

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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October 9, 2006

Re: Our file number LR-06-159;

Dear

This letter ruling is in response to your inquiry dated September 29, 2006 wherein you posed a series of ruling requests relating to the Small Business Capital Formation Incentive Act (68 Okla. Stat. §2357.60 et. seq.) and Rural Venture Capital Formation Incentive Act (68 Okla. Stat. §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 November 22, 2005, Scissortail 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 Scissortail in a letter dated November 23, 2005 (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. submitted a supplemental letter ruling request to the Oklahoma Tax Commission dated January 19, 2006 (the "Supplemental Request"). The Supplemental Request supplemented the facts contained in the previous Ruling Request

and requested confirmation from the Oklahoma Tax Commission that those additional facts did not impact the Ruling issued by the Oklahoma Tax Commission and received by

4. In response, the Tax Policy and Research Division of the Oklahoma Tax Commission issued a ruling dated February 3, 2006 to _____ (the "Supplemental Ruling"). In the Supplemental Ruling, the Oklahoma Tax Commission stated that the supplemental facts contained in the Supplemental Request did not impact the Ruling issued by the Oklahoma Tax Commission and received by

5. 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 became 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.

6. 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.

7. On June 23, 2006, _____ submitted a letter ruling request to the Oklahoma Tax Commission seeking a ruling that, among other things, both the Ruling and the Supplemental Ruling were 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.

8. In response, the Tax Policy and Research Division of the Oklahoma Tax Commission issued certain rulings to _____ in its letter dated June 29 which is referred to herein as the June 29 Ruling. In the June 29 Ruling, the Oklahoma Tax Commission ruled that both the Ruling and the Supplemental Ruling were 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 so that the Capital Company, the Venture Fund and their investors would 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

9. In its June 29, 2006 Ruling, the Oklahoma Tax Commission also ruled that 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 the 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 are 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.

"[p]rovided 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".

10. Prior to November 1, 2006, the Capital Company and the Fund intend to make an investment in (the "Venture") in return for common or preferred equity interests or subordinated debentures ("Portfolio Company Stock") which qualifies for the Oklahoma Tax Credits.

11. The Venture is a limited liability company formed under the laws of the State of Oklahoma on September 28, 2006. The Capital Company and the Fund intend for the Venture to qualify as an "Oklahoma rural small business venture" as defined in the Business Incentive Acts. The operations of the Venture are governed by its Articles of Organization filed with the Oklahoma Secretary of State on September 28, 2006 and its Operating Agreement dated September 28, 2006.

12. The Venture will have at least fifty percent (50%) of its employees or assets located in Oklahoma within 180 days after the Capital Company makes a qualified investment in the Venture.

13. The Venture needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services.

14. The Venture will be engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F, or I of the Standard Industrial Classification Manual, 1987 revision.

15. The Venture will qualify as a small business as defined by the Federal Small Business Administration.

16. The Venture will have its principal place of business initially in Oklahoma (Pottawatomie County). The Company will then construct its Biodiesel plant in Oklahoma (Carter County). Both office locations are located in non-metropolitan areas of Oklahoma as defined in the Business Incentive Acts. The Venture will also conduct the activity resulting in at least seventy-five percent (75%) of its gross annual revenue in Oklahoma (Carter County), which is a non-metropolitan area of Oklahoma as defined in the Business Incentive Acts.

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. After reviewing the Investment Plan, the Articles of Organization, the Operating Agreement and any other agreements responsible for the governance of the Venture and in light of the facts and assumptions set forth in this and prior letter ruling requests, the provisions of 68 Okla. Stat. §2357.63E and 68 Okla. Stat. §2357.74E have been met and the investment by the Fund in the Capital Company followed by the investment by the Capital Company in the Venture prior to November 1, 2006, will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62 and 68 Okla. Stat. §2357.73.

It is the ruling of the Tax Policy Division that the investment by the Fund in the Capital Company followed by the investment by the Capital Company in the Venture prior to November 1, 2006, will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62 and 68 Okla. Stat. §2357.73 based on the following representations:

a. *A qualified investment will be made in prior to November 1, 2006, to be used for the purpose of building and operating a plant to convert soybean oil into biodiesel fuel.*

b. *The investor's funds will be invested in assets which will be used for the production of income, thus, the funds will be at risk.*

c. *The primary purpose of the investment is to generate long-term cash flows from the successful operation of not chiefly to generate tax benefits.*

2. After reviewing the Investment Plan, the Articles of Organization, the Operating Agreement and any other agreements responsible for the governance of the Venture and in light of the facts and assumptions set forth in this letter and prior ruling requests, the provisions of 68 Okla. Stat. §2357.63E and 68 Okla. Stat. §2357.74E have been met and the Direct Investments by the Fund in the Venture prior to November 1, 2006, will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.63 and 68 Okla. Stat. §2357.74.

Yes. Based upon the facts and other assertions contained in your September 29

request and the attached exhibits, qualified investments by the Fund in the Venture in conjunction with qualified investments made by the Capital Company in the Venture prior to November 1, 2006 will qualify for the tax credits under Sections 2357.63 and 2357.74 of Title 68.

