

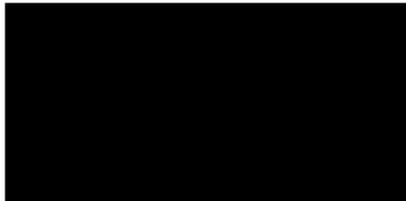
OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
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May 28, 2014



Re: LR-14-026

Dear [REDACTED]

This is in response to your letter to Rick Miller of the Tax Policy and Research Division, dated May 21, 2014, in which you requested a letter ruling on behalf of your client, [REDACTED] as to whether certain employees are eligible for the Oklahoma Aerospace Engineering Tax Credit [68 O.S. Sections 301 – 304]. The basic facts presented in your request-taken directly from your letter dated May 21, 2014-are as follows:

In June 2008, the Oklahoma Legislature passed, and the Governor signed, the Oklahoma Aerospace Engineering Tax Credits (the "OAETC" or the "credit"). The OAETC defined "qualified employee" as

any person employed by or contracting with a qualified employer on or after January 1, 2009, who has been awarded an undergraduate or graduate degree from a qualified program by an institution, and who was not employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer;¹

Following the OAETC's passage, in August 2010, [REDACTED] announced that it had decided to relocate hundreds of aerospace engineering jobs – many of them long-time, experienced [REDACTED] aerospace engineers – from [REDACTED] to Oklahoma.

Then, in early 2012, [REDACTED] announced that it had decided to relocate hundreds of additional aerospace engineering jobs from [REDACTED] to Oklahoma. In conjunction with

¹ 68 O.S. §2357.301(5)

that mass relocation, ██████ sought a letter ruling from the OTC confirming that these relocating engineers – many of whom were long-time, experienced ██████ employees – would be eligible to receive the credit. On February 10, 2012, the OTC's Tax Policy and Research Division provided a letter advising that ██████ transferring engineers would be eligible to receive the credit (the "2012 letter ruling"), regardless of hire date. Focusing on the plain language of the statute, the letter ruling explained:

It . . . appears clear that engineers that transfer into Oklahoma from another state should qualify for both the employee and employer credits, regardless of the date in which such employees have been awarded an undergraduate or graduate degree from a qualified program by an institution, as these employees are engineers with degrees newly employed in Oklahoma. Further, both credits appear to be computed effective the first date of employment in Oklahoma for each employee, so long as that date is outside the moratorium.²

Notwithstanding the 2012 letter ruling's guidance, shortly thereafter ██████ began to hear from some of its transferred engineers that the OTC administrative law judges had issued non-binding rulings that denied the credit to engineers who were employed by ██████ in another state before January 1, 2009 and thereafter transferred to Oklahoma (the "transfer issue"). To reach this conclusion, the non-binding rulings reasoned that the OAETC's "employed by . . . a qualified employer on or after January 1, 2009" language was ambiguous. It could either mean "a state of being employed" or could mean "hired". The non-binding rulings chose the latter interpretation, so that any engineer "hired" by an aerospace company before January 1, 2009 – which is the case with almost all of ██████ transferring engineers – would not be eligible for the credit, even if they transferred to Oklahoma on or after January 1, 2009.

In addition to the transfer problem, other members of the aerospace community began to hear that the OTC was denying the credit to newly-graduated aerospace engineers who had worked as an intern in the aerospace industry before graduation, even though those engineers fell within the core purpose of the OAETC – to retain Oklahoma's aerospace engineering talent (the "intern issue").

Rulings Requested:

1. Are ██████ aerospace engineers eligible for the credit if they were hired by ██████ before January 1, 2009, outside the state of Oklahoma, but were transferred into Oklahoma thereafter (and meet the OAETC's other requirements)?

The credit is available for aerospace engineers that started working in the Oklahoma aerospace sector on or after January 1, 2009. ██████ aerospace engineers are eligible for the credit if they were hired by ██████ before 2009 outside the state of Oklahoma, but were transferred into Oklahoma on or after January 1, 2009 (and meet the OAETC's other requirements).

² See letter from Rick Miller, Director, Tax Policy Division, Oklahoma Tax Commission, to Director, ██████ Oklahoma City at 3-4 (February 10, 2012)

2. Are [REDACTED] aerospace engineers eligible for the credit if they were previously employed in the State of Oklahoma as an intern in the aerospace industry before they received their undergraduate or graduate degree (and meet the OAETC's other requirements)?

[REDACTED] aerospace engineers are eligible for the credit if they were previously employed in the aerospace sector in the State of Oklahoma, but not as a full-time engineer, before they received their undergraduate or graduate degree (and meet the OARTC's other requirements).

Employees of [REDACTED] who have questions regarding their eligibility for the Oklahoma aerospace engineer income tax credit (including eligibility for previous tax years regardless of whether they were previously denied the credit), may contact the Account Maintenance Division at (405) 521-4271.

This response applies only to the circumstances set out in your request dated May 21, 2014. 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 and its investors, 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.

Sincerely,

Oklahoma Tax Commission



Lisa Haws

Tax Policy & Research Division

cc: Bill Winters, Director
Account Maintenance Division