

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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August 24, 2001

Re: Our file number LR 01-103; Income Tax - SBA Guaranty Fee Credit

Dear

This is in response to your inquiry of July 23, 2001 regarding the availability of SBA Guaranty Fee Credit under 68 O.S. § 2357.30. Following is a restatement of the facts in your letter, followed by your question and our response thereto.

***FACTS:***

Under Oklahoma statute 2357.30 - Small Business Credit, a credit is available for a "small business" in the amount of guaranty fee paid to obtain financing guaranteed by the Small Business Administration. In the last sentence of 2357.30 (D) the statute reads: "the credit shall be claimable only by the small business which is the primary obligor in the financing transaction and which actually paid the guaranty fee". In defining small business, section 2357.30 (A) provides that a "small business" means any corporation, partnership, ... There does not appear to be a distinction between a C-Corporation and an S-Corporation.

***QUESTION:***

May an S-Corporation, otherwise qualifying as a "small business" claim the credit for the guaranty fee and pass the credit through to the shareholders of the S-Corporation to be utilized by the shareholders against their pro-rata income tax attributable to the S-Corporation's income reported on their return?

***RESPONSE:***

The credit outlined in 68 O.S. § 2357.30 is available to a qualifying S-Corporation. In the

case of flow-through entities, such as S-Corporations, LLC's, and partnerships, credits are generally distributed to either the appropriate partner or shareholder. The Tax Commission has historically allowed the distributing entity to determine the amount of credits distributed so long as the following two conditions are met. One, the amount distributed does not exceed the amount of available credit and two, distribution must be made to a shareholder or partner of the flow through entity that has generated the credit.

This response applies only to the circumstances set out in your request of July 23, 2001. 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, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of further assistance, please feel free to call me at (405) 521-3133.

Sincerely,

FOR THE OKLAHOMA TAX COMMISSION



Michael C. Kaufmann  
Tax Policy Analyst