OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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November 27, 2006

Re: Our file number LR 06-029 Income Tax - Interaction and Applicability of the Oklahoma Quality Jobs Incentive Act and the Oklahoma Research and Development Incentives Act

Dear

This is in response to your inquiry of February 8, 2006 wherein you requested a letter ruling concerning the applicability of the Oklahoma Quality Jobs Incentive and the Oklahoma Research and Development Incentives Act. Following are the facts outlined in your letter, the reason the ruling was requested, and our response thereto.

FACTS:

Taxpayer is an information technology, data processing, and business process outsourcing services provider with facilities and employees in Oklahoma.

Taxpayer's data processing operations in Oklahoma (Subunit No.1) are currently entitled to receive an exemption from sales and use tax pursuant to the Oklahoma Research and Development Incentives Act (68 O.S. § 54003). Specifically, the functions of Taxpayer's Subunit No.1 are classified in the 1987 version of the United States Standard Industrial Classification (SIC) system under group 7374, which correspond to the 1997 version of the North American Industrial Classification System, United States (NAICS) under group 51421 and to the 2002 version of the NAICS under group 51821.

In order to qualify for this exemption, Taxpayer's Subunit No. 1 is a qualified purchaser which makes qualified purchases which would otherwise be subject to sales or use tax, In addition, Taxpayers Subunit No. 1 is primarily engaged in computer services and data processing as defined in the Oklahoma Research and Development Incentives Act, and has annually filed an affidavit to that effect with the OTC as required. In calculating the number of new full-time-equivalent in-state employees required of a qualified purchaser Taxpayer Subunit No. 1 has not included any employee positions of any business enterprise doing business in Oklahoma as of January 1, 1992. Finally, taxpayers Subunit No.1 has filed all necessary documentation as required by the Oklahoma Research and Development Incentives Act.

Taxpayer's business process outsourcing service (Subunit No.2) provides telephone call center services which are classified under 1987 SIC group 7389, which correspond to the 1997 NAICS group 561422

and to the 2002 NAICS group 561422. Taxpayer's Subunit No. 2 does not currently receive any benefits under the Oklahoma Research and Development Incentives Act.

Taxpayers Subunit No.1 and Subunit No.2 utilize employees who are actually employed by Taxpayers Affiliate. The Affiliate charges an arm-length fee doe the employers services. The Affiliates only income is from these inter-company fees.

REASON FOR THE LETTER RULING AND OTC RESPONSE THERETO:

Taxpayer's Subunit No. 2 may establish a telephone cal center in Oklahoma which could ultimately employ as many 1,200 Oklahomans. This letter ruling is needed to allow Taxpayer and the Oklahoma Department of Commerce (ODOC) to determine whether or not Taxpayer can qualify for certain economic development incentives under the Quality Jobs Act. The Quality Jobs Act limits the ability of a business entity to receive both Quality Jobs Act incentives and sales and use tax exemptions under the Oklahoma Research and Development Incentives Act.

Taxpayer concludes from the plain and unambiguous language of the relevant statutes, from the administrative interpretation by ODOC expressed in its rules, and from the overall legislative scheme, that Taxpayers Subunit No. 1 and Subunit No. 2 should be treated separately and that Subunit No. 2 may qualify for and receive incentive payments under the Quality Jobs Act without affecting Subunit No. 1's exemption under the Oklahoma Research and Development Incentives Act.

68 O.S. § 3607 provides, in part, that a qualified establishment receiving an incentive payment pursuant to the provisions of the Quality Jobs Incentive Act are ineligible to receive a variety of credits or exemptions in connection with the activity for which the incentive payment (Quality Jobs) was received. The exemption form sales and use tax under the Oklahoma Research and Development Incentives Act is one of the exemptions included in 68 O.S. § 3607. Based on the facts outlined in your letter, Subunit No. 2 activities are not the same activities as Subunit No 1, and therefore are eligible for the incentive authorized under the Quality Jobs Incentive Act.

This response applies only to the circumstances set out in your request of February 8, 2006. 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. Further, no analysis was done as to the qualifications under the Oklahoma Research and Development Incentives Act and this letter ruling is not an endorsement of the available sales and use tax incentives claimed or claimable by the taxpayer

Sincerely,

FOR THE OKLAHOMA TAX COMMISSION

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