OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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May 7, 2009

Re: Our file number LR-09-036

Dear

This letter ruling is in response to your letter ruling request dated March 25, 2009 wherein you posed a series of ruling requests relating to the One-Time Credit Against Income Tax for Investments in Qualified Clean-Burning Motor Vehicle Fuel Property (68 O.S. § 2357.22) and Rural Venture Capital Formation Incentive Act (68 O.S. §2357.70 et seq.). Following a verbatim restatement of the facts as outlined in your letter, are the specific rulings requested and our responses thereto.

[redacted] (the "Venture"), is an Oklahoma limited liability company that desires confirmation that certain of its expenditures will qualify for the one-time tax credit for investment in "qualified clean-burning motor vehicle fuel property" as defined in Tit. 68 O.S. §2357.22 ("Qualified Expenditures" when referring to the expenditures on qualified clean-burning motor vehicle fuel property and the "Credits" when referring to the tax credits generated thereby). The Venture will be organized for the purpose of raising investment capital from equity investors and lending institutions to finance [redacted] (the "VEHICLES") currently owned by [redacted] ("VEHICLE OWNER") to compressed natural gas ("CNG") operation. In this regard, it is expected that a significant portion of the Venture's investment capital will be used to make Qualified Expenditures and that the Credits earned by the Venture as a result of the Qualified Expenditures will be available for use by the equity investors.

Statement of Facts:

1. The Venture is an Oklahoma limited liability company which will raise investment capital from accredited investors (the "Investors") as well as obtain loans (collectively, the "Bank Loans") from one or more lending institutions (collectively, the "Lender") to finance the Venture's purchase of the VEHICLES after the VEHICLES are converted to 100% CNG operation.

2. It is expected that the Bank Loans will consist of loans in the total aggregate amount of approximately $4,000,000.

3. The Venture intends to issue two types of equity units, Common Units and Preferred Units. The Investors will be issued all of the Preferred Units in exchange for capital contributions to the Venture. [redacted], an Oklahoma limited liability company ("Management), will be issued all of the Common Units in exchange for a capital contribution to the Venture. Management will be the managing member of the Venture. The Investors and Management shall be the only equity members of the Venture (collectively, the "Members"). The Members shall contribute approximately $7,700,000 of capital to the Venture in total.

4. The Operating Agreement for the Venture shall include one of two possible provisions with respect to allocation of the Credits; (x) that the Credits resulting from the Qualified Expenditures made by the Venture shall be allocated to all the Members based on each Members percentage equity share of the Venture or (y) that the Credits resulting from the Qualified Expenditures made by the Venture shall be allocated solely to the Investors based on each Investor's percentage share of the outstanding Preferred Units.

5. The Venture intends to enter into a series of business transactions whereby: (i) a certified installer of CNG re-powering equipment (the "Converter") will purchase the diesel-powered [redacted] VEHICLES currently operated and owned by VEHICLE OWNER; (ii) the Converter will convert the VEHICLES to 100% CNG operation in compliance with Title 11 of the Clean Air Act and in a manner that is intended to qualify for the federal income tax credits for qualified alternative fuel motor vehicles provided under Section 30B of the Internal Revenue Code; and (iii) the Venture will acquire the converted VEHICLES from the Converter and subsequently lease the converted VEHICLES to VEHICLE OWNER under a true operating lease, as more particularly described in Paragraph 11 below.

6. The Converter will purchase each diesel-powered VEHICLE from VEHICLE OWNER for fair market value (the "Pre-Conversion Purchase Price"), as determined by an independent written appraisal of the VEHICLE from [redacted] or other independent appraiser. The Converter shall acquire title to the VEHICLES free and clear of all liens and encumbrances of any kind.

7. The Converter will convert the VEHICLES to 100% CNG operation. As part of the conversion, the Converter will remove the diesel engines, diesel supply lines and diesel tanks from the VEHICLES. The Converter will then procure and install new EPA-certified CNG engines, new carbon-reinforced CNG tanks and new CNG supply lines (including CNG valves) in addition to performing other modifications to the VEHICLES to allow for 100% CNG operation. All of the above-described equipment to be installed in the VEHICLES and all of the above-described work to be performed as part of the conversion is essential to achieving 100% CNG operation for the VEHICLES.

8. The Venture and the Converter have established, through a process of arms-length negotiations, a fixed fair-market cost to be charged for all equipment and labor provided by the

Converter and directly related to the conversion of each VEHICLE to 100% CNG operation (the "Conversion Cost").

9. The Venture and the Converter are unaffiliated entities and have no common ownership, no common directors and no common officers.

10. The Venture will purchase each VEHICLE from the Converter for a purchase price equal to the Pre-Conversion Purchase Price plus the Conversion Cost (the "Post-Conversion Purchase Price"). The Venture shall acquire title to the VEHICLES free and clear of all liens and encumbrances of any kind.

11. The Venture shall lease the converted VEHICLES to VEHICLE OWNER under a master lease agreement which shall qualify as a "true lease" for federal income tax purposes (the "Lease"), and not as a sale or retention of a security interest. More specifically, the Venture shall remain the owner of the converted VEHICLES at all times during the term of the Lease and VEHICLE OWNER shall not acquire any right, title or interest in or to the VEHICLES except the right to use them in accordance with the terms of the Lease.

