OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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August 7, 2007

Dear :

This is in response to your inquiry of May 24, 2007 wherein you requested a letter ruling or determination regarding the Oklahoma Historic Tax Credits ("SHTC") provided by 68 O.S. § 2357.41, et seq. Following is a restatement of the facts outlined in your letter, the rulings requested and our responses thereto.

Facts

(the "Company") is an Oklahoma limited liability company and an affiliate of an Oklahoma limited liability company (the "Developer"). The Developer has entered into an agreement with the regarding the redevelopment of the historic in downtown (the "Project") as part of the City's Vision 2025 Downtown Housing Program. The Company was formed on March 28, 2007 in order to own and redevelop the . The Company expects to generate a substantial amount of federal Historic Tax Credits and SHTCs throughout the course of the Project and to monetize these credits for the purpose of funding a portion of the Project.

As reflected on the attached Transaction Structure Chart which you provided as an attachment to your inquiry, the Company intends to monetize the federal Historic Tax Credits and SHTCs being generated in connection with the Project by selling equity interests in the Company. The Company will be owned by two entities. , an Oklahoma limited liability company and an affiliate of the Developer (the "Manager"), will own a majority of the Company's equity, and the remaining equity will be held by , an Oklahoma limited liability company (the "Master Tenant"). As a member of the Company, the Master Tenant will enter into an Operating Agreement with the Manager. The Operating Agreement will provide that the Company will elect to "pass thru" all federal Historic Tax Credits to the Master Tenant pursuant to Internal Revenue Code Section 50(d)(5) and will allocate all SHTCs generated by the Project to the Master Tenant. The Master Tenant, as a "pass through" entity and a wholly-owned subsidiary, will subsequently allocate these tax credits to its sole member, a limited liability company . will then allocate the federal Historic Tax Credits to its two members on a

pro rata basis and will allocate all of the SHTCs to its majority member. Thus, the allocation of SHTCs by the Company to the Master Tenant and by to its majority member will not be made on a *pro rata* basis.

Rulings Requested

1. The Company and its direct and indirect investors can allocate SHTCs within a "pass through entity," which allocation is considered a transfer under the SHTC statute and requires the filing of a Form 572 with the Commission to memorialize the transfer.

Yes. In the case of "pass through entities" (limited liability companies, partnerships and Sub S corporations) that elect not to transfer the credit to third parties, the credit may be allocated and distributed to one or more members, partners or shareholders. In those cases, an allocation is considered a "transfer" of the credit under the statute, and the allocating entity (i.e., the transferor) and the recipient member, partner or shareholder (i.e., the transferee) must file a Form 572 with the Commission to memorialize the allocation/transfer.

2. SHTCs are not required to be allocated (i) on a *pro rata* basis in accordance with ownership interests or (ii) in compliance with the federal income tax "substantial economic effect" regulations.

Yes. With respect to other state tax credits, the Tax Commission has historically allowed the distributing entity to determine how the credits are allocated and distributed so long as the following two conditions are met. One, the aggregate amount allocated and distributed by the entity does not exceed the amount of available credits and two, allocations and distributions must be made to a member, shareholder or partner of the "pass through entity" that has generated the credit. We give no assurances with respect to whether the proposed allocations would be respected for federal income tax purposes.

3. Multiple transfers of SHTCs to third parties or the allocation of SHTCs through a series of partnership tiers is permissible so long as a Form 572 is filed with the Commission to memorialize each transfer and/or allocation.

Yes. The statute does not restrict the number of times that the SHTCs may be transferred so long as all transfers are consummated during the five (5) years following the year of qualification. As discussed above, "pass through entities" that elect not to transfer the credit to third parties may allocate and distribute the credit to one or more members, partners or shareholders. The same principle applies to a series of partnership tiers. In those cases, an allocation is considered a "transfer" of the credit under the statute, and the allocating entity (i.e., the transferor) and the recipient member, partner or shareholder (i.e., the transferee) must file a Form 572 with the Commission to memorialize each allocation/transfer.

4. The allocation of SHTCs within a "pass through entity" can be made on any basis determined by the equity owners of such entity.

Yes. As stated above, the Tax Commission has historically allowed the distributing entity to determine how the amounts of credits are allocated and distributed so long as the following two conditions are met. One, the aggregate amount allocated and distributed by the entity does not exceed the amount of available credits and two, allocations and distributions must be made to a member, shareholder or partner of the "pass through entity" that has generated the credit.

5. The rulings requested herein may be relied upon by the Company and the investors in the Company, including any indirect investors through "pass-through entities."

   Yes. The rulings granted herein may be relied upon by the Company and the investors in the Company, including any indirect investors through "pass-through entities. "

This response applies only to the circumstances set out in your request dated May 24, 2007. 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 of 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,

Lisa R. Haws
Tax Policy Analyst