



OKLAHOMA TAX COMMISSION
STATE OF OKLAHOMA

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April 6, 2015

RE: Letter ruling request regarding
Our File No. LR-14-022

Dear

You have requested a letter ruling on behalf of
("Company"). Your request is based upon the following as set forth in your letter:

Company made investments qualifying for ITC¹ under 68 O.S. § 2357.4(E) prior to its participation in the FUND.² Any credits attributable to investments made prior to Company's participation in the FUND shall hereinafter be known as "Pre-FUND credits." The Pre-FUND credits have been carried forward pursuant to 68 O.S. § 2357.4(I), and are available to offset current and future Oklahoma corporate income tax liabilities. Because of limitations imposed on the ability of a person participating in the FUND to "claim" ITC, Company is seeking guidance through this Ruling Request of whether or not the limitations impact Pre-FUND credits.

STATEMENT OF FACTS

- 1: In 2008, Company acquired the assets of a manufacturing facility in Oklahoma. Prior to this acquisition, Company did not have significant operations in the State.
2. Since the acquisition in 2008, Company has continuously made investments in Oklahoma machinery and equipment that qualify for the ITC. Company generated

¹ "ITC" was defined in your letter as "Oklahoma Investment Tax Credits ('ITC'), properly allowed pursuant to 68 O.S. § 2357.4[.]"

² The "FUND" was defined in your letter as "the Community Economic Development Pooled Finance Revolving Fund."

and accrued ITC every year from the date of the acquisition of the initial qualifying assets through 2012. Due to historical net operating losses that the Company is currently in the process of utilizing, Company has not yet utilized any of its ITCs and is carrying them forward subject to the provisions of 68 O.S. § 2357.4.I.

3. Company secured FUND incentives related to its Oklahoma facility beginning in tax year 2013. Company expects to realize benefits from the FUND for ten (10) years: 2013 through 2022. Company entered into an agreement with the (“Authority”) in which it received a loan in the amount of \$ _____ to fund a portion of the cost of its expansion project in Oklahoma. At the same time, Company purchased the loan back from the Authority. Therefore, no cash was exchanged at the time of this agreement except for a minimal amount of fees. The principle and interest of the loan is then paid back from deposits distributed from the FUND. These deposits consist of Company’s employee withholding taxes that are paid to the Oklahoma Tax Commission and subsequently transferred to the FUND. Therefore, Company effectively receives a refund of its employee withholding tax in installments over the ten (10) year period.

4. Company expects to be in a profitable position during the period it qualifies for the FUND. Therefore, absent any limitation, Company would be able to utilize ITC to offset its Oklahoma corporate income tax liability.

RULING REQUESTED

It is our understanding that you are requesting a Letter Ruling regarding use of ITC generated, accrued and carried forward from years prior to Company’s participation in the FUND (the “Pre-FUND credits”). Specifically, you have requested a ruling regarding whether Company may use the Pre-FUND credits during the period Company’s withholding taxes are paid to the FUND (the “Financing Period”) and in years following the Financing Period.

As noted in your request, the Oklahoma Community Economic Development Pooled Finance Act (the “Pooled Finance Act”), 62 O.S. § 891.1 et seq., limits the ability of a company participating in the FUND to claim the Tax Credit for Investments (“ITC”) authorized under 68 O.S § 2357.4. Specifically, § 891.12(I) of the Pooled Finance Act provides:

No for-profit business entity that benefits from proceeds of obligations issued by the Authority from the Economic Development Pool may receive or continue to receive incentive payments pursuant to the Oklahoma Qualify Jobs Program Act or *claim any investment tax credits otherwise authorized* pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes during the period of time that any withholding taxes attributable to the payroll of such entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Authority pursuant to the provisions of this act.

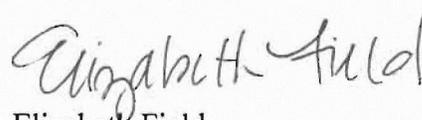
Section 891.12(I) states that an entity may not “*claim any* investment tax credits otherwise authorized.” Reading § 2357.4 in its entirety, the ITC is “claimed” in the taxable year in which the investment generating the credit is made.

It is the opinion of the Office of the General Counsel that credits authorized by § 2357.4 which were claimed but not used by Company prior to the Financing Period may be carried forward and used as a credit against tax during the period of Company’s participation in the FUND. Further, to the extent any Pre-FUND credits remain which are eligible to be carried forward following the Financing Period, those credits may be carried forward and used as a credit against tax for years subsequent to the Financing Period.

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 tax report or return. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. § 221.

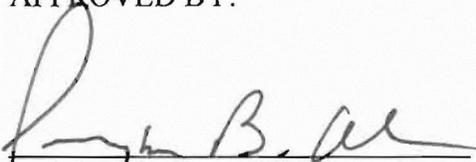
Sincerely,

OKLAHOMA TAX COMMISSION



Elizabeth Field
Assistant General Counsel

APPROVED BY:



Douglas B. Allen
General Counsel