OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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February 26, 2016

Re: LR-16-007

Dear

This is in response to the request of for a ruling on the sales, documentary, and aircraft excise tax treatment of a proposed asset assignment described in its correspondence of February 3, 2016. Also, addressed herein is the corollary issue relating to any resulting income tax consequences. A description of the subject transaction along with the applicable statutory authority by tax type and corresponding conclusions reached are outlined herein.

Transaction Description

The transaction at issue involves the proposed assignment of assets between Texas, and Oklahoma, a proposed Oklahoma-chartered banking association, Assignee. If ultimately formed, Assignee will be along with Assignor, wholly-owned subsidiaries of Subsidiary Corporation, a Delaware corporation and bank holding company, which is a wholly-owned subsidiary of The assets to be assigned or transferred include, inter alia, real estate and tangible personal property i.e. furniture, fixtures and equipment as well as an aircraft. As a condition of the asset assignment, Assignee will assume certain liabilities of Assignor.

Sales Tax

In Oklahoma, sales tax is levied on the gross receipts from the sale of tangible personal property, certain services and other transactions as specified in Section 1354 of Title 68 of the Oklahoma Sales Tax Code. "'Sale' means 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). Gross receipts, gross proceeds, or sales price is the base upon which sales tax is calculated. The terms are

synonymous and are defined as "the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold . . . whether received in money or otherwise. . . ." 68 O.S. § 1352(12)(a).

For purposes of imposition of sales tax, consideration must be given in exchange for the transfer of title and/or possession of tangible personal property. Such is not the case here based on the facts presented. Consequently, sales tax will not be due on the proposed transfer of tangible personal property between assignor and assignee.

Documentary Stamp Tax

The Documentary Stamp Tax Act imposes a tax on "each deed,[1] instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers . . . when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds One Hundred Dollars ($100.00)." 68 O.S. § 3201(A). The tax is "prorated at the rate of seventy-five cents ($0.75) for each Five Hundred Dollars ($500.00) of the consideration or any fractional part thereof and is limited to conveyances of realty sold and does not apply to other conveyances." 68 O.S. § 3201(A) & (B). The tax is due at the time the deed or other conveyance instrument is executed and delivered to the buyer, irrespective of the timing of the sale. 68 O.S. § 3201(B). For purposes of imposition of documentary stamp tax, "'sold' means a transfer of an interest for a valuable consideration, which may involve money or anything of value." 68 O.S. § 3201(C). Subsection C of Section 3201 of Title 68 characterizes consideration as "the actual pecuniary value exchanged or paid or to be exchanged or paid in the future, exclusive of interest, whether in money or otherwise, for the transfer or conveyance of an interest of realty, including any assumed indebtedness."

Evident consideration does not appear to exist for the transfer of real estate therefore documentary stamp tax would not be applicable thereto.

Aircraft Excise Tax

Aircraft excise tax is levied upon the transfer of legal ownership or use within this state of each aircraft[2] that is to be registered with the Federal Aviation Administration at a rate of three and one-fourth percent (3¼%) of the purchase price of such aircraft. 68 O.S. § 6002. The tax is "due at the time of the transfer of legal ownership or first registration in this state, and shall be collected . . . at the time of the issuance of a certificate of registration for any such aircraft." Id. "'Purchase price' means the total amount paid for the aircraft whether paid in money or

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[1] "'Deed' is defined in the Documentary Stamp Tax Act to mean "any instrument or writing whereby realty is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or, at his direction, any other person." 68 O.S. § 3201(C)(2).

[2] "'Aircraft' means and includes every self-propelled plane, airplane, helicopter, or balloon or sailplane manufactured by mass production or individually constructed or assembled, used, or designed for navigation or flight in the air or airspace, and subject to registration with the Federal Aviation Administration." 68 O.S. § 6001(1).

otherwise." 68 O.S. § 6001(3). When no current purchase is involved, purchase price is defined as fair market value. Id.

In accordance with the foregoing and the inapplicability of the aircraft excise tax exemptions set out in Section 6003 of Title 68 to the outlined transaction, it appears that Oklahoma Aircraft Excise Tax will be applicable to the transfer of the aircraft, a Dornier 328-300 fixed wing multi-engine airplane serial number 3168. The tax would be computed on the fair market value of the aircraft.

Income Tax

Oklahoma income tax is imposed on "the 'Oklahoma taxable income' of every corporation doing business within this state or deriving income from sources within this state." 68 O.S. § 2355(E). "Oklahoma taxable income" is defined for purposes of the Oklahoma Income Tax Act to mean "'taxable income' as reported . . . to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided." 68 O.S. § 2353(12). With respect to any Oklahoma taxpayer "taxable income" means the "taxable income . . . as defined in the Internal Revenue Code as applies to such taxpayer or any other income of such taxpayer including, but not limited to, lump sum distributions as defined by the Internal Revenue Code of 1986." 68 O.S. § 2353(10).

Taxable income as reported on the federal income tax return of every corporation doing business within Oklahoma or deriving income from sources within Oklahoma is the base figure upon which Oklahoma income tax is computed. Getty Oil Company v. Oklahoma Tax Commission, 563 P.2d 627 (Okl. 1977). Because Oklahoma utilizes federal adjusted gross income as the starting point for computing Oklahoma taxable income, the question whether the proposed transaction will create a gain under the Internal Revenue Code cannot be determined at this time.

This response applies only to the circumstances discussed in your written request of February 3, 2016. Pursuant to Oklahoma Administrative Code 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

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Tax Policy Analyst