August 6, 2007

Re: LR-07-092 – Withholding Tax Inquiry

Dear

Receipt is acknowledged of your inquiry wherein you requested a clarification on the withholding tax treatment of an out-of-state employee. The facts as stated in your request are that the out-of-state employee is a resident of Texas, is a salesman not reporting to your office on a daily basis, and has his check direct deposited in Texas. You ask the following questions:

1. Are you "required to do state withholding on him"?
Our response: Title 68 O.S. Section 2385.3 specifies when withholding is required. Generally, non-residents are not subject to Oklahoma income withholding on wages unless that person has earned income in Oklahoma in excess of $300.00 for a calendar quarter (68 O.S. Sec.2385.1).

2. Is he "required to file a non-resident tax return"?
Our response: Non-resident individuals in Oklahoma are subject to filing an Oklahoma income tax return if they have Oklahoma gross income of at least one thousand dollars ($1,000.00) for the taxable year (68 O.S. Sec. 2368) from Oklahoma sources. (See, also, OAC 710:50-3-38) The proper form for nonresident individuals to file their income tax return in Oklahoma is form 511 NR.

Copies of Commission rules and statutes cited herein are attached. Statutes referenced herein may also be viewed at the following website by entering the appropriate section number as the search term:

www.oscn.net/applications/oscn/search.asp?simple=true

The rules referenced herein may be viewed at the following website by entering the rule number as the search term:

www.oar.state.ok.us/oar/codedoc02.nsf/

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.

Sincerely,
OKLAHOMA TAX COMMISSION

Evelyn B. Phyffer
Tax Policy Analyst
Attachments (4)