OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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August 23, 2013

RE: LR-13-030; Sales and Use Tax Inquiry

Dear

This letter is in to your inquiry regarding the sales tax treatment of various services outlined below which involve the removal of hazardous waste and training services.

1. Digging and hauling off contaminated soil
2. Digging and hauling off contaminated soil, then backfill and seeding.
3. Perform service of filtration of water.
4. Perform chemical treatment of water or soil.
5. Patching or capping off leaking compressed gas cylinders.
6. Collection of soil, water, and waste samples for analytical testing.
7. Utilization of or other microbial products to remediate water or soils in place.
8. Response on site for containment, collection and transfer of hazardous materials.
9. Transferring of chemicals utilizing pumps, vacuum trucks, or conveyer systems for damaged or overloaded vessels into shippable vessels.
10. Service of Bio haz clean ups, such as suicide cleanup or vehicle decon after car wrecks.
11. Emergency response and cleanup of hazardous material releases caused during transportation incidents.
12. Restoration of facilities impacted by fire or explosion.
13. Demolition of facilities impacted by fire or explosion.
14. Providing roll off containers to our customers along with transportation and disposal of waste materials placed into containers.
15. Decontamination of facilities where chemicals or other contaminants have to be removed and or sanitizing of food grade areas and clean rooms.
16. Removal of products contained in above ground storage tanks, making entry and performing high pressure cleaning of tanks interiors and exteriors.
17. Removal and closure of underground and above ground storage tanks, along with cleaning of above ground storage tanks. Closure for above and underground tanks have to be cleaned, removed from site and paper filed.
18. Facility Maintenance includes ground maintenance, high pressure cleaning, debris removal, vacuum truck services, minor mechanical repairs.
19. Hydro blasting service providing high pressure cleaning services utilizing blasting units.
20. Site Assessment providing environmental and safety assessments of customer's facilities and properties to assess potential safety hazards or environmental impacts.

21. Removal of oil, gas, diesel and etc. from impacted soils left in place.
22. Water response, containment, and cleanup of hazardous materials release on water.
23. Confined space standby rescue crews for customer's making confined space entries.
24. Training customers in multiple OSHA and EPA disciplines.

RESPONSE

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other transactions as specified in Section 1354 of Title 68 of the Oklahoma Sales Tax Code. Tangible personal property is defined to mean "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses . . . [and] includes electricity, water, gas, steam and prewritten computer software".

The described services 1 through 13 and 15 through 24 do not constitute the transfer of tangible personal property nor do they fall within the enumerated transactions subject to sales tax pursuant to Section 1354 of Title 68 of the Oklahoma Statutes. Consequently, purchases in Oklahoma of taxable services and tangible personal property to provide the nontaxable services are subject to sales tax.[1] Likewise, use tax is due on tangible personal property when purchased out-of-state and brought into Oklahoma for use or consumption.

Please note, for example, if , in item 7, is itemizing on bills to its customers charges for and other microbial products separately from the service/labor charge, should collect, report and remit sales tax on the amounts billed for materials.

Likewise for item 14 if is acting as a vendor making sales/rentals of containers along with the provision of a nontaxable waste disposal service, must collect sales tax on the gross receipts[2] attributable to these sales/rentals in Oklahoma and report and remit same to the Oklahoma Tax Commission. Separately stated charges for the waste disposal 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[3]. 68 O.S. § 1357(3).

However, if provides the containers as part of its provision of the waste disposal service, it should not separately bill a container 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 waste disposal service.

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[1] Oklahoma Administrative Code 710:65-1-7 and 710:65-19-309

[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] To register for a sales tax permit, a completed Business Registration Packet (Packet A) available online at www.tax.ok.gov should be submitted, to the Taxpayer Assistance Division, Oklahoma Tax Commission, P.O. Box 26920, Oklahoma City, OK 73126-0920

This response applies only to the circumstances discussed in your written request of April 30, 2013. 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

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Tax Policy Analyst