

Oklahoma Business Activity Tax Update

July 11, 2011

Overview

In June 2010, Oklahoma adopted various tax law changes that imposed a new Business Activity Tax (“BAT”).¹ The Oklahoma Tax Commission (“OTC”) has recently issued guidance on its website in the form of Frequently Asked Questions (“FAQs”) that address a variety of BAT issues, including entity reporting requirements, clarification of the term “doing business,” and when penalties and interest apply.²

This Tax Alert summarizes selected FAQs.

Entity Reporting Requirements

According to the OTC’s FAQ guidance, the BAT applies to all entities, regardless of form, doing business in Oklahoma. By way of example, the OTC website specifies that the tax applies to the following entities “doing business” in the state:

- Sole proprietorships
- Partnerships
- Limited liability companies
- Business trusts
- All types of corporations³

The BAT does not apply to non-profit entities⁴ and dormant entities.⁵

Entities to which the BAT applies are required to file Form BT-190, *Oklahoma Business Activity Tax Return*,⁶ and must also submit a listing of all officers, members, partners, or registered agents and their addresses.⁷

The FAQs also specify that the \$100 registered agent fee continues to apply to corporations not originated in Oklahoma.⁸ LLCs, partnerships, and other taxable entities are not subject to the registered agent fee.

“Doing Business” Examples

The FAQs provide examples of entities that are deemed to be “doing business” in the state and are required to file under the BAT, including:

- Entities with only flow-through income from investments in other entities doing business in Oklahoma.⁹

¹ For information regarding the BAT, please see our Multistate Alert dated July 30, 2010, available at: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_OKBATALert_080210.pdf.

² The OTC’s FAQs are available at: <http://www.tax.ok.gov/faq/faqBAT.html>. Our summary of these FAQs is based upon the information posted on the OTC website as of the date of this Tax Alert.

³ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT002.html>.

⁴ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT020.html>.

⁵ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT022.html>.

⁶ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT004.html>. Farmers filing a federal schedule F and sole proprietors filing either a federal schedule C or C-EZ are required to file form 511 BAT along with their individual income tax return. All other entities are required to file form BT-190.

⁷ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT010.html>; Okla. Stat. tit. 68, § 1221 A.

⁸ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT009.html>.

⁹ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT025.html>.

- Single member LLCs without any activity, but that are paying an annual Oklahoma Secretary of State fee.¹⁰
- Entities with only working interest and royalty interest in oil and gas properties located in Oklahoma.¹¹

Note also that an entity that is otherwise “doing business” in the state is required to file and pay BAT even if that entity’s income consists solely of excludable items (e.g., interest, dividends, real estate rentals, compensation, and others).¹²

Due Dates

The FAQs specify that sole proprietors filing either a federal Schedule C or C-EZ and farmers filing a federal Schedule F must file annual BAT returns as part of and at the same time as their Oklahoma individual income tax returns.¹³ All other required filers (i.e., those entities that are required to file a form BT-190) must file by the 1st day of July following the close of the taxable year.¹⁴ Extensions for these filers are not available. However, the FAQs provide that “penalties and interest are not imposed for late filing and payment until September 15, 2011.”¹⁵

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¹⁰ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT018.html>.

¹¹ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT034.html>.

¹² OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT024.html>.

¹³ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT003.html>; Okla. Stat. tit. 68, § 1220. B.

¹⁴ 68 Okla. Stat. § 1220.C. Okla. Reg. § 710:95-19-4(b) provides that the BAT form is due by July 1 “following the calendar year for which the business activity is being reported.”

¹⁵ OTC FAQ available at: <http://www.tax.ok.gov/faq/faqBAT030.html>; 68 Okla. Stat. § 1220.C provides that if the BAT is not paid by the next ensuing September 15, “the penalties provided in Section 11 of this act shall apply.” Section 11 of S.J.R. § 61 (the Act that created the BAT) is codified as 68 Okla. Stat. § 1224, which provides that if the BAT report is not filed and the tax is not paid by the § 1220.C deadline, a penalty equal to 10% of the tax due and delinquent will be imposed. Note that BT-190 Form instructions provide that interest and penalties will apply if the return is “postmarked after September 15th.”