

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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October 20, 2003

Re: Our file number LR 03-193; Income Tax - Pass-through Entity Withholding

Dear

This is in response to your inquiry of October 6, 2003 wherein you requested guidance concerning the recently enacted Pass-through Entity Withholding statute (68 O.S. § 2385.29 et seq.) Following are the facts outlined in your letter, the specific questions you posed, and our responses thereto.

FACTS:

is organized as an S corporation for federal and Oklahoma tax purposes. Our offices are located in Wisconsin. We currently have 31 shareholders, none of which are residents of Oklahoma or have any other income derived from the state of Oklahoma. In the past we have elected to pay the shareholders' share of income apportioned to Oklahoma on the corporation's Oklahoma tax return, Form 512-S, at a rate of 6%.

QUESTION 1:

The cover letter we received says the corporation must withhold 5% of the Oklahoma share of income distributed to each non-resident shareholder. However, the HB 1356 Information Sheet says withholding is required on distributions made to non-residents. Is this requirement referring to the actual cash distributions made to shareholders or does it refer to the corporation's income that is taxed on a shareholder level?

RESPONSE:

Withholding is required on the cash distribution.

QUESTION 2:

If the corporation only makes distributions to cover shareholder tax liabilities by making direct

payments to the federal and state governments on behalf of its shareholders, does withholding need to be remitted as taxes are paid?

RESPONSE:

To the extent those distributions are subject to Oklahoma income tax withholding would be required.

QUESTION 3:

Why would taxes need to be withheld on distributions that qualify as non-taxable due to a sufficient balance in the corporation's AAA?

RESPONSE:

Withholding would not be required on any distribution not subject to Oklahoma income tax.

QUESTION 4:

How do we, as a multi-state company, determine the portion of a distribution that is subject to Oklahoma withholding requirement?

RESPONSE:

To determine the Oklahoma portion of a distribution, normal apportionment rules under 68 O.S. § 2358 would apply.

QUESTION 5:

Are we as a corporation no longer going to be allowed to report the shareholder's portion of tax on a "composite" or group basis on our Form 512-S (currently at a rate of 6%)? And if not, why not? It would seem that the composite filing is good for everyone. It saves tax return preparation time for the shareholders and your department saves time because it only has to process one tax return instead of a return for every shareholder.

RESPONSE:

Composite returns are still allowed for S-Corporations. The Form 512-S will allow for the shareholders withholding to be claimed when filing on a composite basis.

This response applies only to the circumstances set out in your request of October 10, 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

A handwritten signature in cursive script, appearing to read "Michael C. Kaufmann". The signature is written in black ink and is positioned above the printed name.

Michael C. Kaufmann
Tax Policy Analyst