

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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December 1, 2004

Re: Our File No. LR-04-227 – Registration of Out of State Attorneys

Dear

Receipt is acknowledged of your email inquiries wherein you request a letter ruling regarding the Commission's application and interpretation of the new rules regarding the Registration of Out-of-State Attorneys (710:95-13-1). After reviewing your emails, it appears as though there were four primary issues raised. They are listed below followed by our responses.

- A. What is the frequency in which a client has to pay to the Commission the five percent (5%) tax withheld from the fees paid to an out-of-state attorney registered pursuant to Title 5 O.S. Section 1.1 et seq.?

**Response:** The five percent (5%) withheld from all amounts paid for legal services performed in Oklahoma pursuant to 5 O.S. §1.6 and in connection with any proceeding described in 5 O.S. §1.2 is to be remitted on or before the fifteenth (15<sup>th</sup>) day of the month following the date on which payment for the legal services is made. See OAC 710: 95-13-1(e).

- B. From the perspective of the attorney representing defendants in a civil case, which person or entity has to submit Form 500-C and whose tax return is to be submitted?

**Response:** Form 500-C, Information Return-Report of Out –Of-State Attorney Income Tax Withheld, must be completed annually and report the total amount paid during the calendar year for the legal services on which income tax was required to be withheld and to report the total amount of income tax withheld. Pursuant to 5 O.S. §1.6(B), out-of-state attorneys are required to report annually all income derived from legal services performed in connection with any proceedings under 5 O.S. §1.2(A). The Registration of Out-Of-State Attorneys Act does not address the registration of firms, corporations, partnerships, etc. but registration of a “lawyer” and “lawyer” is not defined in the statute. Form 500-C must be enclosed with the income tax return of the attorney or entity reporting the income and claiming the withholding. If legal fees are paid to a firm, of which the out-of-state attorney is a member, the firm then has a reporting requirement of income earned in Oklahoma and the registered attorney also has a reporting requirement for that portion of the lawyer's income which was generated from services performed in Oklahoma.

- C. "Numerous professionals in non-legal vocations work or practice in Oklahoma on an infrequent basis and are not taxed by the state on income they earn here." (Quoted from email message, dated Nov. 23, 2004.)  
**Response:** Pursuant to 68 O.S. §2368(A)(3), "every nonresident individual having Oklahoma gross income for the taxable year of One Thousand Dollars (\$1,000.00) or more," is required to file a return with the State of Oklahoma. See, also, OAC 710:95-13-1(f).
- D. Is the legislature considering repealing this new tax law for the reasons stated in your email message of Nov. 23, 2004, and because it (the new tax law) infringed on the sole right of the Oklahoma Supreme Court to regulate the practice of law in this state?  
**Response:** The Tax Policy Division is not aware of any planned action by the Oklahoma legislature to repeal this law at this time.

It is my understanding that a copy of the rule cited herein has been provided, previously. If I can be of further assistance, please feel free to contact me.

Sincerely,  
**OKLAHOMA TAX COMMISSION**



Evelyn B. Phyffer  
Tax Policy Analyst

cc: Jerry Webb, Assistant Director  
Taxpayer Assistance Division