OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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October 20, 2003

Re: Our file number LR 03-189; Income Tax - Pass-Through Entity Withholding

Dear

This is in response to your inquiry of September 23, 2003 regarding Oklahoma income tax withholding required of pass-through entities on distributions made to non-resident members. Following is an exact restatement of your questions and our response thereto.

Question 1:

As the taxable income on pass thru entities is furnished to an entity member on a Form K-1 rather than actual cash distributed what should the withholding be based on and when should tax be withheld? The due date for pass thru entities is March 15 for "S" corps and April 15 for partnership, trusts, and LLC's. As these tax returns can be very complex and the taxable income can be different than book income there is no way of knowing what taxable income is until the return is completed (possibly as late as October 15, with approved extensions).

Response:

Withholding is required at the time of the distribution. In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the cash distribution or the Oklahoma net distributed income if determinable at the time of distribution.

Question 2:

Some pass thru entities have out of state income as well as Oklahoma income, what is the guidelines for withholding Oklahoma income tax on cash distributions to members from pass thru entities where the entity has both Oklahoma taxable income and non-Oklahoma taxable income.

Response:

Withholding is only required on Oklahoma source income distributed to non-resident members.

Question 3:

What is the guidelines (sic) for distributions from entities which have income exempt from Oklahoma income tax (ie U.S. Government interest)? What are guidelines for withholding and paying the withheld tax to Oklahoma in the above situations? It appears if remittance is required, before the tax returns are completed, the remittance will have to be on an estimated basis. What are regulations on penalties and interest if the estimated withheld tax is incorrect? Where there are several pass thru entities in a related group and some entities will have a pass thru loss which will offset part or all of the income from the other entities. What are guidelines in this circumstance?

Response:

With regards to income exempt form Oklahoma income tax, pass-through entities making distributions of income not subject to Oklahoma income tax are ***not*** *required to withhold on those distributions. Title 68 O.S. § 2385.31 specifies the penalties on the pass-through entity for under withholding. A copy is enclosed for your review.*

With respect to the loss offset, withholding is still required on the taxable distributions. If distributions are made from one pass-through entity to another pass-through entity withholding is not required on those distributions.

This response applies only to the circumstances set out in your request of September 23, 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