

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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October 11, 2000

Re: Our file number LR 00-136; Income Tax - Investment New Jobs Credit

Dear

This is in response to your inquiry of June 1, 2000 wherein you requested guidance on the proper application of the Investment New Jobs Income Tax Credit and how that credit relates to the filing of returns that have Sub Chapter S elections in place. Following is a restatement of the facts outlined in your letter, along with the specific questions you posed and our responses thereto.

FACTS

Our client is an _____ doing business in Oklahoma. It will generate a substantial Oklahoma Investment New Jobs Credit ("credit") as a result of a sizable investment in fixed assets. All shareholders of the _____ are currently non-residents of Oklahoma.

QUESTIONS

1. Assume that in 2000, the _____ generates an Investment / New Jobs Credit. For the year 2000, the _____ elects to pay the Oklahoma income tax at a rate of 6% on behalf of its Oklahoma non-resident shareholders on Form 512-S. The credit is not fully utilized on the 2000 Form 512-S and a carryover is therefore established. Further assume in the year 2001, the Oklahoma non-resident shareholders would prefer to each file a Non-Resident Shareholder Agreement, Form 512-SA, and individually file Form 511NR to pay his or her portion of the Oklahoma tax. Would the shareholder, be entitled to use the Investment/New Jobs Credit carryover generated in 2000 on the 511 NR even though the tax had been paid by the _____ on the 512-S in 2000?

Yes, the unused portion of the credit would be available to be claimed on the Oklahoma 511NR.

- a) If the non-resident shareholders are able to utilize the credit carryforward on the 511NR in 2001, how is the credit allocated to each individual shareholder? Is it based on his or her ownership percentage in 2000 when the original credit was generated or on the ownership percentage in 2001, when the credit is being used individually by each shareholder?

The credit is allocated at the discretion of the shareholders. There is no specific requirement to allocate based on ownership percentage, although this method is frequently utilized. The Tax Commission has historically allowed the distributing entity (Sub _____) to determine the

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