

**STATE BOARD OF EQUALIZATION**

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June 3, 1988

M--- W. H---  
Sr. Excise Tax Analyst  
O--- P--- S---, Inc.  
P. O. Box XXX  
---, TX XXXXX

Re: SS -- XX-XXXXXX

Dear Mr. H---:

This is in response to your letters date March 21 and April 13, 1988 regarding the application of sales tax to a sale of an oil and gas lease with equipment.

O--- has a fee lease. You explain that in the oil and gas industry, a fee lease is where the lessee has surface and mineral rights and owns the land. O--- owns the equipment on the land, which you describe as follows:

- “A. All tanks are above ground with a sump or a retaining wall around them.
- “B. The casing is in the ground and attached to a well head above ground. Inside of the casing is the tubing which is hung from the well head and inside of the tubing are the rods which are attached to the downhole pumps in the well bore and attached to a pumping unit which is on a foundation above ground and run by an electric motor. The pumping unit causes the rods to go up and down pumping the oil from the ground. Attached to the well head are flow lines which carry the oil from the well to the tanks.

“C. The steam generator and boiler are attached to foundations at the lease site.”

If any buildings or improvements affixed to land are being sold, such sale would be subject to sales tax as a sale of tangible personal property only if, pursuant to the contract of sale, the buildings or improvements are to be severed from the land by the seller, O---. (Reg. 1596(a).) Otherwise, the sale of buildings and improvements affixed to land is not subject to sales tax. (Id.)

With respect to the sale of affixed fixtures, machinery, and equipment, Regulation 1596(c) provides:

“The transfer ‘in place’ of affixed fixtures, machinery and equipment, or draperies is taxable as a sale of personal property when removal of the fixtures, machinery or equipment, or draperies by the seller or purchaser is contemplated by the contract of sale. The transfer ‘in place’ of affixed fixtures, machinery and equipment, or draperies owned by a lessee of land or buildings to which those items are affixed, is also taxable as a sale of personal property when the lessee-seller has the present right to remove the items either as trade fixtures under Section 1019 of the Civil Code or under the express terms of the leases.”

Tanks with over 500 barrels capacity are regarded as improvements to realty. (Reg. 1521(a)(1)(A) and Appendix C, Business Taxes Law Guide Annot. 190.1040 (1/22/59).) If a tank has less than 500 barrels capacity and is not attached to realty, it maintains its status as tangible personal property and is not an affixed fixture. I assume the tanks you refer to are over 500 barrels capacity or are attached to realty.

Any item you list in categories B and C would be regarded as tangible personal property if installed so that it rests in position on the land by force of gravity and not otherwise attached to the land by concrete, bolts, or screws or physically connected to other property constituting an improvement to realty. (See, e.g., Reg. 1521(c)(7).) The sale of any such item would be subject to sales tax in the same manner as sales of other tangible personal property. However, as we understand your description, all items are either improvements to realty (e.g., casing installed in the ground), physically connected to such improvements (e.g., the tubing and rods), or attached to the realty by concrete, bolts, or screws (e.g., the pumping unit, steam generator, and boiler).

Provided all understandings and assumption set forth above are correct, we would regard the items being sold as improvements to realty or fixtures, machinery and equipment affixed to realty. (For example, if the electric motor or pumping unit listed in category B is not attached to realty, rather resting in place solely by force of gravity, the sale of such item would be a sale of tangible personal property subject to sales tax.) You state that O--- owns the land upon which the items are affixed. Therefore, assuming the contract of sale does not contemplate removal of the affixed fixtures, machinery and equipment, we would regard the entire sale as a sale of real property the sale of which is not subject to sales tax.

You also ask how sales tax would apply to the above transaction if, instead of a fee lease, a mineral lease or surface lease is involved where the seller of the equipment is not the owner of the land upon which the equipment is located. The sale of items constituting buildings on or improvements to realty (e.g., casing in the ground and tanks having over 500 barrels capacity) would not be subject to sales tax. (Reg. 1596(a).) Assuming the lessee/seller has a present right to remove the remaining items, we would regard the sale of those items (including affixed fixtures, machinery, and equipment) as a taxable sale of tangible personal property. (Reg. 1596(c).)

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

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