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October 7, 2014

Via U.S. Mail

Re: Request for Letter Ruling from
Counsel File No. LR-14-017

Office of the General

Dear

This is in response to your letter to Rick Miller of the Tax Policy and Research Division, dated May 28, 2014, in which you requested a letter ruling on behalf of your client, as to whether certain property related to the delivery of compressed natural gas ("CNG") qualifies for the income tax credit available under 68 O.S. § 2357.22. Mr. Miller forwarded your request to the Office of the General Counsel for review. The basic facts presented in your request—taken directly from your letter dated May 28, 2014—are as follows:

is in the process of installing CNG equipment this year to provide CNG to the public. will be taking ownership of the CNG equipment through a limited liability company, This company will be reporting the Credits.

The CNG equipment owned by will be located at (i) existing and newly-constructed full-service facilities, but the CNG equipment will be segregated from the standard gasoline delivery systems for various regulatory and practical reasons, as discussed below; and (ii) new locations without any other fuel delivery systems.

All of the CNG equipment owned by _____ will be new and _____ will be the original owner and user. All of the CNG equipment will be used exclusively for delivery of CNG into the fuel tanks of motor vehicles that are propelled by CNG. In each case, the CNG delivery system will incorporate a point-of-sale computer system to process credit card transactions. In virtually all instances, this computer system will be the method for consumers to purchase CNG from the delivery system. The CNG dispensers will have a label indicating that payment at the pump is required, however, at attended sites, cash transactions will be accepted if necessary. At unattended locations, only credit card transactions will be accepted.

For reference, _____ received quotes for a "turnkey" installation of the CNG equipment where many of the costs discussed below were built into the price of the compressor and dispenser. These turnkey quotes, however, were at least \$200,000 per location above the costs that _____ will incur by installing the CNG equipment itself.

In your letter dated May 28, 2014, you provided the following description of property related to the delivery of CNG:

This list is directly related to the delivery of CNG without further explanation:

1. CNG dispenser;
2. CNG compressor;
3. CNG dryer;
4. CNG compressor enclosure;
5. CNG electronic soft start system;
6. CNG storage tanks;
7. CNG priority panel including auto-dialer for emergency notification; and
8. CNG compressor skid with compressor plumbing and electrical wiring.

The next list of property is directly related to the delivery of CNG for the following reasons. Part of the installation of CNG equipment is to provide a stable and plumbed location for the dispenser and compressor that are secure from the dangers of impact. National Fire Protection Association 52; Vehicular Gaseous Fuel Systems Code ("NFPA 52") requires a secure setting for the dispenser and compressor. The CNG delivery system cannot be operated if not in compliance with NFPA 52. Further, the costs of such installation are capitalized into the cost of the equipment for determination of its cost basis.

1. Dispenser island (materials and installation);
2. Compressor pad (materials and installation);
3. Bumper poles at dispenser island; and
4. Canopy over dispenser island.

The next list of property is directly related to the delivery of CNG for the following reasons. The items are integral parts of dispensing CNG because the CNG has to be pumped from the compressor to the dispenser. This includes pressurized piping to carry the CNG and electrical power to run the dispenser. CNG could not be delivered to a motor vehicle without these items. Further, the costs of such installation are capitalized into the cost of the equipment for determination of its cost basis.

1. CNG trenching for electrical and plumbing;
2. Electrical installation for compressor and dispenser;
3. Plumbing installation for compressor and dispenser.

The next list is directly related to the delivery of CNG for the following reasons. The items are required by the manufacturer to bring the compressor and dispenser to operational condition. The manufacturer transports the equipment to the location and checks the equipment for leaks or other faults. Further, the costs of such installation are capitalized into the cost of the equipment for determination of its cost basis.

1. Compressor and dispenser freight costs; and
2. Compressor start up examination.

The next item of property is directly related to the delivery of CNG for the following reasons. These systems are exclusively for processing the sale of CNG to consumers. Certain locations in _____ will be unattended retail CNG fueling sites and could not dispense CNG without these systems. Certain other locations in _____ while placed at existing _____ fueling stations, will be segregated from the standard fuel delivery systems. The attendants will be able to approve cash transactions, but the pumps will have a label indicating that payment at the pump is required. Accordingly, each CNG dispenser will require a system for processing payments for the CNG it dispenses. Further, the cost of such systems is capitalized into the cost of the equipment for determination of its cost basis.

1. Computer point-of-sale system.

The next items of property are directly related to the delivery of CNG for the following reasons. _____ will be improving and expanding its delivery

capacity at certain facilities where CNG is currently being delivered. These new equipment items will be added to existing CNG locations:

1. CNG dispenser (1 or 2 per location)
2. CNG compressor

Lastly, the next items of property are directly related to the delivery of CNG for the following reasons. At several of its existing and new locations, will need to improve the natural gas delivery system provided by the natural gas supplier, such as The improvements will either enhance the amount of natural gas available to (“flow”) or the pressure of the natural gas delivered (“psi”). These improvements are necessary for to meet the demand for CNG at the filling stations. Without the improvements, either compressor cannot get enough gas out of pipeline, or the pressure is too low for to improve the compressor's performance. Because such improvements will increase natural gas sales to the natural gas supplier typically will provide a credit against the cost of the improvements. Accordingly, we estimate that will pay for only a small portion of the cost of such improvements.

