

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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May 5, 2003

Re: Our file number LR 03-056; Income Tax - Payroll Factor and Corporate Income Apportionment

This is in response to your inquiry of March 1, 2003 in which you posed several questions relating to Oklahoma's treatment of the payroll factor as it relates to corporate income tax and apportionment. Following is a restatement of your question with our response thereto.

Question 1:

Are severance and other termination payments, subject to FICA taxes, included on an employee's W-2 form as compensation and reported on form 941 included in the numerator and denominator of the payroll factor?

Response:

Yes, except for compensation paid to officers. 68 O.S. § 2358 (A)(5)(b) specifies, "*The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. "Compensation", as used in this subsection, means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.*"

Question 2

Are severance and other termination payments treated as supplemental unemployment benefits, which are not subject to FICA taxes, included on an employee's W-2 form as

compensation and reported on form 941 included in the numerator and denominator of the payroll factor?

Response:

Yes, except for compensation paid to officers. See 68 O.S. § 2358 (A)(5)(b) from response to question 1.

Question 3:

Is income generated from the exercise and sale of long-term performance based stock options, subject to FICA taxes, included on an employee's W-2 form as compensation and reported on form 941 included in the numerator and denominator of the payroll factor?

Response:

Yes, except for compensation paid to officers. See 68 O.S. § 2358 (A)(5)(b) from response to question 1.

This response applies only to the circumstances set out in your request of March 1, 2003. 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