OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

September 7, 2007

Re: Our file number LR 07-126; Income Tax - Severance Pay

Dear

This is in response to your inquiry of June 18, 2007. What follows is verbatim your facts and requested ruling and our response thereto.

We respectfully request guidance from the Oklahoma Tax Commission as it relates to the following situation. Our client, in the ordinary course of its business, sometimes terminates employees on an involuntary basis. At that time, an employee may be entitled to certain severance payments which are based upon certain formulae and criteria. Additionally, Internal Revenue Code section 409A may require that certain payments made by to certain key employees based upon such criteria to be delayed for a period of six months. The employee moves from Oklahoma (whereby all services were performed by the employee's entire career with) to another state during the required six month period and establishes legal residence in such state prior to the date that the payment is made. Therefore, the payment is made by and the payment is received by the former employee when he/she is a resident of another state. The payment will be reported as wages on a Form W-2 for the year in which the payment is made. would like to ask the following questions:

1. Is required to withhold Oklahoma income tax on such payment and report such payment as income attributable to Oklahoma on the employee's Form W-2?

would not be required to withhold on severance pay to former employees if the payment is made while the former employee is not a resident of Oklahoma.

2. Is the payment to the former employee that resides in another state at the time the payment is received subject to Oklahoma income tax on such payment in the year that it is received?

The payment to the former employee that resides in another state at the time the payment is received would not be subject to Oklahoma income tax on such payment in the year that it is received

This response applies only to the circumstances set out in your request of June 18, 2007. 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