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October 2, 2008

Steven P. Young
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Salt Lake City, Utah 84111-2263

Re: Petition to Amend Tax Commission Rule R865-6F-28 Enterprise Zone Corporate Franchise Tax Credits

Dear Mr. Young,

Per my communication to you on August 12, 2008, and as required by UCA 63-46a-12:

Interested parties -- Petition for agency action. . . . (5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings,

I am responding on behalf of the Commission to your letter dated August 6, 2008 regarding petition for rulemaking on behalf of Questar Exploration and Production Company.

Your petition requested the Commission amend Tax Commission Rule R865-6F-28 Enterprise Zone Corporate Franchise Tax Credits. Specifically, the Petition requested the following language be amended into the rule (Exhibit A of Petition):

(7) If a business entity qualifies for a credit, and is included on a combined report with a business entity engaged in retail trade or a public utilities business, the combined group may claim a credit if the qualifying business entity is:
   (a) not engaged in retail trade or a public utilities business,
   (b) a separate legal entity from the business entity engaged in retail trade or the public utilities business, and
   (c) operated at a separate physical location from the business entity engage in retail trade or the public utilities business

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Included with the Petition, and Exhibit A, was a narrative explanation of the statutory and policy reasons for the requested amendment, and an Exhibit B titled "Full Relevant text of Statutes and Rules Relating to Qualification for the Utah Enterprise Zone Credit."

Finally, in a separate communication you provided a pie chart showing the various Questar entities, and their contribution to net income. You wrote:

> "Questar Gas Company (the utility) produces only 7% of the net income. Thus disallowing enterprise zone credits to the other entities would allow the tail to wag the dog. Of the five entities listed on the pie chart, Questar Gas Co. (the utility), Wexpro, and Questar Gas Management are single business entities. Questar Pipeline has four business entities within the group, and Questar Exploration and Production is comprised of several separate entities within the group. All five groups on the pie chart, and their under-lying entities, are included on the Questar combined report."

The Commission has considered your petition, and reviewed all the material you provided. At this time the Commission declines to proceed with rulemaking and offers the following reasons for its decision:

1. Pursuant to Utah Code Ann. § 63M-1-503, the enterprise zone credit is allowed to a qualifying "business applicant." A "business applicant" is defined as a "business" that is a "claimant." Utah Code Ann. § 63M-1-501(2). A "claimant" includes a resident or non-resident person that has Utah taxable income as defined in Section 59-7-101.

2. In determining the tax obligations of a member of a unitary group, Utah has adopted the so-called "Finnegan" approach, whereby the unitary group itself is considered to be the taxpayer. See Rule R865-6F-24. The unitary group, not the individual member, is the person that has Utah taxable income as defined in Section 59-7-101.

3. The Tax Commission does not consider the individual characteristics, factors or income of the separate members of the unitary group in determining qualification for nonrefundable credits. If a unitary group qualifies for a credit, the Tax Commission does not attempt to determine if the member of the group that actually made the investment would have enough taxable income, on a separate return basis, to qualify for the credit.

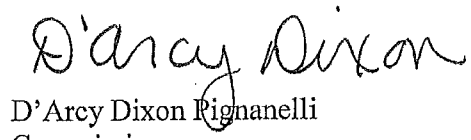
4. This interpretation has been implicitly approved by the legislature with the recent enactment of S.B. 136 (2008) which allows the net operating losses of an acquired corporation to be offset against a pro rata portion of the income of the entire unitary business, and does not require computation of the separate post-acquisition income of the acquired corporation.

5. We believe our current practice is generally a taxpayer friendly application. If enterprise zone credits were limited to the separate legal entity making the investment, a start up company may not have the income for years to take the deduction. On the other hand, under the Tax Commission's current interpretation, a parent company may benefit from the credit immediately, even if the start-up subsidiary has losses.

We acknowledge that there are legitimate policy arguments favoring your position. The Legislature could reasonably have limited the credits to certain kinds of property or facilities, regardless of ownership. In that case, manufacturing facilities, for example, could be allowed a credit even if owned by a claimant who was also engaged in the retail or public utility business. It did not do so. These policy considerations, which are implicated with the rule amendment you request, are best addressed by the Legislature.

As always, we appreciate your interest in our tax commission rules and in our processes. We welcome a dialogue on rules and will of course consider any future requests for rule making.

Sincerely,



D'Arcy Dixon Pignanelli
Commissioner
Utah State Tax Commission