

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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June 15, 2001

Re: Our file number LR 01-33; Income Tax & Franchise Tax - Filing Requirements

Dear

This is in response to your inquiry of March 26, 2001 wherein you requested guidance on the filing of Oklahoma income and franchise tax returns. Following is a restatement of the facts presented in your letter, the questions posed and our response thereto.

FACTS:

Client is primarily involved in the business of mortgage banking. Although this corporation currently services loans in your state and may eventually hold a security interest in real property if foreclosure occurs, they have no offices, employees, or other representatives located in your state. The corporation is, however, registered to do business in your state, and obviously wishes to have rights in the courts of the state with respect to foreclosure.

As background, some states, like California, would classify our client, based on its activities, e.g., a company engaged in the business of soliciting loans secured by first deeds with the intention of assigning them to institutional investors is considered to be dealing in moneyed capital in competition with national banks and, therefore, for California franchise/income tax purposes is treated as a financial corporation. Other states, like Illinois, look to the specific categories of entities listed in the statutory definition of "financial organization" in the Illinois Income Tax Act. Mortgage banking corporations do not qualify as financial organizations for Illinois income tax purposes.

Our client's more specific facts are, as follows:

Our client is a mortgage banker, organized as a Limited Liability Company (LLC), taxed as a partnership, with its headquarters in _____, that began operations in your state in the year _____

Our client is registered to do business in each of the states in which it originates loans.

From its _____ office it solicits loan originations in Illinois, Indiana, Kentucky, Michigan, Ohio, Oklahoma and Tennessee.

Our client is planning to open a new loan origination office in _____ in _____. Up until that date all _____ loan originations were solicited and processed in Indiana.

Our client has an _____ office that solicits and originates loans in Arizona, California and Utah.

The personnel in the _____ office also work with two wholesale loan originators, who work out of home offices in _____ one wholesale loan originator in _____ and one wholesale loan originator in _____ who also both work out of a home offices.

Loan originations are solicited through advertisements in national publications, by making telephone calls to potential customers, by purchasing leads from telemarketing companies, and through referrals from affinity relationships with various banks, finance and insurance companies.

Our client does not currently advertise in local or so-called "national" yellow pages, but is currently considering doing both types of advertising.

Loans that are originated by our client are funded on their behalf by various title companies, who also prepare loan packages and perform the closings on behalf of our client.

Our client also purchases loans from other loan originators and resells them.

QUESTIONS:

1. Based on the above description of our client's activities in your state, do these activities create nexus for income and/or franchise tax purposes in your state for either the LLC or its members? If so, please cite your statutory authority and/or other basis for that determination.
2. Based on the above description of our client's activities in your state, would your state classify and treat the LLC as a regular LLC or would it be treated as a financial institution or financial organization under your state's law? Please cite the statutory authority and/or other basis for your determination.
3. Does your state require LLCs or its members to file income and/or franchise tax returns, if the LLC does not have nexus in your state, but is registered to do business? If so, please cite your statutory authority and/or other basis for that determination.

4. If the LLC or its members are required to file income and/or franchise tax returns in your state, please provide guidance as to the specific filing requirements, e.g., which tax forms need to be filed, for both the LLC and its members. If members are required to file income tax returns, are composite returns permitted for individual members and are there nonresident withholding requirements for individual members? Please cite the statutory authority and/or other basis for your determinations.
5. If the LLC or its members are required to file income and/or franchise tax returns in your state, please provide guidance on the sourcing rules for apportionment factor purposes of:
 - a. how revenue from loan origination fees, where loans are closed in your state on behalf of our client by unrelated third-parties, is sourced for the sales or receipts factor;
 - b. how interest income from loans on real property located in your state are sourced for the sales or receipts factor; and
 - c. whether loans held by our client are included in the property factor and how are they sourced.

RESPONSE:

1. Based on the description of your client's activities in Oklahoma, it appears that there is not sufficient nexus to create an Oklahoma income tax filing requirement. It does appear that the activities would be sufficient to require franchise tax filing. However, under 68 O.S. § 1201, LLC's are exempt from Oklahoma franchise tax.
2. For tax purposes, the above-described LLC would be classified as a regular LLC.
3. There is no requirement to file an income tax return for registering to do business in Oklahoma. As for franchise tax purposes, the definition of doing business is broader and a return could be required. However LLC's are specifically exempt from Oklahoma franchise tax. (68 O.S. § 1201).
4. For income tax purposes, a LLC that is required to file an Oklahoma income tax return must file an Oklahoma partnership return, OTC Form 514. Composite returns are allowed for partnerships after permission has been granted by the Oklahoma Tax Commission. There is no nonresident withholding requirement for individual members of the LLC.

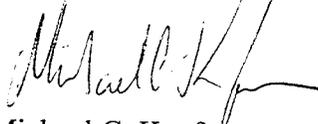
- 5.
- a. Revenue from loan origination fees on loans closed in Oklahoma would be Oklahoma sales for sales factor purposes.
 - b. Interest income from loans on real property located in Oklahoma would be sourced to Oklahoma for the sales factor.
 - c. Loan value would not be included in either the numerator or denominator of the property factor.

This response applies only to the circumstances set out in your request of March 26, 2001. 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 call me at (405) 521-3133.

Sincerely,

FOR THE OKLAHOMA TAX COMMISSION



Michael C. Kaufmann
Tax Policy Analyst