

Re: LR-25-007 - Income Tax Withholding

Dear [REDACTED]:

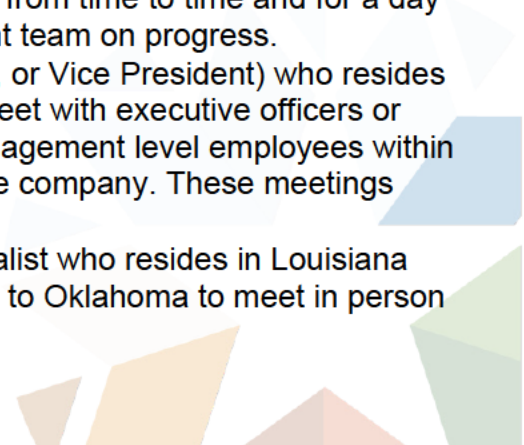
This letter is in response to your request for a letter ruling concerning exemptions of Oklahoma income tax withholding requirements under 68 O.S. § 2385.2(A) for non-resident employees of the [REDACTED] (“Company”) who perform their employment services out-of-state yet travel to Oklahoma for business in certain circumstances.

Facts as Presented

Company is incorporated in [REDACTED] with its headquarters located in [REDACTED] Oklahoma. Company has operations in [REDACTED] states across the country and employs approximately [REDACTED] people in Oklahoma, with the remainder of its approximately [REDACTED]-person workforce residing in other states. Company’s non-Oklahoma resident employees perform their employment services in their respective states and are subject to the income tax requirements of those states. However, with its headquarters in [REDACTED] many of Company’s non-resident employees travel to [REDACTED] and other parts of the state for occasional business meetings or to visit Company’s facilities located in the state.

The following scenarios are examples of short term and infrequent travel occurrences for Company’s non-resident employees:

- A project manager who resides in Colorado may lead a construction project at a pipeline in Colorado but visit headquarters in [REDACTED] from time to time and for a day or two each time to brief a commercial development team on progress.
- A management level employee (Manager, Director, or Vice President) who resides in Texas may travel to [REDACTED] from time to time to meet with executive officers or attend management team meetings with other management level employees within the employee’s operations group or from across the company. These meetings could last from one to three days.
- A community outreach or government affairs specialist who resides in Louisiana and whose work is focused in Louisiana may travel to Oklahoma to meet in person



with Oklahoma officials for a day or two. The same employee may travel to [REDACTED] from time to time to meet with employees who have responsibility for operations or projects in Louisiana or to brief management on her work.

- A human resources employee who is a resident of Texas and is based in Company's [REDACTED] Texas office may travel to [REDACTED] for a two-day human resources department all-hands meeting. She may then stay a third day to meet with other Company employees based in [REDACTED].
- An employee who resides in Pennsylvania may travel to [REDACTED] for a conference that is not sponsored by Company, but which furthers the employee's work and Company's business. For example, an energy organization might have a conference at the [REDACTED] Convention Center. The employee would remain in [REDACTED] for however long the conference lasts and might extend the stay to meet with other Company employees either before or after the conference.

Income Tax Withholding

Every employer making payment of wages is required to deduct and withhold income tax from the wages paid to each employee. 68 O.S. § 2385.2. Employees are defined as those who perform services for an employer that has authority to control and direct the employees' work. 68 O.S. § 2385.1. The term "employee" includes every individual performing services if the relationship between him and the person for whom services are performed is the legal relationship of employer and employee. OKLA. ADMIN. CODE 710:90-1-2. Employees who perform services in Oklahoma are subject to Oklahoma income tax withholding regardless of their residency status. *Id.*

"Wages" means all remuneration for services performed by an employee for his employer. OKLA. ADMIN. CODE 710:90-1-2. However, the term "wages" does not include payment for services performed in the state by a non-resident individual whose income in any calendar quarter does not exceed \$300.00. 68 O.S. § 2385.1(e). This is the only exception to income tax withholding for non-Oklahoma residents who perform services in Oklahoma.

Your request described several scenarios in which Company employees who are not Oklahoma residents travel to Oklahoma for business meetings or facility visits. Based on the very limited information provided with the five theoretical scenarios in the request, it appears such employees would be performing services in Oklahoma related to their employment, except for the employee attending a conference not sponsored by the Company.

If the scenarios were applied to specific employees to determine whether the described activities constitute "services in Oklahoma" requiring withholding, it would depend on the specific nature of work performed while physically present in the state and whether that work is required for the employee to perform as part of their employment with the employer. Company would evaluate each situation as compared to the employee's job requirements to determine whether the employee's activities while in Oklahoma constitute compensable work performed within the state that would trigger the withholding requirement under 68 O.S. § 2385.2.

However, in determining whether withholding applies for services provided in Oklahoma, Company should also evaluate the wages to be paid for those services and whether the de minimus exception

outlined in 68 O.S. § 2385.1(e) would apply. If the wages to be paid an employee for services provided while in Oklahoma would be below that threshold, then withholding would not apply pursuant to that exemption provided by statute.

This response applies only to the circumstances discussed in your request. Pursuant to OKLA. ADMIN. 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. Further, this Letter Ruling is a general statement of the law as it relates to your questions and may not be relied upon in relation to any previous audits or protests related thereto.

Sincerely,

Marie Schuble, Director
Tax Policy and Research Division
Oklahoma Tax Commission