OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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January 11, 2006

Re: Our File No. LR-06-006; Gross receipts tax claim for refund

I am writing in response to you inquiry as to whether is entitled to a refund of gross receipts tax levied pursuant 68 O.S. § 1803. Section 1803 of Title 68 levies on as an Oklahoma rural electric cooperative, an annual tax of "2% of the gross receipts derived by . . . [the cooperative] from the sale and distribution of electric energy during the calendar year." Pursuant to its business practices, then passes on the tax, as a line item cost of service, to its member-customers, one of which is the

In Chickasaw Nation v. Oklahoma Tax Commission, 515 U.S. 450 (1995), the United States Supreme Court stated that "when Congress does not instruct otherwise, a State's excise tax is unenforceable if its legal incidence falls on a Tribe or its members for sales made within Indian country." In this case, since the legal incidence of the gross receipts tax imposed pursuant to Section 1803 of Title 68 does not fall on the as the consumer or user of the electricity but on the , the is not entitled to a refund of the gross receipts tax levied on

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar
Tax Policy Analyst