclosed). Since [REDACTED]

is regularly engaged in making taxable sales in Oklahoma, it is required to hold an Oklahoma sales tax permit and collect and remit state and local sales tax on its sales in Oklahoma. Pursuant to its sales tax permit, [REDACTED] can purchase materials that become a component of the fabricated products exempt from sales tax, however; it cannot purchase tools, equipment or supplies that are used to make the products exempt from sales tax.

[REDACTED] labor or service cost associated with the fabrication of an item of tangible personal property¹ cannot be deducted from the gross receipts² upon the sale of such property for sales tax calculation purposes. 68 O.S. § 1352(12)(a)(2). However, labor charges for installation of a finished item of tangible personal property, if separately stated, are not subject to sales tax. 68 O.S. § 1352(12)(a)(5).

This response applies only to the circumstances discussed in your written request of October 10, 2011. Pursuant to Oklahoma Tax Commission 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

¹ "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. For purposes of the Oklahoma Sales Tax Code, "tangible personal property" includes electricity, water, gas, steam and prewritten computer software. [68 O.S. § 1352(24)] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. "Tangible personal property" does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes. OAC 710:65-1-2.

² Gross receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms 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. . . ." 68 O.S. § 1352(12).