12. The initial term of lease for each converted VEHICLE shall be one (1) year, with four (4) successive options, exercisable by VEHICLE OWNER in VEHICLE OWNER's sole discretion, to extend the lease for additional periods of twelve (12) months each. In the event VEHICLE OWNER leases a converted VEHICLE through all option periods (i.e., for 5 years), VEHICLE OWNER shall have the right to purchase that VEHICLE from the Venture at an agreed upon fair market option price (the "Option Price"). Any converted VEHICLE not purchased by VEHICLE OWNER at the end of the Lease shall be sold on the open market and: (x) the Venture shall be obligated to pay to VEHICLE OWNER a portion of the amount by which the proceeds of the open-market sale for the VEHICLE exceed the VEHICLE's Option Price, in the event that the open-market sale proceeds do in fact exceed the Option Price, or (y) VEHICLE OWNER shall be obligated to pay to the Venture a portion of the amount by which the open-market sale proceeds for the Vehicle are less than VEHICLE's Option Price, in the event that the VEHICLE's Option Price is greater than the open-market sale proceeds.

13. All of the converted VEHICLES will placed in service under the Lease prior to [redacted].

14. The Venture will elect, or has already elected, to be classified as a "partnership" for federal and state income tax purposes and shall always be operated in a manner consistent with such classification.

15. Neither the Converter nor VEHICLE OWNER will claim any Credits in connection with the conversion of the VEHICLES to CNG operation. Also, the converted VEHICLES will not be placed in service at any prior to their sale to the Venture.

16. One or more of the Investors may make their investment in the Venture, either directly of through a rural small business capital company, in such a manner to satisfy all of the requirements of the Rural Venture Capital Formation Incentive Act, Tit. 68 O.S. §2357.71 et.

seq. (the "RVCA"). In such case, the "rural small business capital company" used for the Investor's investment in the Venture shall be classified as a "partnership" for federal and state income tax purposes and shall always be operated in a manner consistent with such classification.

17. Management will enter into contractual agreements with the Investors whereby Management will be entitled to purchase the Preferred Units of the Investors, and the Investors will be entitled to sell their Preferred Units to Management, at a yet to be determined price and a yet to be determined time following the termination of the Lease.

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

1. The new CNG engines, the new carbon-reinforced CNG tanks and the new CNG supply lines (including CNG valves) along with other incidental equipment to be installed by the Converter on the VEHICLES and directly related to the modification of the VEHICLES to CNG operation, all as more particularly described in Paragraph 7 of the section above, shall constitute "qualified clean-burning motor vehicle fuel property" as set forth in Tit. 68 §2357.22(B)(1).

Yes.

2. The fair-market Conversion Cost paid by the Venture to the Converter as part of the Post-Conversion Purchase Price, established through a process of arms-length negotiations and all as more particularly described in Paragraphs 8 and 10 of the section above, adequately establishes the Venture's cost basis in the "qualified clean-burning motor vehicle fuel property" for each VEHICLE for purposes of the Credit calculation set forth in Tit. 68 §2357.22(D).

Yes.

3. The calculation of the amount of Credits generated in connection with the conversion of each VEHICLE to 100% CNG operation shall be fifty percent (50%) of the Conversion Cost for that VEHICLE.

Yes. The credit for investments in qualified clean-burning motor vehicle fuel property shall be 50% of the Conversion Cost for the VEHICLE.

4. The Venture, as the purchaser of a newly converted VEHICLE, may claim the Credits with respect to the conversion of the VEHICLE to 100% CNG operation at the time such VEHICLE is first placed into service under the Lease.

Yes, provided they are placed into service prior to January 1, 2010.

5. The Credits attributable to the conversion of the VEHICLES to 100% CNG operation will pass through to the Members and may be (x) specially allocated to the Investors based on each Investor's percentage share of the outstanding Preferred Units or (y) allocated to all the Members based on each Member's percentage equity share of the Venture.

Yes.

6. At the time a converted VEHICLE is placed into service under the Lease, the Members (or Investors if so specifically allocated) may immediately use the Credits resulting from the conversion of the VEHICLE to offset Oklahoma income tax liability under Tit. 68 §2355, or estimated Oklahoma income taxes, then due or to become due for the same year in which the converted VEHICLE is placed into service.

Members of pass-through entities that are entitled to a credit under §2357.22 of Title 68 may receive an allocation of the credits from the pass-through entity. Once allocated to the members, the credits may immediately be used to offset Oklahoma income tax liabilities for the same year in which the investment was made.

7. An Investor which properly makes an investment in the Venture, either directly or through a "rural small business capital company", in such a manner to satisfy all of the requirements of the RVCA, and assuming that all the requirements of the RVCA are satisfied with respect to the rural small business capital company and the Venture, shall be entitled to claim the Credits in addition to any Oklahoma credits properly claimed by the Investor under the RVCA.

Yes. The Venture shall be entitled to claim credits under the Rural Venture Capital Formation Incentive Act in addition to any credits claimed for qualified clean-burning motor vehicle fuel property provided all statutory requirements are met.

This response applies only to the circumstances set out in your request dated March 25, 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.

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

Lisa Haws

Lisa Haws
Tax Policy & Research Division