

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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August 23, 2002

Re: Our file number LR 02-031; Income Tax; Withholding for a non-resident employee.

Dear Ms. Davis:

This letter is in response to your inquiry of March 20, 2002 wherein you requested guidance concerning the Oklahoma income tax withholding for a non-resident employee. Following is a restatement of the fact outlined in your correspondence, your questions and our response thereto.

FACTS:

Employee salesman works for Oklahoma based company but lives in Texas. Salesman works out of Texas and all over the country. Has occasion to come to Oklahoma for meetings at the company.

Salesman also received a stock option from the Oklahoma based company.

QUESTION 1:

Are we required to withhold tax for this employee?

RESPONSE TO QUESTION 1:

No. Withholding is required for non-resident employees who perform services in Oklahoma. Please see enclosed Title 68 Section 2385 which details withholding requirements. Also note, for purposes of this response, it is assumed that the employee salesman is a resident of Texas. The response would be different if the salesman were an Oklahoma resident.

QUESTION 2:

Does the employee salesman have to pay Oklahoma income tax on the stock options received from the Oklahoma based company.

RESPONSE TO QUESTION 2:

Again assuming that the employee salesman is a Texas resident, there is no Oklahoma income tax on a stock option granted to a Texas resident if the option is exercised and the proceeds are received while he is a Texas resident. Oklahoma does not tax intangible income (i.e. proceeds from stock options) of non-residents.

This response applies only to the circumstances set out in your request of March 20, 2002. Pursuant to Commission Rule 710:1-2-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all the pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of any additional assistance, please feel free to call me at (405) 521-3133.

Sincerely,

FOR THE OKLAHOMA TAX COMMISSION



Michael C. Kaufmann
Tax Policy Analyst