1. Gas pipeline upgrades or extensions necessary to meet CNG motor vehicle volume demand

By letter dated June 17, 2014, you provided supplemental information regarding the locations where will install the property. will install the property at the following locations:

Oklahoma City, OK

Alva, OK 73717

Okmulgee, OK 74447

Hennessey, OK

Billings, OK 74630

Edmond, OK 73013

The Oklahoma Income Tax Act provides for a one-time income tax credit for “investments in qualified clean-burning motor vehicle fuel property.” *See generally* 68 O.S. 2014, § 2357.22(A). This tax credit is available for tax years beginning before January 1, 2020. *Id.* The statute provides several definitions of “qualified clean-burning motor vehicle fuel property,” one of which is property, excluding “a building and its structural components” that is:

directly related to the delivery of compressed natural gas, liquefied natural gas or liquefied petroleum gas, or hydrogen, for commercial purposes or for a fee or charge, into the fuel tank of a motor vehicle propelled by such fuel including compression equipment and storage tanks for such fuel at the point where such fuel is so delivered but only if such property is not used to deliver such fuel into any other type of storage tank or receptacle and such fuel is not used for any purpose other than to propel a motor vehicle[.]

See id. at § 2357.22(B)(3)(a). A taxpayer is entitled to a “per-location credit of seventy-five percent (75%) of the cost” of property that fits under this statutory definition. *See id.* at § 2357.22(D)(2). It has been the policy of the Oklahoma Tax Commission that the installation costs of CNG property are eligible for the tax credit, so long as such installation costs: (a) are for property directly related to the delivery of compressed natural gas; and (b) are capitalized in accordance with the Internal Revenue Code and federal Treasury Regulations (e.g., I.R.C. § 263A and Treas. Reg. §§ 1.263A-1, et seq.).

Issue No. 1: Whether certain items of property are eligible for the tax credit.

Based upon the information provided in your letter dated May 28, 2014, and the supplemental information you provided on June 12, 2014, the items listed below are property “directly related to the delivery of [CNG], for commercial purposes or for a fee or charge, into the fuel tank of a motor vehicle” and are therefore eligible for the tax credit. *See generally* 68 O.S. 2014, §§ 2357.22(B)(3)(a), 2357.22(D)(2). If the installation costs of such property are capitalized in accordance with the Internal Revenue Code and federal Treasury Regulations, the installation costs are also eligible for the tax credit.

CNG dispenser	CNG compressor
CNG dryer	CNG compressor enclosure
CNG electronic soft start system	CNG storage tanks
CNG compressor skid with compressor plumbing and electrical wiring	

The items listed below are property “directly related to the delivery of [CNG], for commercial purposes or for a fee or charge, into the fuel tank of a motor vehicle” and are therefore eligible for the tax credit. *See generally id.* at §§ 2357.22(B)(3)(a), 2357.22(D)(2). If the installation costs of such property are capitalized in accordance with the Internal Revenue Code and federal Treasury Regulations, the installation costs are also eligible for the tax credit.

Dispenser island
(materials and installation)

Compressor pad
(materials and installation)

Bumper poles and dispenser island

Canopy over dispenser island

Computer point-of-sale system

The installation costs listed below, so long as they are capitalized in accordance with the Internal Revenue Code and federal Treasury Regulations, qualify for the tax credit.

CNG trenching for electrical
and plumbing

Electrical installation for compressor
and dispenser

Plumbing installation for compressor
and dispenser

Compressor and dispenser freight costs

Compressor start up examination

Issue No. 2: Whether CNG dispensers and CNG compressors that will install at facilities that already deliver CNG are eligible for the tax credit.

You have requested a ruling as to whether CNG dispensers or CNG compressors that will install at certain facilities that already deliver CNG are eligible for the tax credit. As set forth above, CNG dispensers and CNG compressors are “directly related to the delivery of [CNG], for commercial purposes or for a fee or charge, into the fuel tank of a motor vehicle.” See generally 68 O.S. 2014, § 2357.22(B)(3)(a). Furthermore, the tax credit is limited to “seventy-five percent (75%) of the cost of the qualified clean-burning motor vehicle fuel property” installed at a location. See *id.* § 2357.22(D)(2). So long as or another entity has not previously claimed the tax credit for the additional CNG dispensers or compressors which are to be installed at a site at which CNG dispensers and compressors are already operating, these newly-installed items qualify for the credit, see § 2357.22.B.3.

Issue No. 3: Whether improvements to a natural gas supplier’s CNG delivery system are eligible for the tax credit.

You have requested a ruling as to whether improvements that will make to the CNG delivery systems provided by a natural gas supplier are eligible for the tax credit. Per your May 28, 2014, letter, these improvements are intended to enhance the flow or pressure of the CNG going to the CNG dispensers. You also state that the natural gas provider will typically provide a credit against the cost of the improvements, in essence providing a subsidy or reimbursement for at least a portion of the cost of these improvements.

Because these improvements are necessary to improve the performance of the CNG compressor, they are “directly related to the delivery of [CNG], for commercial purposes or for a fee or charge, into the fuel tank of a motor vehicle.” *See generally* 68 O.S. 2014, § 2357.22(B)(3)(a). The credit, however, anticipates an investment on the part of the taxpayer claiming the credit. *See generally id.* at §§ 2357.22(A), 2357.22(D)(2). Only costs *in excess* of the subsidy or reimbursement from a natural gas provider—i.e., any costs actually borne by the taxpayer—are eligible for the credit.

Thus, the line item “gas pipeline upgrades or extension necessary to meet CNG motor vehicle volume demand” qualifies for the tax credit to the extent that the natural gas provider does not provide a subsidy or reimbursement for the costs. If any of the costs of this line item are for the installation of gas pipeline upgrades or extensions, such costs must be capitalized in accordance with the Internal Revenue Code and federal Treasury Regulations to qualify for the credit.

This letter ruling may generally be relied upon only by the taxpayer 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. § 206 of any report or return claiming a tax credit 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. § 221.

Respectfully,



Linda Samuel-Jaha
Assistant General Counsel

APPROVED:



Douglas B. Allen
General Counsel