

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
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March 4, 2013

Re: LR-12-012 Tax Credit Inquiry

Dear

This is in response to your inquiry of January 24, 2012 wherein you requested a ruling concerning Oklahoma Tax Credit - Sale of Electricity Generated by Zero-Emissions Facilities. What follows is verbatim your facts and requested ruling and our response thereto.

Facts:

This letter requests a letter ruling (the "Ruling Request") on behalf of our client, ("Commerce"). We are requesting assurances regarding Oklahoma Tax Credit - Sale of Electricity Generated by Zero-Emissions Facilities under 68 Okla. Stat. §68-2357.32A (the "Credits"). Commerce anticipates entering into agreements whereby Commerce will purchase the Credits from either the initial recipient of the Credits or potentially a subsequent transferee, and Commerce intends to re-sell the Credits to third parties who may, in turn, re-sell the Credits to other parties.

Rulings Requested

Commerce and its subsequent transferees of the Credits respectfully request a letter ruling from the Tax Policy and Research Division of the Oklahoma Tax Commission that:

- 1) The Credits can be transferred as noted above (subject to the limitations provided in the statute), and Commerce may bifurcate or split the amount of the Credits among various transferees, so each transferee may receive a portion of the Credits.
- 2) The Credits cannot be recaptured or be otherwise voided after Commerce purchases the Credits. Our specific concern is that the Credits cannot be taken away after Commerce has purchased the Credits.
- 3) In the event of an audit of the eligible costs or any other adjustments that would otherwise result in a reduction of the Credits, the Credits will not be reduced in the hands of Commerce or any transferee or subsequent transferee, and the Oklahoma Tax

Commission will not look to Commerce, any transferee or subsequent transferee for any recovery related to the reduction in the Credits. Our specific concern is the statement contained in subsection (F) of Section 2357.32A which states, "Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred." It is acceptable that the initial recipient be liable for the adjustment, but Commerce requests assurance that the Credits cannot be reduced in the hands of Commerce or a subsequent transferee after they have purchased the Credits.

Please also confirm that Commerce and any transferee of the purchaser of the Credits may fully rely on this ruling.

We appreciate your attention to this Letter Ruling Request. Please do not hesitate to contact me at your convenience if you have any questions regarding this matter or need any additional information.

Response:

- 1) Yes, Credits that are allowed, but not used, are freely transferable at any time during the ten (10) years following the year of the qualification, subject to the limitations in the statute. Commerce may bifurcate or split the amount of the Credits among various transferees, so each transferee may receive a portion of the Credits.
- 2) Yes, the Credits cannot be recaptured or be otherwise voided after Commerce purchases the Credits.
- 3) Yes, in the event of an audit or other adjustment that would result in a reduction of the Credits, the Credits will not be reduced in the hands of Commerce or any transferee or subsequent transferee. The provision which states, "Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred" limits the rights of the transferee to those of the transferor; in other words, it puts a cap on the rights, but does not reduce them. A transferee's rights do not expand from what was transferred from the transferor. The provision that states, "The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee, regardless of the actual tax liability of the tax credit transferor, for the relevant taxable period" limits your risk to reduction. Even if the transferor's tax liability increases, it will not be passed to the transferee, thus the Credits will not be reduced in the transferee's hands.

This response applies only to the circumstances set out in your request of January 24, 2012. 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