

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133  
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August 23, 2002

Re: Our file number LR-02-110; Income Tax - Non Resident Withholding for Oil & Gas Royalties

Dear

This letter is in response to your inquiry of July 3, 2002 wherein you inquired as to the withholding requirement on oil and gas royalties for non-Oklahoma residents. Specifically, you have information of a family trust that is claiming to be an Oklahoma resident trust, with a Colorado address.

*Analysis:*

68 O.S. § 2385.25 et seq. requires Oklahoma income tax to be withheld on Oklahoma oil and gas royalties paid to non-resident entities, including trusts. 68 O.S. § 2353 (6) defines resident and non-resident trusts as follows:

**"Resident trust" means (a) a trust, or a portion of a trust, consisting of property transferred by will of a decedent domiciled in this state at his death, or (b) a trust, or a portion of a trust, consisting of the property of a person domiciled in this state if such trust is not irrevocable and (c) a trust, or portion of a trust, consisting of property of a person domiciled in this state at the time such property was transferred to the trust if such trust or portion was then irrevocable or a person domiciled in this state at the time such trust or portion became irrevocable. A trust, or portion of a trust, is irrevocable if it is not subject to a power exercisable solely by the transferor of such property, at any time, to revert title in himself. "Nonresident trust" means a trust other than a resident trust;...**

*Conclusion:*

Based on the information provided, it appears that you are paying royalties to an Oklahoma resident trust that has a Colorado address. If this trust is in fact an Oklahoma resident trust, withholding is

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not required under 68 O.S. § 2385.25.

This response applies only to the circumstances set out in your request of July 3, 2002. 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

A handwritten signature in black ink, appearing to read "Michael C. Kaufmann", with a stylized flourish at the end.

Michael C. Kaufmann  
Tax Policy Analyst