OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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March 16, 2009

RE: LR-09-022

Dear

This letter ruling is in response to your letter ruling request dated February 23, 2009, whereinn you posed a series of ruling requests relating to the 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.

FACTS

A. Summary of Original Transaction. On [redacted], [redacted] (the "Fund") made an investment in [redacted] ("LLC") and [redacted] ("VENTURE") pursuant to the facts set forth in the letter ruling issued by the Oklahoma Tax Commission on October 30, 2007 under File No. LR-07-170. In brief summary, [redacted] ("BANK") and other investors invested $[redacted] in the Fund for [redacted] common shares of the Fund. The Fund made an equity investment in LLC of $[redacted] in exchange for [redacted] Preferred Units of LLC Series Y ("LLC Series Y Preferred Units"). LLC then loaned $[redacted] to VENTURE (the "LLC Loan") and invested $[redacted] in VENTURE's [redacted] preferred equity interests (the "Preferred Equity Interests"). The holders of the Fund's common shares (which contributed $[redacted] to the Fund) earned the entire 30% Oklahoma rural venture capital formation tax credit of $[redacted] (the "Credits"). In addition to the LLC Loan, VENTURE borrowed $[redacted] from [redacted] ("BANK II") which subsequently assigned such loan to its affiliate, [redacted] (collectively with BANK II, "[redacted]") (the "LOAN II"). No Oklahoma rural venture capital formation tax credits were generated by the LOAN II. The LOAN II was subordinate to the LLC Loan.

B. Facts of Proposed Transaction. VENTURE defaulted under the LLC Loan and the LOAN II on or before [redacted]. On [redacted], VENTURE, LLC and [redacted] entered into certain forbearance agreements (the "Forbearance Agreements") relating to certain defaults outstanding under the LLC Loan and the LOAN II. Subsequent to entering into the Forbearance Agreements, VENTURE breached certain terms and conditions of the Forbearance Agreements and is currently in default under the LLC Loan, the LOAN II and the Forbearance

Agreements. To resolve the defaults, [redacted], LLC, BANK, the Fund and VENTURE have agreed in principle to the following proposed series of transactions (collectively, the "Transaction") in order to keep the business as a going concern:

i. LLC will assign the LLC Loan and all related rights and agreements, and the Preferred Equity Interests, to the Fund in redemption of the LLC Series Y Preferred Units.

ii. The Fund will assign the LLC Loan and all related rights and agreements, and the Preferred Equity Interests, to BANK in exchange for the assumption by BANK of all rights and obligations of the Fund thereunder arising from and after such assignment and assumption. BANK will release and cancel all of its rights and interests in the Preferred Equity Interests such that such Preferred Equity Interests are effectively cancelled and terminated.

iii. [redacted] will form a new company, [redacted], a [redacted] limited liability company ("NEW COMPANY"). NEW COMPANY will acquire substantially all of the assets of VENTURE for the price of $[redacted], plus the assumption of the LLC Loan, the LOAN II, and certain trade payables of VENTURE pursuant to a certain Asset Purchase Agreement. NEW COMPANY will be a wholly-owned subsidiary of [redacted]., a [redacted] corporation ("CORPORATION"). CORPORATION will be owned by [redacted]. The stock of CORPORATION will not be owned by (i) a person, or an entity controlled by a person, that made a qualified investment in LLC that provided funds for use by VENTURE, as provided in 68 Okla. Stat. § 2357.74B(A)(2)(a)(1), or (ii) a person, or entity controlled by a person, that made an investment in conjunction with a qualified investment made by LLC that provided funds for use by VENTURE, as provided in 68 Okla. Stat. § 2357.74B(A)(2)(a)(2).

iv. NEW COMPANY, VENTURE and BANK will enter into an Assumption Agreement wherein NEW COMPANY will assume the LLC Loan, and an amendment and restatement of the LLC Loan agreement pursuant to which the LLC Loan will be restated and modified to, among other things, consolidate the notes evidencing the LLC Loan, extend the forbearance period, defer the measurement of the financial covenants set forth in the LLC Loan, and revise the payment schedule under the LLC Loan.

