OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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February 6, 2008

Re: LR-07-201

Dear

This is in response to your inquiry of November 9, 2007 concerning the calculation of the holding period of property for the purposes of determining whether gains recognized on sales qualify for the Oklahoma capital gain deduction under 68 O.S. § 2358 (F)(1).

Statement of Facts:

1. is an Oklahoma Limited Liability Company organized on

2. was an Oklahoma Limited Partnership organized on .

3. was liquidated during 2006 and the assets of the partnership were transferred to , is owned by the same members who had been partners in . The ownership interests in are identical to the ownership interests in at the time of its liquidation.

4. The assets transferred from were sold by in 2007. is currently in the process of liquidation.

Rulings Requested and OTC Responses:

The following rulings are respectfully requested for the purpose of determining if the holding period requirements of Section 2358.F.2 of the Oklahoma Statutes are satisfied.

1. The members of may include the holding periods of their interests in both , and in determining the holding periods of their indirect interests in the assets sold by

Yes.

2. In calculating the holding period of assets sold, , may include the period the assets were owned by .

68 O.S. § 2358(F)(1) of the Oklahoma Statutes provides for a deduction from Oklahoma adjusted gross income of any individual taxpayer for qualifying gains receiving capital treatment that are included in the Federal adjusted gross income of the taxpayer during the year. Qualifying gains receiving capital treatment include gains from the sale of real or tangible personal property located within Oklahoma that has been directly or indirectly owned by the taxpayer for a holding period of at least five years [68 O.S. § 2358(F)(2)(a)(1)]. Also, qualifying gains receiving capital treatment include gains from the sale of stock or the sale of a direct or indirect ownership interest in an Oklahoma company, limited liability company, or partnership where such stock or ownership interest has been directly or indirectly owned by the taxpayer for a holding period of at least two years. [68 O.S. § 2358(F) (2) (a) (2)]

In the fact pattern presented, was liquidated in 2006 and the assets transferred to . then sold those assets in 2007. It is not clear that the 2007 transaction did, in fact, result in a capital gain to the members of nor are we able to determine what type of assets were ultimately sold by . In fact, under IRC § 735, it appears that certain transactions give rise to ordinary income. If these gains are in fact capital gains, then the exclusion under 68 O.S. § 2358 (F) (1) would be available.

4. Section 2358.F.2.e provides that "indirect" means the taxpayer owns an interest in a pass-through entity (or chain of pass-through entities) that sells the asset that gives rise to the qualifying gains receiving capital treatment.

Yes.

5. Section 2358.F.2.e(1) provides, in part, that with respect to sales of real or tangible personal property located within Oklahoma, the deduction for qualifying gains shall not apply unless the pass- through entity that makes the sale has held the property for not less than five uninterrupted years prior to the sale.

Yes.

6. Section 2358.F.2.e (2) provides, in part, that with respect to sales of stock or an ownership interest in an Oklahoma company, limited liability company, or partnership, the deduction for qualifying gains shall not apply unless the pass-through entity that makes the sale has held the stock or ownership interest for not less than two uninterrupted years prior to the sale.

Yes.

7. Senate Bill 685 amended Section 2358.F.2.b to provide that the holding period of property includes any additional period when the property was held by another individual or entity, if such additional period is included in the taxpayer's holding period for the asset pursuant to the Internal Revenue Code. The amendment is effective January 1,2008.

Yes.

8. Section 735(b) of the Internal Revenue Code provides, in general, that a distributee partner includes the partnership's holding period in determining the holding period of property received in a distribution from a partnership.

We are unable to provide advice on the Internal Revenue Code.

9. Under Section 1223(2) of the Internal Revenue Code, a partnership's holding period of a contributed asset includes the holding period of the asset to the contributing partner.

We are unable to provide advice on the Internal Revenue Code.

This response applies only to the circumstances set out in your request of November 9, 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,

OKLAHOMA TAX COMMISSION

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