OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 31, 2011

Re: LR 11-112 – Income Tax; Credit for Cleaning Burning Motor Fuel Property (68 O.S. § 2357.22)

Dear

This is in response to your inquiry of October 7, 2011 wherein you requested a ruling concerning Credit for Cleaning Burning Motor Fuel Vehicle Property (68 O.S. § 2357.22). What follows is verbatim your facts and requested ruling and our response thereto.

Our client, , an limited liability company (respectfully requests that the Tax Policy and Research Division review the facts presented below and issue the rulings requested herein based on those facts.

Statement of Facts

1. and , an limited liability company will be the members of , an limited liability company) and parties to the Operating Agreement of . which is attached hereto as Exhibit A (the "Operating Agreement"). The following is a summary of the substantive terms of the Operating Agreement:

a will make one or more contributions of cash to in exchange for ninety-nine and one-half percent (99.5%) of the membership interests of (.

b. (will make one or more contributions of cash to). in exchange for one-half of one percent (0.5%) of the membership interests of (

c. The primary purpose of . will be to acquire, install and lease compressed natural gas equipment.

d. All allocations of income, gain, loss or deduction, including any Oklahoma income tax credits available under 68 O.S. § 2357.22, will be allocated in proportion to the ownership of - i.e. 99.5% to and 0.5% to .

2. will purchase compressed natural gas equipment and other related equipment and personal property (the "Equipment") for the delivery of compressed natural gas at three premises located at (a) ; (b) and (c) (each, a "Site" and collectively, the "Sites").

3. Specifically, will purchase the Equipment listed on Schedule 1, all in new condition.

4. will cause the Equipment to be installed at the Sites on or before December 31, 2011.

5. will lease the Equipment to (the "Lessee") pursuant to the Equipment Lease and Management Agreement attached hereto as Exhibit B (the "Lease"). The following is a summary of the substantive terms of the Lease:

a. The term of the Lease will be at least five (5) years beginning on the earlier of the date the Equipment is placed in service or December 31, 2011 and ending on December 31, 2016. The term may be shortened or extended by consent of the parties.

b. Lessee will pay rent for the Equipment.

c. Lessee will be responsible for all taxes relating to the Equipment or the use or ownership thereof.

d. Lessee will be responsible for all repair and maintenance of the Equipment.

e. Lessee will be responsible for all insurance relating to the Equipment.

f. Lessee will have the option to purchase the Equipment at any time after December 31, 2016 and on or before March 31, 2017.

6. will grant the right to purchase all of membership interests - i.e. 99.5% - in pursuant to the terms of the Option Agreement attached hereto as Exhibit C (the "Option"). The following is a summary of the terms of the Option:

a. will have the right to require to sell membership interests to at any time between January 1, 2017 and March 31, 2017.

b. will have the right to require to purchase membership interests at any time after March 31, 2017 and on or before June 30, 2017.

Requested Rulings:

1. Please identify whether or not the Equipment referenced in Paragraph 3 and listed on Schedule 1 qualifies for the income tax credit under 68 O.S. § 2357.22?

Your original schedule 1 is attached to the end of this letter, along with supplemental descriptions of certain equipment. One of the requirements for qualification for the tax credit under 68 O.S. § 2357.22 is that the equipment be directly related to the delivery of a clean burning fuel (i.e. CNG). The following items appear to qualify for the income tax credit under 68 O.S. § 2357.22, provided that the property is directly related to the delivery of CNG and that all other requirements of 68 O.S. § 2357.22 are met.

a. CNG Equipment
b. CNG Dispenser
d. Compressor Pad
e. Dispenser Island
f. Horseshoe Bumpers
i. Autogas POS System
j. Security Enclosure of CNG Equipment
k. Canopy

The following equipment appears to qualify for the income tax credit under 68 O.S. § 2357.22, provided that the property is directly related to the delivery of CNG, the and the expense item is capitalized into the cost of the equipment per the Internal Revenue Code and that all other requirements of 68 O.S. § 2357.22 are met.

c. CNG Freight
g. CNG Equipment Installation
h. CNG Electrical & Plumbing Installation

The following items do not qualify for the income tax credit under 68 O.S. § 2357.22, since it is a structural component not directly related to the delivery of CNG

l. Signage
m. Drive Pad Around Dispenser
o. Fencing
p. Light Poles

The following items do not qualify for the income tax credit under 68 O.S. § 2357.22, since they are not property; nor are they capitalized into the cost of the equipment per the Internal Revenue Code.

n. Site Prep
q. Engineering
r. Other Site Costs

2. Based on the Statement of Facts, will be entitled to claim the income tax credit under 68 O.S. § 2357.22, based on their proportion of ownership in for the Equipment identified as qualifying in your response in Question 1 above?

Yes, will be entitled to claim the income tax credit under 68 O.S. § 2357.22, based on their proportion of ownership in for the Equipment identified as qualifying in response to Question 1 above. Please also be advised of the provisions of 68 O.S. § 2357.10 which requires an additional report to the Oklahoma Tax Commission for credits that are allocated.

This response applies only to the circumstances set out in your request of October 7, 2011. 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, 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.

If I can be of further assistance, please feel free to call me at (405) 521-3133.

Sincerely,

OKLAHOMA TAX COMMISSION

Michael C. Kaufmann
Tax Policy Analyst