v. NEW COMPANY, VENTURE and [redacted] will enter into an Assumption and Modification Agreement wherein NEW COMPANY will assume the LOAN II, and the LOAN II will be modified to, among other things, extend the forbearance period, defer the measurement of the financial covenants set forth in the LOAN II, revise the payment schedule under the LOAN II, and [redacted] will make an additional loan of up to $[redacted] to NEW COMPANY and VENTURE, jointly and severally, to pay certain expenses of the business.

vi. NEW COMPANY will make a payment of approximately $[redacted] to

LLC in satisfaction of accrued and future management fees and reimbursement of certain attorneys' fees in connection with the LLC Loan and the Transaction.

vii. The consummation of the proposed asset transfer and debt assumption transactions between NEW COMPANY and VENTURE and assignment and assumption of the LLC Loan are both conditioned upon receipt of the rulings requested hereby, satisfactory in form and substance to the various parties to the foregoing transactions. The consummation of the Transaction is also conditioned upon the consummation of all of the series of transactions making up the overall Transaction.

RULING REQUESTED

1. The transfer by VENTURE to NEW COMPANY of substantially all of its assets for the purchase price of $[redacted] plus the assumption of the LLC Loan, the LOAN II and certain trade payables of VENTURE by NEW COMPANY, will qualify as a "market-based liquidity event" under 68 Okla. Stat. § 2357.74B(A)(2).

Based on the facts and representations contained in your February 23rd request and the attached exhibits, it is the ruling of the Tax Policy Division that the transfer by VENTURE to NEW COMPANY of substantially all of its assets for the purchase price of $[redacted], plus the assumption of the LLC Loan, the LOAN II and certain trade payables of VENTURE, qualifies as a "market-based liquidity event" as defined in 68 Okla. Stat. § 2357.74B(A)(2).

2. The assignment of the LLC Loan and all related rights and agreements and the Preferred Equity Interests by LLC to the Fund in redemption of the LLC Series Y Preferred Units, the assignment of the LLC Loan and all related rights and agreements and the Preferred Equity Interests by the Fund to BANK in exchange for the assumption by BANK of all obligations of the Fund thereunder, and the cancellation of the Preferred Equity Interests by BANK, arise as a result of a "market-based liquidity event" under 68 Okla. Stat. § 2357.74B(A)(2) and thus will not constitute a "recapture event" under 68 Okla. Stat. § 2357.74B(A).

Based on the representations contained in your February 23rd request that the transactions are interdependent, it is the ruling of the Tax Policy Division that the assignment of the LLC Loan and all related rights and agreements and the Preferred Equity Interests by LLC to the Fund in redemption of the LLC Series Y Preferred Units, the assignment of the LLC Loan and all related rights and agreements and the Preferred Equity Interests by the Fund to BANK in exchange for the assumption by BANK of all obligations of the Fund thereunder, and the cancellation of the Preferred Equity Interests by BANK, arise as a result of a "market-based liquidity event" under 68 Okla. Stat. § 2357.74B(A)(2) and thus will not constitute a "recapture event" under 68 Okla. Stat. § 2357.74B(A).

3. The Transaction will not cause the recapture of the Credits under 68 Okla. Stat. § 2357.74B(A).

Yes, based upon the facts and representations contained in your February 23rd request

and the attached exhibits, the Transaction will not cause the recapture of the Credits under 68 Okla. Stat. § 2357.74B(A).

4. The rulings request herein may be relied upon by the Fund, LLC, VENTURE, NEW COMPANY, CORPORATION, [redacted] and BANK.

Yes. This response applies only to the circumstances set out in your request dated February 23, 2009. 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. This ruling is being issued to VENTURE and NEW COMPANY, and the investors in these respective entities include the Fund, LLC, [redacted] and BANK.

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.

Sincerely,

Oklahoma Tax Commission

Dawn Elizabeth Cash

Dawn Elizabeth Cash, Director
Tax Policy & Research Division