

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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June 9, 2010

Re: LR-10-091

Dear

This letter ruling is in response to your letter ruling request dated May 19, 2010, wherein you posed a series of ruling requests relating to the Small Business Capital Formation Incentive Act (68 O.S. §2357.60 et seq.). Following a verbatim restatement of the facts as outlined in your letter, are the specific rulings requested and our responses thereto.

Our firm represents _____ which is a physician group practicing medicine in _____ Oklahoma. _____ is considering entering into a business transaction with _____ and is concerned about the effect that such a transaction might have on the continued availability of Oklahoma tax credits allowable to investors who have previously made qualified investments in _____. _____ is not a "tax credit" investor in _____; and understands that its contemplated transaction with _____ will not generate any tax credits for _____'s benefit.

PERTINENT FACTS

1. _____ and _____ (the "Fund") obtained a favorable letter ruling from the Oklahoma Tax Commission ("OTC") on November 12, 2009 (LR-09-123) with respect to various aspects of its investment in _____ (the "Original Ruling"). Subsequently, a supplemental ruling was requested regarding the Fund's allocation of tax credits among its owners, and a favorable ruling was issued by the Commission on February 24, 2010 (the "Supplemental Ruling").

2. Subsequent to issuance of the Supplemental Ruling, the Fund consummated the investment transactions described in the Original Ruling and the Supplemental Ruling by issuing Class B preferred equity interests in the Fund to two corporate investors in exchange for their capital contributions.

3. Simultaneously with the Fund's capitalization, the proceeds were used to make qualified investments described in 68 O.S. § 2357.62 (an investment in a qualified small business capital company, in exchange for preferred equity interests) and 68 O.S. § 2357.63 (a subordinated loan to made in conjunction with a similar loan made to

4. As confirmed by the Original Ruling, at the time of capitalization, the Fund met the requirements of a "qualified small business capital company" and met the requirements of a "qualified small business venture." As a result, the Fund became entitled to tax credits under the Oklahoma Small Business Capital Formation Incentive Act (the "Act") during its taxable year ending December 31, 2010.

5. has begun to utilize the proceeds of these qualified investments in the manner required by the Small Business Capital Formation Incentive Act (the "Act"). Although to date has not fully satisfied the spending requirements of the Act, it fully anticipates doing so within the 18 month period prescribed by the Act.

6. In the Original Ruling, it was represented that, following construction of building to would lease the agreement with and would enter into a management

7. is interested expanding its by investing in the but not in the and support this.

8. believes that the transaction may be structured in either of two ways:

Alternative 1

(a) The management agreement for the between and would be cancelled and replaced by a lease agreement between and a joint venture composed of The would thereafter be operated by the leasing joint venture under a issued to the joint venture.

(b) The lease agreement entered into between and would continue.

(c) The qualified investments in would remain in effect without change, and would be repaid in accordance with their existing terms.

Alternative 2

(a) A joint venture formed by _____ would purchase 100% of the common equity interests from the current owners. Thereafter, the joint venture would be the sole owner of all of the common equity interests in _____

(b) The _____ agreement and the _____ lease agreement between _____ would be cancelled and both the _____ and _____ would be owned and operated by _____ The _____ would be held by _____

(c) The qualified investments in _____ would remain in effect without change, and would be repaid in accordance with their existing terms.

9. In the view of both _____ changes in the law made by the recently enacted _____ would prevent _____ from participating in either transaction described above unless the transaction is completed by _____

RULINGS REQUESTED AND BASIS FOR RULINGS

1. A purchase of all common equity interests in _____ by _____ or by a joint venture composed of _____ and _____ will constitute a "market-based liquidity event" that is excepted from the definition of a "recapture event" under 68 O.S. § 2357.63B(2). Neither _____ is:

(1) controlled by a person that made a qualified investment in _____ (the qualified small business capital company that provided funds for use by the Oklahoma small business venture), or

(2) controlled by the Fund or any investor in the Fund (the Fund having made an investment in conjunction with a qualified investment made by the qualified small business capital company _____ that provided funds for use by the Oklahoma small business venture

As a result the tax credits allowable with regard to the qualified investments in _____ will not be recaptured.

Yes, the purchase of all common equity interests in _____ by _____ or by a joint venture composed of _____ will constitute a "market-based liquidity event" [68 O.S. § 2357.63B(2)] and will not trigger a recapture event.

2. None of the tax credits allowable with regard to the qualifying investments in _____ will be recaptured or disallowed if, after either _____ or a joint venture comprised of _____ becomes the owner off _____ no longer

would qualify as a "small business" defined by the federal Small Business Administration (SBA).

The fundamental question raised here is whether the "size" test that must be met under 68 O.S. § 2357.61(5)(d) in order for a business concern to be treated as an Oklahoma small business venture must only be satisfied at the time a qualifying investment is made. The Commission has expressed the view in other private letter rulings that the only time for performing similar tests is when an investment is made. See for example, LR-08-152 (under the Rural Venture Capital Formation Incentive Act the capital company's capitalization is to be measured at the time each investment is made in the capital company). Applying the same reasoning to this situation, a change in ownership of a concern after a qualifying investment has been made for which a tax credit is allowable and should not result in a retroactive reclassification of the venture as something other than a "small business venture". This result is particularly compelling where, as here, such an event has not been included in the statutory listing of "recapture events." See 68 O.S. § 2357.63B.

Whether meets the definition of an "Oklahoma small business venture" is determined at the time the qualified investment is made in under the provisions of §2357.61 A subsequent change in ownership, causing to no longer qualify as a "small business" as defined by the federal Small Business Administration (SBA), would not trigger a recapture event.

3. None of the tax credits allowable with regard to the qualifying investments in will be recaptured or disallowed if, leases the but continues to manage the

As with the application of the "size" test described above, the fundamental question raised here is whether the business classification test, that must be met under 68 as § 2357.61(5)(c) in order for a business concern to be treated as an Oklahoma small business venture, must only be satisfied at the time a qualifying investment is made. The Commission has expressed the view in other private letter rulings that the only time for performing similar tests is when an investment is made. See for example, LR-08-152 (under the Rural Venture Capital Formation Incentive Act the capital company's capitalization is to be measured only at the time an investment is made in the capital company). Applying the same reasoning to this situation, a change in a venture's business after a qualifying investment has been made for which a tax credit is allowable should not result in a retroactive reclassification of the venture as something other than a "small business venture". This result is particularly compelling where, as here, such an event has not been included in the statutory listing of "recapture events." See 68 O.S. § 2357.63B.

See number 2 above.

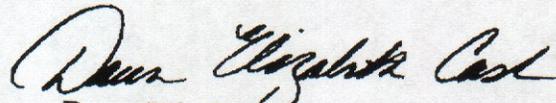
This response applies only to the circumstances set out in your request dated May 19, 2010. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued and its investors, assuming

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

Letter rulings are binding on the Commission only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.