
Opinion of the Tax Commissioner

Date Issued: December 16, 2005

Opinion No: 05-0011

Tax: Corporate Franchise/Personal Income

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Subject: OVCA Credits

This request for an Opinion of the Tax Commissioner (Opinion) by XXXX (Taxpayer) was received on December 12, 2005. The request concerns the use of tax credits issued by the Ohio Venture Capital Authority (OVCA) under Ohio Revised Code (R.C.) 150.07, that would be allowed under R.C. 5707.031, 5725.19, 5727.241, 5729.08, 5733.49, or 5747.80, to a lender as defined in R.C. 150.01(A)(2), with respect to any loss as defined in R.C. 150.01(A)(3). Such credits would be evidenced by tax credit certificates.

Question Presented By The Taxpayer

If the OVCA issues a tax credit certificate in the form attached to this Opinion, will the taxpayer named in the certificate be entitled to use the credit in accordance with the terms set forth on the face of the certificate?

Analysis

R.C. 5703.50 enumerates the taxes for which a taxpayer may request an Opinion. The taxes include those taxes imposed on tangible personal property listed in accordance with R.C. Chapter 5711 and taxes imposed by R.C. Chapters 5733, 5739, 5741, 5747, and 5751. Accordingly, this Opinion is limited to the credits allowed under R.C. 5733.49 and 5747.80 since the other credits issued by the OVCA involve taxes for which an Opinion may not be requested. This does not imply that there would be any different result for the other credits.

In addition, an Opinion under R.C. 5703.53 applies solely to the taxpayer for whom the Opinion was prepared. While, for the reasons discussed below, the Tax Commissioner has no authority to review or challenge the terms of a tax credit certificate issued by the OVCA to any named taxpayer, this Opinion is binding only to the extent the taxpayer named is Taxpayer, for whom this Opinion was prepared.

The OVCA is authorized by R.C. 150.07 to issue credits, evidenced by tax credit certificates, to lenders as defined in R.C. 150.01(A)(2) for losses as defined in R.C. 150.01(A)(3) to the extent moneys of the Ohio Venture Capital Venture Fund created under R.C. 150.08 are insufficient to cover the losses. See R.C. 150.04(B)(2). Both refundable and nonrefundable credits are authorized under R.C. 150.07, which requires the certificate to be issued to the lender and to state the amount of the credit, whether the credit is refundable or nonrefundable, and tax year under R.C. 5733.49 or taxable year under R.C. 5747.80 for which the credit may be

claimed. R.C. 150.07(B) provides that a tax credit may not be claimed until the beginning of the fifth year after the OVCA establishes the investment policy or after June 30, 2026. Unless the certificate provides that the credit is available outside this time span, the Tax Commissioner must allow the credit as certified as the Commissioner is granted neither the duty nor the authority to review whether the credits, as evidenced by the certificates, were properly issued by the OVCA.

As mentioned above, credits under R.C. 150.07 are to be issued to the lender, and it is up to the OVCA to determine who that lender is and to issue the credits accordingly. The taxpayer has implied in some of the materials submitted that the credit for a “pass-through entity” as defined in R.C. 5733.04 would be granted by the OVCA to pass-through entity’s investors based on their distributive or proportionate shares. The Tax Commissioner would note that the pass-through entity itself may be subject to taxes levied by R.C. 5707.031, 5725.19, 5727.241, or 5729.08. Whether the credit in such case should be granted to the entity or its investors must be determined by the OVCA.

Opinion of the Tax Commissioner

It is the Opinion of the Tax Commissioner that if the OVCA issues a tax credit certificate to Taxpayer that does not specify that it may be claimed outside the time requirements of R.C. 150.07(B), the Tax Commissioner must and will comply with the terms of that certificate to the extent that it applies to a credit allowed under R.C. 5733.49 or 5747.80. As stated above, the Tax Commissioner is not authorized to issue an Opinion as concerns the credits allowed by R.C. 5707.031, 5725.19, 5727.241, or 5729.08.

This Opinion applies solely to Taxpayer. It may not be transferred or assigned. In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of Taxpayer to be aware of such changes. See R.C. 5703.53(E).

William W. Wilkins
Tax Commissioner