OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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March 16, 2009

Re: LR 08-164; Income Tax - Oklahoma Historic Rehabilitation Credits

Dear

This is in response to your inquiry of November 13, 2008 wherein you requested a series of ruling requests relating to the Oklahoma Historic Rehabilitation Credits under 68 Okla. Stat. § 2357.41. What follows is verbatim your facts and requested ruling and our response thereto.

Statement of Facts

1. Your client, the "Landlord"), has incurred certain qualified rehabilitation expenses in calendar year 2008 and will incur additional qualified rehabilitation expenses in calendar year 2009 for the rehabilitation of a certified historic structure located a Oklahom generally known as the Building.

2. Pursuant to the Operating Agreement of the Landlord, one of the Members of the Landlord (the "State Member") has been or will be allocated transferable Oklahoma Historic Rehabilitation Tax Credits under 68 Okla. Stat. § 2357.41 (the "State Tax Credits").

3. The rehabilitation expenditures also will qualify for the Federal Historic Rehabilitation Tax Credits (the "Federal Tax Credits").

4. The State Member of the Landlord desires to be able to transfer the State Tax Credits to third party purchasers.

5. In order to help finance the rehabilitation and renovation of the Building, the Landlord has entered into a Master Lease of the premises with

6. Landlord has entered into a Pass-Through Agreement with Master Tenant whereby the Federal Tax Credits have been passed-through to the Master Tenant.

7. Landlord and Master Tenant have agreed that the Pass-through Election only applies to the Federal Tax Credits and not to the State Tax Credits.

8. Landlord is owned by the Master Tenant and the State Member.

9. Under the Landlord Operating Agreement, the State Member is allocated all the State Tax Credits.

10. The State Member is a limited liability company.

11. The State Member has been negotiating with third parties (the "Potential Third Party Purchaser") to enter into an agreement wherein one or more third parties will purchase the State Tax Credits from the State Member.

12. The s a building that consists of commercial rental spaces. It is estimated that the total Qualified Rehabilitation Expenditures ("QREs") eligible for the Federal Tax Credit will be approximately Based upon that estimate, the total State Tax Credits would be approximately

13. The Building is being rehabilitated in two phases.

14. Phase 1 of the Project encompasses the rehabilitation of the overall interior and exterior building shell, roof and basement, common areas, and tenant spaces on as shown on Amendment #1 to Part 2 of the Historic Preservation Certification Application. It is expected that Phase 1 will be completed prior to December 31, 2008 and that the basement, common areas and tenant spaces on will be ready to be placed in service on or before December 31, 2008. It is expected that the QREs for Phase 1 will be approximately and that Phase 1 of the Project will qualify for the Federal Tax Credits for the QREs related to Phase 1 in calendar year 2008.

15. Phase 2 of the Project encompasses the tenant space improvements on as shown on Amendment #1 to the Part 2 of the Historic Preservation Certification Application. It is expected that Phase 2 will be completed during calendar year 2009 and that a Permanent Certificate of Occupancy for the entire Building, including the tenant space improvements on will be issued by the City of luring calendar

year 2009. It is expected that the QREs for Phase 2 will be approximately and that Phase 2 of the Project will qualify for the Federal Tax Credits for the QREs related to Phase 2 in calendar year 2009.

16. As a general rule, pursuant to Section 47 of the Internal Revenue Code ("IRC"), the Federal Tax Credit allowed for the tax year that the qualified rehabilitated building is placed in service. However, when a building, such as the Building, is being rehabilitated and placed in service in phases, the Federal Tax Credits for QREs related to each phase may be taken into account in the tax year in which each phase of the project is completed and placed in service. See IRC Reg. §1.48-12(b)(2)(v).

17. The Building was listed on the national register of certified historic structures by the Oklahoma Historical Society and the National Park Service on

18. Landlord submitted Part 2 of its Historic Preservation Certification Application (Description of Rehabilitation) with the Oklahoma Historical Society and the National Park Service on and received its approval of its Part 2 from the Oklahoma Historical Society and the National Park Service on

19. Landlord has not yet submitted Part 3 of its Historic Preservation Certification Application (Request for Certification of Completed Work) with the Oklahoma Historical Society and the National Park Service. Landlord anticipates that it will submit its Part 3 in March of 2009.

Rulings Requested and OTC Responses

1. The State Tax Credits will initially be owned by, and in the name of, the State Member due to the allocation of the State Tax Credits to the State Member by the Operating Agreement of the Landlord.

   Yes. In the case of pass through entities, the Oklahoma Tax Commission allows the Oklahoma tax credits to be either allocated, assigned, or distributed to the members, shareholders, or partners at the pass through entities discretion, so long as the allocation, assignment, or distribution of the credits does not exceed one hundred percent (100%). In this case, the Landlord (a limited liability company or "LLC") will have generated Oklahoma Tax Credits that may be allocated to members of the LLC, of which the State Member is a member.

2. The Federal Pass-Through Agreement does not pass the State Tax Credits through to the Master Tenant.

   Yes.

3. The State Tax Credits attributable to Phase 1 will be available to be claimed by the State Member on or before December 31, 2008 to the extent the Project qualifies for federal historic rehabilitation tax credits in 2008 for QREs related to Phase 1.

