OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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July 20, 2006

Re: Our file number LR-06-114

Dear :

This letter ruling is in response to your inquiry of July 7, 2006 where in you posed a series of ruling requests relating to the Small Business Capital Formation Incentive Act (68 O.S. §2357.60 et. seq.) and Rural Venture Capital Formation Incentive Act (68 O.S. §2357.70 et seq.). Following a restatement of the facts outlined in your letter, are the specific rulings requested and our responses thereto.

Statement of Facts:

1. On October 7, 2004, respectfully submitted a letter ruling request to the Oklahoma Tax Commission seeking a ruling that (i) the proposed investments outlined in the letter ruling request qualified for the Oklahoma Tax Credits, and (ii) the Oklahoma investors were eligible to utilize the Oklahoma Tax Credits upon the investment in the Portfolio Companies (the "Ruling Request").

2. In response, the Tax Policy and Research Division of the Oklahoma Tax Commission issued certain rulings to in a letter dated (the "Ruling"). In the Ruling, the Oklahoma Tax Commission provided that the proposed investments outlined in the Ruling Request would qualify for the Oklahoma Tax Credits, and the Oklahoma investors were eligible to utilize the Oklahoma Tax Credits upon the investment in the Portfolio Companies.

3. Senate Bill 1577, signed by the Governor of the State of Oklahoma on June 6, 2006, makes certain amendments to the Business Incentive Acts which become effective July 1, 2006 (the "Amendments"). The Amendments, among other things, (i) eliminate the use of the Oklahoma Tax Credits against Oklahoma gross production tax and the additional excise tax on oil and gas imposed under 68 Okla. Stat. § 1101 and 1002, and (ii) reduce the carry forward of the Oklahoma Tax Credits from ten (10) years to three (3) years.

4. The Amendments also provide a "grandfather clause" for those persons or entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006. Under the Amendments, any person or entity that has obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the Oklahoma Tax Credits shall not be subject to the Amendments to the Business Incentive Acts made by Senate Bill 1577 for investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

Rulings Requested:

Based upon these facts, respectfully requests a letter ruling from the Tax Policy and Research Division of the Oklahoma Tax Commission that:

1. The rulings made by the Tax Policy and Research Division of the Oklahoma Tax Commission in its Ruling to , are still valid and effective after the enactment of Senate Bill 1577 due to the "grandfather clause" set forth in 68 Okla. Stat. § 2357.63E and 68 Okla. Stat. § 2357.74E.

Yes. The rulings were contained within a "favorable determination letter" as required under §2357.63E and §2357.74E and were issued by this office prior to March 15, 2006.

2. and the Capital Company are entities that have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006 regarding their ability to claim or otherwise utilize the Oklahoma Tax Credits authorized by the Business incentive Acts as required by the Amendments to the Business Incentive Acts.

Yes, as provided in the answers to requests #1 above.

3. As entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, Oklahoma Venture Capital Fund, the Capital Company, and their investors shall not be subject to the Amendments to the Business Incentive Acts made by Senate Bill 1577 on qualified investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

Yes, , and their investors are not subject to the amendments contained within HB 1577 if all the requirements for investments contained in §2357.63E and §2357.74E are met.

4. As entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, and their investors shall be able to use their Oklahoma Tax Credits to offset Oklahoma income taxes (including estimated income taxes), bank privilege taxes and insurance company premium taxes on qualified investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

Yes. and their investors may use their Credits to offset Oklahoma income taxes (including estimated income taxes), bank privilege taxes and insurance company premium taxes on qualified investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63E and/or 68 Okla. Stat. § 2357.74E.

5. As entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006,
Company and their investors shall be able to use their Oklahoma Tax Credits against Oklahoma gross production tax and the additional excise tax on oil and gas imposed under 68 Okla. Stat. § 1101 and 1002 due on or after July I, 2006, on qualified investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

Yes. and their investors may use their Credits against Oklahoma gross production tax and the additional excise tax on oil and gas imposed under 68 Okla. Stat. § 1101 and 1002 due on or after July 1, 2006, on qualified investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63E and/or 68 Okla. Stat. § 2357.74E.

6. As entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006,
and their investors shall be able to carry forward the Oklahoma Tax Credits for ten (10) years for investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

Yes. and their investors may carry forward their Credits for ten (10) years for investments made in Portfolio Companies prior to November 1, 2006 and which meet the statutory requirements set forth in 68 Okla. Stat. § 2357.63EA and/or 68 Okla. Stat. § 2357.74EA.

7. The Portfolio Companies, which will receive qualified investments from the
will have one-hundred eighty (180) days after the qualified investment is made to have at least fifty percent (50%) of its employees or assets located in Oklahoma.

Yes, within 180 days after the qualified investment, the portfolio companies must have at least 50% of its employees or assets located in Oklahoma.

8. Entities who have obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006 will be deemed to have made a qualified investment and met the requirements of 68 Okla. Stat. § 2357.63E and § 2357.74E if:

(1) such investment is made prior to November 1, 2006 "... to satisfy a legitimate business purpose of the entity receiving such investment which is consistent with its organizational instruments, bylaws or other agreement responsible for the governance of the business venture";

(2) the capital company's funds were at risk; and

(3) if the investments meet the requirements of (1) above they will be deemed not to have been made chiefly for the purpose of reducing tax liability.

Yes, provided, it will be necessary for the Tax Policy Division to review the actual investment plans, the bylaws or similar documents of the business venture (Portfolio Company), and any other necessary documentation prior to issuing a ruling as to whether the provisions of §2357.63E and §2357.74E have been met to qualify the investments for the Credits.

This response applies only to the circumstances set out in your request of July 7, 2006. 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 O.S. §206 if 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 O.S. §221.

If I can be of further assistance, please feel free to contact me.

Sincerely,

OKLAHOMA TAX COMMISSION

Tony Mastin, Director
Tax Policy & Research Division