

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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July 22, 2009

[REDACTED]

RE: LR-09-093
[REDACTED]

Dear [REDACTED]

This letter ruling is in response to your letter ruling request dated June 24, 2009, wherein 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 December 26, 2007, [REDACTED] (the "Fund") made an investment in [REDACTED] ("CAPITAL COMPANY") and VENTURE ("VENTURE") pursuant to the facts set forth in the letter ruling issued by the Oklahoma Tax Commission on June 7, 2007 under File No. LR-07-056. In brief summary, various investors invested \$3,586,000 in the Fund for 100% of the common shares of the Fund, and [REDACTED] made a loan to the Fund in the amount of \$6,200,000, which was guaranteed by the [REDACTED] and other investors in the Fund. The Fund made an equity investment in CAPITAL COMPANY of \$8,386,000 in exchange for 8,100,000 Preferred Units of CAPITAL COMPANY Series AA-1 and 286,000 Preferred Units of CAPITAL COMPANY Series AA-2 (collectively, the "CAPITAL COMPANY Series AA Preferred Units"). The Fund also made a direct investment in VENTURE. CAPITAL COMPANY then loaned \$8,386,000 to VENTURE (the "CAPITAL COMPANY Loan"). Pursuant to the CAPITAL COMPANY Loan, VENTURE executed and delivered to CAPITAL COMPANY (i) a Promissory Note in the original amount of \$8,100,000 (the "CAPITAL COMPANY Series AA-1 Note"), and (ii) a

Promissory Note in the original amount of \$286,000 (the "CAPITAL COMPANY Series AA-2 Note," and collectively with the CAPITAL COMPANY Series AA-1 Note, the "Notes,"). Further, to secure VENTURE's obligations under the Notes and certain other obligations to CAPITAL COMPANY, VENTURE executed and delivered to CAPITAL COMPANY (i) a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement (the "Mortgage") covering certain real property and all fixtures and articles of personal property owned by VENTURE, and (ii) a Security Agreement (the "Security Agreement," and collectively with the Mortgage and the Notes, the "CAPITAL COMPANY Loan Documents") covering the interest of VENTURE in certain collateral. The holders of the Fund's common shares earned the entire 30% Oklahoma rural venture capital formation tax credit (the "Credits").

B. Facts of Proposed Transaction. VENTURE defaulted under the CAPITAL COMPANY Loan Documents on or around August, 2008. On or around August, 2008, VENTURE executed and delivered to CAPITAL COMPANY (i) a First Amendment to Promissory Note pursuant to which the parties amended the CAPITAL COMPANY Series AA-1 Note (the "Series AA-1 Note Amendment"), and (ii) a First Amendment to Promissory Note pursuant to which the parties amended the CAPITAL COMPANY Series AA-2 Note (the "Series AA-2 Note Amendment," and collectively with the Series AA-1 Note Amendment, the "Amendments"). Subsequent to entering into the Amendments, VENTURE breached certain terms and conditions of the Amendments and is currently in default under the CAPITAL COMPANY Loan Documents and the Amendments. Due to the defaults, CAPITAL COMPANY desires to file an action against VENTURE and other various parties in the District Court of ██████ County to seek a judgment (i) against VENTURE for the amounts owed under the CAPITAL COMPANY Loan Documents, (ii) ordering the liens of the Mortgage and the Security Agreement foreclosed, and (iii) ordering the property and collateral secured by the CAPITAL COMPANY Loan Documents sold to satisfy the judgment with the proceeds of such sale applied first to the costs of such foreclosure, then to the payment and satisfaction of CAPITAL COMPANY's claim and judgment, with the surplus, if any, paid into the court to abide further order (collectively, the "Foreclosure").

RULINGS REQUESTED

1. The Foreclosure 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 June 24th request, it is the ruling of the Tax Policy Division that the Foreclosure qualifies as a "market-based liquidity event" as defined in 68 Okla. Stat. § 2357.74B(A)(2).

2. The return of CAPITAL COMPANY's investment in VENTURE due to the sale of VENTURE's assets in the Foreclosure arises 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 June 24th request, it is the ruling of the

Tax Policy Division that the return of CAPITAL COMPANY's investment in VENTURE due to the sale of VENTURE's assets in the Foreclosure arises 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 Foreclosure 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 June 24th request, the Foreclosure will not cause the recapture of the Credits under 68 Okla. Stat. § 2357.74B(A).

4. The rulings requested herein may be relied upon by the Fund, CAPITAL COMPANY, VENTURE and the investors who invested, directly or indirectly, in the Fund.

Yes. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon by the Fund, CAPITAL COMPANY, VENTURE and the investors who invested, directly or indirectly, in the Fund.

This response applies only to the circumstances set out in your request dated June 24, 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



Dawn Cash, Director
Tax Policy & Research Division