   Yes.

4. The State Tax Credits attributable to Phase 2 will be available to be claimed by the State Member during 2009 if a Permanent Certificate of Occupancy is issued by the City of as to Phase 2 during 2009 and assuming the Project qualifies for federal historic rehabilitation tax credits in 2009 for QREs related to Phase 2.

   Yes.

5. The transfer of the State Tax Credits attributable to Phase 1 can be accomplished by the State Member and the Potential Third Party Purchaser by completing the Form 572: Transfer Agreement for Income Tax, Rural Electric Cooperatives Tax, or Insurance Premium Tax Credit and indicating the amount of the QREs incurred in Phase 1 on the Form 572 and filing a copy of the agreement executed by the State Member and the Potential Third Party Purchaser of the State Tax Credits within thirty (30) days of the date of transfer with the Oklahoma Tax Commission.

   Yes, transfers of the Oklahoma tax credits are accomplished by filing Oklahoma Tax Commission Form 572.

6. The transfer of the State Tax Credits attributable to Phase 2 can be accomplished by the State Member and the Potential Third Party Purchaser by completing the Form 572: Transfer Agreement for Income Tax, Rural Electric Cooperatives Tax, or Insurance Premium Tax Credit and indicating the amount of the QREs incurred in Phase 2 on the Form 572 and filing a copy of the agreement executed by the State Member and the Potential Third Party Purchaser of the State Tax Credits within thirty (30) days of the date of transfer with the Oklahoma Tax Commission.

   Yes, transfers of the Oklahoma tax credits are accomplished by filing Oklahoma Tax Commission Form 572.

7. The State Tax Credits are transferable by the State Member to the Potential Third Party Purchaser at the time the State Tax Credits become available to be claimed by the State Member (i.e. during the 2008 calendar year for QREs related to Phase 1 and during the calendar year 2009 for QREs related to Phase 2).

Yes.

8. The Potential Third Party Purchaser will be able to utilize the State Tax Credits related to Phase 1 by either: (i) claiming the State Tax Credits on its Oklahoma tax return for its 2008 tax year, (ii) using the State Tax Credits to obtain an immediate refund of any estimated payments previously paid for the 2008 year, or (iii) offsetting any estimated tax payments due in 2008 in each case by attaching the 511CR: Other Credits Form, and a copy of the Form 572 to its Oklahoma tax return or estimated payment vouchers, as the case may be, for its 2008 tax year.

   Yes, the Oklahoma tax credits are claimed on the Oklahoma tax return and reported on Oklahoma Tax Commission Form 511CR, and Oklahoma Tax Commission Form 572 is supporting documentation .

9. The Potential Third Party Purchaser will be able to utilize the State Tax Credits related to Phase 2 by either: (i) claiming the State Tax Credits on its Oklahoma tax return for its 2009 tax year, (ii) using the State Tax Credits to obtain an immediate refund of any estimated payments previously paid for the 2009 year, or (iii) offsetting any estimated tax payments due in 2009 in each case by attaching the 511CR: Other Credits Form, and a copy of the Form 572 to its Oklahoma tax return or estimated payment vouchers, as the case may be, for its 2009 tax year.

   Yes, the Oklahoma tax credits are claimed on the Oklahoma tax return and reported on Oklahoma Tax Commission Form 511CR, and Oklahoma Tax Commission Form 572 is supporting documentation.

10. The State Tax Credits available for 2008 or 2009 can be used by the Third Party Purchaser to apply for a refund of any of the taxes identified in 68 Okla. Stat. § 2357.41 paid by the Potential Third Party Purchaser in the 2008 or 2009 tax year to which the State Tax Credit relates (including any estimated payments of such taxes paid during the year) or used to satisfy such tax obligations in subsequent years (subject to the limitations provided in the statute).

    Yes.

11. The date of transfer of the State Tax Credits for all purposes is the date specified in the first paragraph of Form 572.

    Yes.

12. A Third Party Purchaser will have no liability to repay the State of Oklahoma for any of the State Tax Credits the Third Party Purchaser uses to reduce any of the taxes identified in 68 Okla. Stat. § 2357.41 provided that the State Tax Credits became available on or after January 1, 2009, the effective date of certain amendments to 68 Okla. Stat. § 2357.41, even if the amount of the State Tax Credits are reduced upon audit of the Landlord or otherwise.

Yes.

Please also confirm that any third party purchaser of the State Tax Credits from the State Member and any transferee of the third party purchaser of the State Tax Credits may fully rely on this ruling.

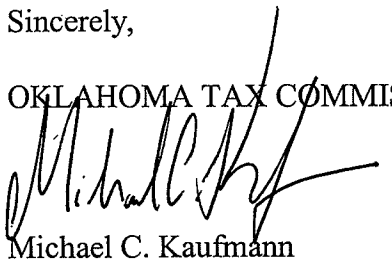
Yes. This letter may also be relied upon by subsequent transferees of this credit for the transactions outlined in this letter assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law

This response applies only to the circumstances set out in your request dated November 13, 2008. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon 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,

OKLAHOMA TAX COMMISSION



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