OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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November 4, 2003

Re: Our file number LR 03-221; Income Tax - Withholding on Pass-through Entities

Your inquiry of September 30, 2003 to Thomas Kemp, Chairman of the Oklahoma Tax Commission regarding HB 1356 has been forwarded to me for a response. Your letter of October 24, 2003 to Chairman Kemp regarding your 2002 income tax refund has also been forwarded to me.

In your letter of September 30, 2003 you expressed some concerns as to the interaction of the Oklahoma income tax withholding requirement on royalty income paid to non-residents (68 O.S. § 2385.25) and the newly enacted withholding requirement for distributions made to non-resident members of pass-through entities (68 O.S. § 2385.29).

It is the position of the Tax Policy Division that the withholding requirements on pass-through entities under 68 O.S. § 2385.29 et seq. **does not** apply to those entities that have withheld tax on royalty interest income under 68 O.S. § 2385.25 et seq. Pass-through entities are not required to withhold income tax under 68 O.S. § 2385.29 for any distribution of royalty income on which the 6.75% royalty interest income tax has already been withheld. This position has been recommended to and adopted by the Tax Commission through the promulgation of an emergency rule under the Administrative Procedures Act. [Rule 710:90-3-11 was adopted by the Commission on October 7, 2003]. This rule is not yet in effect since not yet signed by the Governor, but it is the intended policy of the Oklahoma Tax Commission.

As to your refund claim for tax year 2002, we were unable to verify the Oklahoma income tax withheld on your Oklahoma form 511NR as filed. Supporting documentation from the partnership was not attached. We then corresponded requesting W-2's and 1099's, but failed to specify that we were attempting to verify the Oklahoma withholding on the royalty income distributed from the partnership. I verified the amount of withholding from the partnership and have taken steps to have your 2002 refund processed. You should receive your refund check of within the next fourteen (14) days. We cannot, however, pay interest since the proper supporting documentation was not attached to the return as filed.

This response applies only to the circumstances set out in your request of September 30, 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

Cc: Thomas E. Kemp, Jr. - Chairman, Oklahoma Tax Commission
Douglas B. Allen - General Counsel, Oklahoma Tax Commission