OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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October 8, 2008

Re: LR 08-127; Income Tax Inquiry

Dear

This is in response to your inquiry of September 4, 2008 wherein you requested a ruling concerning the Oklahoma income tax treatment of a capital gain from a sale of a partnership interest. What follows is verbatim your facts and the question you posed and our response thereto.

FACTS:

I have an individual taxpayer who is a stockholder in an Oklahoma Sub-S corporation. In 1997, this Sub-S corporation transferred assets, in exchange for a partnership interest, into an LLC with "primary" headquarters in This LLC had taxable nexus in approximately 19 states including Oklahoma. This LLC is not a publicly traded partnership. This LLC did register in Oklahoma. In 2006, the Oklahoma Sub-S corporation sold its partnership interest in the LLC. The capital gain from that sale was passed through the Sub-S corporation to the shareholder. I understand that the individual taxpayer cannot take the Capital Gain Exclusion due to the fact that the sale of the LLC interest was not the sale of an Oklahoma company with its "primary" headquarters in Oklahoma.

QUESTION:

My question is can this gain be apportioned to Oklahoma based on apportionment rules under Statute 2358 (A)(4)(b)(1)?

OTC RESPONSE:

68 O.S. § 2358 (A)(4) states in part:

" Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:

a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;

b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:

(1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; interest income from investments held to generate working capital for a unitary business enterprise shall be included in apportionable income; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,..."

Based on the information in your letter, we do not believe that the partnership interest has acquired a commercial situs apart from the domicile of the taxpayer and would therefore not be eligible for apportionment under 68 O.S. § 2358 (A)(4)(b)(1). Rather the gain must be allocated to Oklahoma by the resident individual.

This response applies only to the circumstances set out in your request of September 4, 2008 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

Michael C. Kaufmann
Tax Policy Analyst