OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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May 18, 2010

[redacted]

Re: LR-10-074
[redacted]

Dear [redacted]:

This letter ruling is in response to your letter ruling request dated May 10, 2010 wherein you posed a ruling request relating to the 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.

This letter is to request an opinion on whether a new film production company in Oklahoma will meet the requirements of an Oklahoma Rural Small Business Venture under the Rural Venture Capital Formation Incentive Act, 68 O.S. § 2357.71 et seq ("Act"). [redacted], an Oklahoma Rural Small Business Capital Company ("Capital Company"), has previously received a favorable ruling from your office on its business operation under the Act for the benefit of motion picture production within the state. A film production company has expressed an interest in Oklahoma for an upcoming feature film production. The availability of investment from the Capital Company is a substantial reason to locate the film production in Oklahoma. Before committing to bring the film production to Oklahoma, the company requests a letter ruling from the Tax Commission that the company will qualify as a Rural Small Business Venture under the Act.

In support of the request, we offer the following facts.

STATEMENT OF FACTS:

1. The film production will form an Oklahoma limited liability company (the "Venture"). The purpose of the Venture will be to film a portion of the motion picture [redacted] (the "Project") in Oklahoma, conducting business for that purpose as the Oklahoma entity on a stand-alone basis. Another company, established in the [redacted], will conduct the filming of the remaining portions of the completed Project in the [redacted]. The two separate entities will have the same unrelated, unaffiliated, third party individual investors from the [redacted]. The Venture will also have the same managers or Producers as the [redacted] entity. The Venture will own or control the individual asset it creates, its respective portion of the Project, and the Venture will license its portion of the asset, for a fee, to a third entity established in the [redacted] to handle the distribution of the film. The Venture will hire its employees from Oklahoma and will conduct 100% of its business in Oklahoma. The Venture will spend 100% of the amount invested by the Capital Company in Oklahoma for the purpose of filming its portion of the Project in Oklahoma. The [redacted] entity will have a separate investment for its purpose which investment amount will not be included in the transaction between the Capital Company and the Venture.

2. The Venture will be engaged in a lawful business under SIC Division I Major Group 78, Motion Picture Production.

3. The Venture requires the use of the Capital Company investment in order to come to Oklahoma and begin its operation and is therefore in need of financing.

4. The Venture will have a physical office address located-outside of a county with a population of 100,000 or more according to the latest decennial census count, specifically [redacted], Oklahoma, [redacted] County. The Venture will conduct activity, including periods of pre-production and production, resulting in at least seventy-five percent (75%) of its gross annual revenue, determined by the license fee for the asset created, from a nonmetropolitan area of the state.

5. The Venture will, within 18 months of any investment made by the Capital Company, have more than 50% of its employees or assets located in Oklahoma.

6. The Venture will expend within 18 months of any investment made by the Capital Company 50% of its investment on both tangible and intangible assets, as those terms are defined under the Act, for the purchase or lease of equipment, services, goods, locations, accommodations, rentals, IP rights, and working capital.

Supplemental Ruling Requested

The ruling requested is as follows:

1. The Venture seeking to film its motion picture in Oklahoma will meet the requirements of an Oklahoma Rural Small Business Venture under the Act according to the facts above.

It is the ruling of the Tax Policy Division that the Venture meets the definition of an "Oklahoma rural small business venture" within the meaning of § 2357.72(6), (provided the Venture qualifies as a small business as defined by the federal Small Business Administration), based on the following representations:

1) The Venture will have at least 50% of its assets or employees located in Oklahoma within 180 days after a qualified investment is made;

2) The Venture needs financial assistance in order to commence its business as described in the letter ruling request;

3) The Venture is engaged in a lawful business activity under Division I of the Standard Industrial Classification Manual;

4) At least seventy-five percent (75%) of the Venture's gross annual revenues will be a result of activities conducted in areas deemed to be non-metropolitan areas within the state of Oklahoma; and

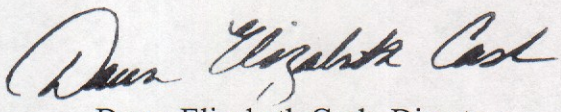
5) The Venture will expend within eighteen (18) months after the date of the qualified investment at least 50% of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business, and for working capital.

This response applies only to the circumstances set out in the request dated May 10, 2010. 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 Elizabeth Cash, Director
Tax Policy & Research Division