3. After reviewing the Investment Plan, the Articles of Organization, the Operating Agreement and other agreements responsible for the governance of the Venture and in light of the facts and assumptions set forth in this and prior letter ruling requests, the investment by the Capital Company in the Venture and the Direct Investment made by the Fund in the Venture satisfies a legitimate business purpose of the Venture which is consistent with its organizational instrument, bylaws and other agreements responsible for the governance of the business venture, as stated in 68 Okla. Stat. §2357.63E(A)(1) and §2357.74E(A)(1).

Yes. The production of biodiesel fuel satisfies a legitimate business purpose of the Venture as required under 68 Okla. Stat. §2357.63E(A)(1) and §2357.74E(A)(1).

4. Based on the facts and assumptions set forth in this and prior letter ruling requests, the funds of the Capital Company () are at risk as required under 68 Okla. Stat. §2357.63E(A)(2) and §2357.74E(A)(2), including both the portion representing Investor capital contributed to the Fund as well as the portion funded by loan proceeds borrowed by the Fund. Accordingly, the Oklahoma Tax Credits will be calculated as a percentage of the funds contributed by the Fund to the Capital Company, whether such funds are derived from Investor equity or the loan.

Yes. Based upon the facts and other assertions contained in your September 29 request and the attached exhibits, the funds invested by the Capital Company in the Venture are "at risk" as required under 68 Okla. Stat. §2357.63E(A)(2) and §2357.74E(A)(2).

5. Based on the facts and assumptions set forth in this and prior letter ruling requests, the Fund's Direct Investments in the Portfolio Companies are at risk as required under 68 Okla. Stat. §2357.63E(A)(2) and §2357.74E(A)(2), including both the portion representing Investor capital contributed to the Fund as well as the portion funded by loan proceeds borrowed by the Fund. Accordingly, the Oklahoma Tax Credits with respect to Direct Investments by the Fund will be calculated as a percentage of the funds contributed by the Fund to the Portfolio Companies, whether such funds are derived from Investor equity or the loan.

Yes. Based upon the facts and other assertions contained in your September 29 request and the attached exhibits, the funds invested by the Fund are "at risk" as required under 68 Okla. Stat. §2357.63E(A)(2) and §2357.74E(A)(2).

6. Based on the facts and assumptions set forth in this letter ruling request, both the investment by the Capital Company in the Venture and the Direct Investments by the Fund in the Venture in exchange for Portfolio Company Stock (including subordinated debentures) will be a "qualified investment" within the meaning of 68 Okla. Stat. §2357.61(6) and 68 Okla. Stat. §2357.72(7).

Yes. Based upon the facts and other assertions contained in your September 29 request and the attached exhibits, both the investment by the Capital Company in the Venture and the Direct Investments by the Fund in the Venture in exchange for Portfolio Company Stock (including subordinated debentures) meet the definition of a "qualified investment" as defined in 68 Okla. Stat. §2357.61(6) and 68 Okla. Stat. §2357.72(7).

7. After reviewing the Investment Plan, the Articles of Organization, the Operating Agreement and other agreements responsible for the governance of the Venture, the investment by the Capital Company in the Venture and the Direct Investment made by the Fund in the Venture is not made chiefly for the purpose of reducing tax liability, as stated in 68 Okla. Stat. §2357.63E(A)(3) and §2357.74E(A)(3).

Yes, the Tax Policy Division agrees that the qualified investments by the Capital Company in the Venture and direct investments made by the Fund in the Venture are not made chiefly for the purposed of reducing tax liability.

8. The Venture will qualify as an Oklahoma rural small business venture as that term is defined in 68 Okla. Stat. §2357.72(6).

Yes. It is the ruling of the Tax Policy Division that meets the definition of an "Oklahoma rural small business venture" within the meaning of §2357.72(6) based on the following representation:

a. *will have at least 50% of its assets and employees located within Oklahoma;*

b. *needs financial assistance in order to build a plant and commence the business of converting soybean oil into biodiesel fuel.*

c. *At least seventy-five percent (75%) of gross annual revenues will be a result of activities conducted in Carter County in an area deemed to be a non-metropolitan area.*

d. *is engaged in a lawful business activity under Division D of the Standard Industrial Classification Manual; and*

e. *meets the definition of a small business by the federal Small Business Administration.*

9. Based on the facts and assumptions set forth in this and prior letter ruling requests, neither the investments by Fund nor the Capital Company will be made chiefly for the purpose of reducing tax liability.

Yes. See response #7.

This response applies only to the circumstances set out in your request dated September 29, 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.

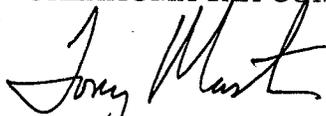
Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 if any report or return claiming a credit for the transactions outlined in this letter ruling. The

Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

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

Sincerely,

OKLAHOMA TAX COMMISSION

A handwritten signature in black ink, appearing to read "Tony Mastin". The signature is written in a cursive style with a large, stylized initial "T".

Tony Mastin, Director
Tax Policy & Research Division