# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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January 16, 2008

Re: Letter Ruling Request – Joint Venture; Our File No. LR-07-161

Dear :

I am writing in response to your request regarding the taxability of a transfer of assets pursuant to the formation of a limited liability company. The facts presented in your request are set forth verbatim along with the question posed and the response thereto.

**FACTS**

Taxpayer #1, Taxpayer #2 and Taxpayer #3 will create the Joint Venture to own and operate certain target assets, including assets located in Oklahoma (the "Transaction"). The Joint Venture will be formed as a limited liability company, with Taxpayer #1 and Taxpayer #2 owning membership interests. In conjunction with the Transaction, Taxpayer #2 a wholly owned subsidiary of Taxpayer #3 will contribute its interest in the target assets to the Joint Venture in exchange for 100% of the Class A membership interests in the Joint Venture limited liability company. Taxpayer #1 will simultaneously contribute cash equal to the value of the assets to the Joint Venture in exchange for 100% of the Class B membership interest in the Joint Venture limited liability company. The Joint Venture will then loan the cash to Taxpayer #3 in exchange for a note (the "Note").

Upon consummation of the transaction, Taxpayer #1 and Taxpayer #2 will each receive equal capital interests in the Joint Venture limited liability company, with Taxpayer #1 being the managing member.

Taxpayer #2's Class A membership interest entitle Taxpayer #2 to a preferred return on its invested capital roughly equal to the interest paid on the Note plus a 5% sharing in the net profits of the Joint Venture. Taxpayer #1's Class B membership interests entitle Taxpayer #1 to 95% sharing in the bottom-line net profits of the Joint Venture. In general, the Joint Venture will pay out all post-closing cash flow available for distribution on a quarterly basis with 95% of distribution going to Taxpayer #1 and 5% of distribution going to Taxpayer #2.

Question #1
Is the Joint Venture Transaction described above subject to Oklahoma sales tax or exempt by means of 68 O.S. § 1360?

The sale of tangible personal property, unless specifically exempted by the provisions of the Oklahoma sales tax code, is subject to the levy of sales tax. 68 O.S. §1354(A)(1). "Sale" is defined to mean, "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state. . . ." 68 O.S. §1352(22).

The Legislature has exempted certain specific transfers of tangible personal property from the levy of sales tax. 68 O.S. § 1360(A)(6) effective through December 31, 2007 provided a sales tax exemption for the transfer of tangible personal property "[t]o a limited liability company in the organization of the limited liability company if the former owners of the property transferred are, immediately after the transfer, members of the limited liability company and the interest in the limited liability company received by each is substantially in proportion to the interest in the property prior to the transfer."

Section 1360(A)(6) was amended effective January 1, 2008[1] and renumbered as Section 1360(1)(f) providing for a sales tax exemption for the transfer of tangible personal property "to a limited liability company in the organization of the limited liability company if the former owners of the property transferred are, immediately after the transfer, members of the limited liability company and the value of the interest in the limited liability company received by each is substantially in proportion to the value of the interest in the property transferred by all the former owners."

Pursuant to the facts presented Taxpayer #2, the current owner of the assets, will receive 50% of the capital of the newly formed limited liability company upon contribution of the assets. Taxpayer #1 in return for its contribution of cash equal to the value of the contributed assets, will receive 50% of the capital of the newly formed limited liability company. Both will be members of the limited liability company. Therefore the transaction in question is specifically exempted from the sales tax levy pursuant to the above referenced statutory provision.

This response applies only to the circumstances discussed in your request of October 1, 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 there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar

Christy J. Caesar
Tax Policy Analyst

[1] Laws 2007, c. 346, § 1