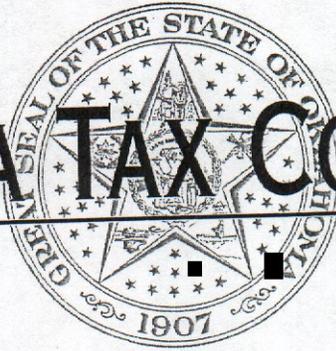


OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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

November 8, 2012

[REDACTED]

Re: LR 12-090 Business Activity Tax – State Question 766

Dear [REDACTED]

This is in response to your amended inquiry dated October 29, 2012 (received via email) wherein you requested a policy statement concerning the effect on the outcome of SQ766 on the filing of Business Activity Tax Returns and Corporate Franchise Tax Returns during Calendar 2013. What follows is verbatim your facts; question posed and our response thereto.

FACTS

I've been asked to submit an article to the Oklahoma Society of CPAs by November 15 regarding the effect of the outcome of SQ 766 on the filing of Business Activity Returns and Corporate Franchise Returns during the calendar year 2013.

In looking at the existing statutes, it appears to me in either case a straight forward interpretation results in a calendar year corporation being subject to essentially the same tax twice in the same calendar year. A BAT return for 2012 based on 2012 income would be due 7/1/2013 and a franchise return also based on 2012 financials for the franchise tax year 2013-2014 would be due the same date.

Businesses and accountants will need to know the answers to these questions when preparing tax returns for 2012 as BAT and franchise tax returns need to be prepared at the same time.

QUESTION POSED

So this is to request a formal policy statement as to when franchise tax returns will again be required.

OTC RESPONSE:

Senate Joint Resolution 52 was adopted during the 2012 legislative session and submitted to the voters of the State of Oklahoma a proposal to amend Section 6A of Article 10 of the Oklahoma Constitution to provide that beginning January 1, 2013, intangible personal property shall not be subject to ad valorem tax or to any other tax in lieu of ad valorem within this State. Therefore, State Question 766 has been put on the November 6, 2012 ballot in Oklahoma.

Senate Bill 1436 was also enacted during the 2012 legislative session and became effective November 1, 2012. The provisions of SB 1436 extends the Business Activity Tax (BAT) through 2013 unless Senate Joint Resolution 52 is approved by a vote of the people and certified by the Election Board. If such approval and certification occurs, the Business Activity Tax will expire at the end of 2012 as scheduled under current law.

Senate Joint Resolution 61 was enacted during the 2010 legislative session and became effective August 27, 2010. SJR 61 expressed the intent of the Legislature to place a moratorium on the levy of the franchise tax and enact a tax "in lieu" of ad valorem taxes on intangible personal property of locally assessed business entities. The *Oklahoma Business Activity Tax Code* was enacted (68 O.S. § 1215 et. seq.). Under 68 O.S. § 1228 the *Business Activity Tax Code* is set to expire for tax years beginning after December 31, 2012 (Calendar Year 2013). Further 68 O.S. § 1212.1 was enacted which placed a moratorium on reporting and paying franchise taxes due for taxable periods Beginning July 1, 2010 and ending before July 1, 2013.

Since SQ 766 prevailed, the Oklahoma business activity tax will end beginning with calendar year 2013. BAT returns and tax will be due for 2012 activity. For Schedule C sole proprietors and Schedule F farmers, these returns and the corresponding tax is due with the filing of their individual income tax return for tax year 2012 due in 2013. No BAT returns will be due for calendar year 2013 and these types of entities are typically not subject to franchise tax.

Further, for all other entities subject to the BAT, BAT returns will also be due for calendar 2012 activity. These returns are due July 1, 2013 and become delinquent September 15, 2013. No BAT returns will be due for calendar year 2013. The franchise tax due date is determined under the provisions of 68 O.S. § 1208 (C).

68 O.S. § 1208 (C):

The tax levied by Section 1201 et seq. of this title shall become due and payable on July 1 of each year or at the option of the taxpayer upon the last day of the income tax year of the taxpayer, and if not paid before the next ensuing September 1 for taxpayers electing to pay tax by July 1, or the date by which an income tax return is required to be filed pursuant to the provisions of subsection G of Section 2368 of this title or pursuant to the provisions of Section 216 of this title, for taxpayers electing to pay the tax at the time such income tax return is due, the penalties hereinafter provided shall apply.

With the passage of SQ 766, calendar year corporations must file a business activity tax return for 2012 based on 2012 business activity by July 1, 2013 (delinquent September 15, 2013). They would not be required to file a franchise tax return based on 2012 capital; rather the next franchise tax filing would be due July 1, 2014 based on 2013 capital.

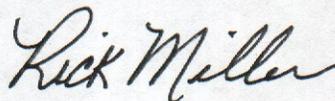
This response applies only to the circumstances set out in your request of October 29, 2012 Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

If I can be of further assistance, please feel free to call me at (405) 521-3133.

Sincerely,

OKLAHOMA TAX COMMISSION



Rick Miller, Director
Tax Policy Division