Re: LR 16-018 – Income Tax Investment / New Jobs Credit - SB 1582

Dear

This is in response to your inquiry of May 16, 2016 to Tony Mastin, Executive Director of the Oklahoma Tax Commission wherein you requested guidance concerning the possible enactment of SB 1582. Your request has been assigned to me for a response. What follows is verbatim your letter; requested guidance and our response thereto.

Text of Letter:

Following up on our meeting on May 11, 2016 and on behalf of a wholly owned subsidiary of we respectfully request your guidance regarding the Oklahoma Tax Commission's ("OTC") interpretation of the Investment and Jobs Tax Credit statute assuming Senate Bill 1582 is enacted as currently drafted. For reference, enclosed please find a copy of Senate Bill 1582.

Background

is a limited liability company taxed as a corporation for federal and Oklahoma income tax purposes.

Oklahoma Investment and Jobs Tax Credit

68 O.S. 2011, Section 2357.4 provides an income tax credit for:

1. Investment in qualified depreciable property placed in service for use in a manufacturing operation, or
2. A net increase in the number of full-time-equivalent employees in a manufacturing operation.
Subsection G provides the credit is generally either:

a. 1% of the investment in qualified depreciable property in the initial year and each of the four subsequent years for a total benefit equal to 5% of the investment, or

b. $500 per incremental employee in the initial year and each of the four subsequent years if the level of new employees is maintained for a total benefit of $2,500 per incremental employee.

has investment tax credits which will carry forward into the 2016 income tax year, and the taxpayer expects to earn additional investment tax credits in future years.

Senate Bill 1582

Senate Bill 1582 proposes to cap the amount of investment tax credit that can be used to offset income tax at $25,000,000 per year for each of the income tax years beginning January 1, 2016, and ending on or before December 31, 2018. The bill proposes to insert a new paragraph 5 in subsection L:

5. Provided, for tax years beginning on or after January 1, 2016, and ending on or before December 31, 2018, the amount of credits available as an offset in a taxable year shall be limited to the percentage calculated by the Tax Commission pursuant to the provisions of subsection L of this section.

Senate Bill 1582 also proposes to add subsections L and M as follows:

L. For tax years beginning on or after January 1, 2016, and ending on or before December 31, 2018, the total amount of credits authorized by this section used to offset tax shall be adjusted annually to limit the annual amount of credits to Twenty-five Million Dollars ($25,000,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by this section shall be reduced so the total amount of credits used to offset tax does not exceed Twenty-five Million Dollars ($25,000,000.00) per year. The formula to be used for the percentage adjustment shall be Twenty-five Million Dollars ($25,000,000.00) divided by the credits used to offset tax in the second preceding year.

M. Pursuant to subsection L of this section, in the event the total tax credits authorized by this section exceed Twenty-five Million Dollars ($25,000,000.00) in any calendar year, the Tax Commission shall permit any excess over Twenty-five Million Dollars ($25,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.
Desired Clarification

The Taxpayer respectfully requests the Oklahoma Tax Commission's confirmation that, assuming Senate Bill 1582 is enacted as currently drafted, the OTC will interpret the revised Investment and Jobs Tax Credit statute consistent with the following statements:

1. Senate Bill 1582 applies an annual cap of Twenty-five Million Dollars per year on the amount of Investment and Jobs Tax credits that can be used to offset income tax during the applicable three tax years, and implements the cap by applying a percentage limitation to the amount of Investment and Jobs Tax Credit a taxpayer would otherwise utilize. Credits limited because of the cap are carried forward and will be available to offset income tax in 2019 and later tax years.

   **OTC Response:** Yes; credits limited because of the cap may be carried forward and may be available to offset income tax in 2019 and later tax years.

2. The Tax Commission will calculate the percentage limitation for each of the three tax years based on credits used in the second preceding year, not on credits earned in the second preceding year.

   **OTC Response:** Yes; the Tax Commission will calculate the percentage limitation for each of the three tax years based on credits used in the second preceding year.

3. Senate Bill 1582 does not adjust or limit the calculation of the total amount of Investment and Jobs Tax Credits a taxpayer earns during a tax year for making an investment in qualifying property or incremental jobs.

   **OTC Response:** Yes; Senate Bill 1582 does not adjust or limit the calculation of the total amount of Investment and Jobs Tax Credits a taxpayer earns during a tax year for making an investment in qualifying property or incremental jobs, rather limits the amount that may be claimed.

4. Senate Bill 1582 does not affect the status of Investment and Jobs Tax Credits carried over from tax years ending prior to January 1, 2016, and such carry over tax credits are available to offset income tax, subject to the newly proposed percentage limitation, during the 2016, 2017 and 2018 income tax years.

   **OTC Response:** Yes; Senate Bill 1582 does not affect the status of Investment and Jobs Tax Credits carried over from tax years ending prior to January 1, 2016, and such carry over tax credits are available to offset income tax, subject to the newly proposed percentage limitation, during the 2016, 2017 and 2018 income tax years.
5. Any Investment and Jobs Tax Credits which are carried over into or earned during the 2016, 2017, and 2018 income tax years but which are not allowed to be offset against income tax due to the application of the Twenty-five Million Dollar ($25,000,000.00) cap shall carry forward and will be available to offset income tax in 2019 and later tax years.

**OTC Response:** Yes; any Investment and Jobs Tax Credits which are carried over into or earned during the 2016, 2017, and 2018 income tax years but which are not allowed to be offset against income tax due to the application of the Twenty-five Million Dollar ($25,000,000.00) cap shall carry forward and will be available to offset income tax in 2019 and later tax years.

This response applies only to the circumstances set out in your request of May 16, 2016. 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,

Michael C. Kaufmann
Tax Policy Analyst