

December 9, 2004

Re: Our File Number LR-04-223; Sales Tax on the purchase of building materials to be used in the area of "Site Construction" by a manufacturer.

Dear

This is in response to your inquiry made via email to [redacted] regarding the taxability of certain purchases by a manufacturer to be used in "building and expanding an existing" manufacturing facility.

I have set out your questions and comments below and each is followed by our response:

Your Question Number 1. In the roof the USDA requires that they place a vapor barrier that maintains the processing area at a constant temp (established by the USDA) and prevents condensation that would drip down and contaminant the food. Should this occur the whole batch would have to be discarded.

Our Response to Your Question Number 1. Since the placement of a vapor barrier in the roof is part of the area of "site construction", there is no exemption that would apply to the purchase of the material to be used as a vapor barrier.

Your Question Number 2. Stainless steel piping, drains, sinks and curbs. This is to allow the processing room to be cleaned to a microbiological level. It is necessary for the sanitation of the room to meet the standards. Concrete and galvanized will not- concrete is porous and can hold bacteria (listeria) and galvanized will deteriorate due to the chemicals used in cleaning that USDA requires.

Our Response to Your Question Number 2. Since the stainless steel piping, drains, sinks and curbs become part of the real property, they are classified as being part of the area of "site construction". There is no exemption that would apply to the purchase of the stainless steel piping, drains, sinks and curbs which become part of the real property.

Your Question Number 3. Precast concrete wall to prevent fire and explosion. This is fire proof for 3 hours. It houses the electrical controls to the equipment.

Our Response to Your Question Number 3. Since the placement of a precast concrete wall is part of the area of “site construction”, there is no exemption that would apply to the purchase of the precast concrete wall.

Your Question Number 4. Insulated wall panels- again stainless and insulated to maintain temp to keep food from spoiling.

Our Response to Your Question Number 4. Since the placement of insulated wall panels is part of the area of “site construction”, there is no exemption that would apply to the purchase of the insulated wall panels.

Your Question Number 5. Electrical- USDA requires a certain level of lighting and USDA grade stainless light fixtures. Would this be exempt?

Our Response to Your Question Number 5. Since stainless steel light fixtures become part of the building they are a part of the area of “site construction”, and there is no exemption that would apply to the purchase of the stainless steel light fixtures.

Your Question Number 6. A lot of items are required to be in stainless since it is a food processing facility. If it were not, some could be made out of cheaper materials. Would the stainless be exempt? If not what about the portion that was above and beyond the cost of standard materials? For instance- galvanized pipe is 2.00 a ft- Stainless is 4.00 a ft- could they only pay or accrue tax on the difference of 2.00?

Our Response to Your Question Number 6. Since the stainless steel pipe which is the subject of this question, becomes a part of the real property, the expenditure is classified as being for the area of “site construction” and the manufacturers’ sales tax exemption does not extend to the area of “site construction”.

The responses above are based on Oklahoma Tax Commission Rule 710:65-13-150.1 A copy is attached.

This response applies only to the circumstances set out in your request of November 10, 2004. Pursuant to Commission Rule 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.

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION

Michael G. Pillow
Tax Policy Analyst

cc: