OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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

June 16, 2014

[redacted]

Re: Nonresident Withholding
Our file no: LR- 14-007

Dear [redacted]

This is in response to your letter dated January 30, 2014, in which you requested a letter ruling regarding nonresident withholding. The basic facts presented in your request are as follows:

> I work for [redacted] in [redacted] TX,
> I live and work in Texas. My base yard is in Oklahoma, but I do not work any days at all, in Oklahoma.
> My pay comes from [redacted] Texas.
> [redacted] is withholding Oklahoma State Income Tax from my Texas earnings.
> We have been informed by OTC that this is incorrect and that we need to request a corrected W- 2 with a zero in box 16. [redacted] is refusing to correct the W-2, due to some confusion on their end. They want proof that their withholdings are erroneous.
> OTC has told us on 3 separate occasions that this is incorrect.
> Can you send us a ruling on a taxpayer that lives and works In Texas, whose paycheck comes from the company's [redacted] TX, offices, being wrongly taxed Oklahoma State Income Tax?
> This is not just a little money for us, this is over $11,000. It is happening to *several* men from this company and none are getting any help from [redacted] in getting their W-2's corrected.

Every employer making payment of wages is required to deduct and withhold from the wages paid each employee a tax in an amount determined by the Oklahoma Tax Commission [68 O.S. § 2385.2] and pay over the amount so withheld as taxes to the Oklahoma Tax Commission. [68 O.S. § 2385.3]

2501 NORTH LINCOLN BOULEVARD • OKALHOMA CITY • OKLAHOMA 73194

IT IS OUR MISSION TO SERVE THE PEOPLE OF OKLAHOMA BY PROMOTING TAX COMPLIANCE THROUGH QUALITY SERVICE AND FAIR ADMINISTRATION

The term "**employer**" shall mean any person transacting business in or deriving any income from sources within the State of Oklahoma. [68 O.S. § 2385.1(b)]

The term "**employee**" shall mean any "resident individual," [68 O.S. § 2353] performing services for an employer, either within or without the State of Oklahoma, and every other individual performing services within the State of Oklahoma. [68 O.S. § 2385.1(c)]

The term "**wages**" shall have the same meaning as used in the Internal Revenue Code, but shall not include remuneration paid for services performed in Oklahoma by a person who is not a "resident individual," whose income in any calendar quarter is not more than Three Hundred Dollars ($300.00). [68 O.S. §2385.1(e)(4)]

You requested an opinion as to whether your wages are subject to Oklahoma withholding tax. As a resident of Texas, employed by [redacted] located in [redacted] Texas, who derives no income from sources within the state of Oklahoma, it is the opinion of the Tax Policy Division that your employer is not required to deduct and withhold Oklahoma withholding tax from your wages.

This response applies only to the circumstances set out in your request dated January 30, 2014. This letter ruling may be generally relied upon only by the entity to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law. *See* Okla. Admin. Code § 710:1-3-73(e). Furthermore, this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. 2011, § 206 of any report or return claiming an exemption for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. 2011, § 221.

Sincerely,

Oklahoma Tax Commission

Lisa Haws
Tax Policy & Research Division