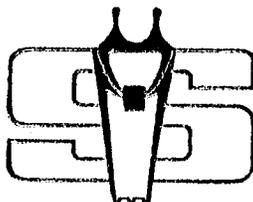

APPENDIX C

Letter from Stewart Title Guaranty Company regarding formation of CAPCOs in Texas



Sanctity of Contract
STEWART TITLE
GUARANTY COMPANY

RANDY M. LEE
Senior Vice President
Governmental Affairs
and Real Estate

May 25, 2000

The Honorable John Carona
Chairman, Subcommittee on Private Sector Business Financing
Senate Economic Development Committee
State Capitol, Room 3E.8
Austin, Texas 78701

Dear Senator Carona,

We applaud your efforts to seek ways to encourage small businesses to obtain financing through privately held investors.

However, if the committee does recommend legislation similar to SB 899 from last session, we respectfully ask that any reference to Texas title insurance companies be omitted, specifically Article 9.59, Insurance Code.

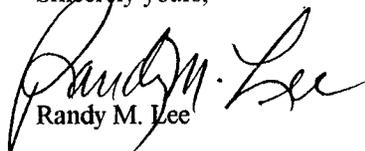
Last session we asked for an amendment to SB 899 which removed title insurance from the bill for several reasons. First, Stewart Title Guaranty Company is the largest Texas domestic title insurance company. We do not know the retaliatory tax impact in other states to changes in tax credits to our premium tax code as was proposed. What happens to Texas premium tax law affects what will be our premium tax liability calculations in all other states.

For example, we are currently involved in a major lawsuit over the definition of taxable premium income in a western state as a result of changes in the 1987 title insurance tax code. Although SB 899 declared the credits to be non-retaliatory in nature, that declaration is irrelevant to other states' laws.

Second, there are only a handful of title insurers in this country and we, as a rule, do not make investments of this kind. We are just too small relative to the property and casualty industry.

We appreciate your consideration of our request and look forward to working with you in the next session.

Sincerely yours,



Randy M. Lee

cc: Mr. Malcolm S. Morris, President, Stewart Title Guaranty Co.

“Enhancing the Real Estate Closing Process”

100 Congress, Suite 200 • P.O. Box 1806 • Austin, Texas 78767
(512) 322-8742 • FAX: (512) 472-6504 • E-Mail: rlee@stewart.com

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APPENDIX D

New Jersey Statutes providing for investment tax credits

[Passed Both Houses]

[First Reprint]

SENATE, No. 445

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER, McGREEVEY, Kyrillos, Palaia, Inverso,
Assemblymen Felice, Cohen, Impreveduto, Bucco, LeFevre,
Augustine and Suliga

1 AN ACT providing a credit against the corporation business tax for
2 certain investments made in small New Jersey-based
3 high-technology businesses, and supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.).

5

6 BE IT ENACTED by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. This act shall be known and may be cited as the "Small New
10 Jersey-based High-Technology Business Investment Tax Credit Act."

11

12 2. As used in this act:

13 "Advanced computing" means a technology used in the designing
14 and developing of computing hardware and software, including
15 innovations in designing the full spectrum of hardware from hand-held
16 calculators to super computers, and peripheral equipment;

17 "Advanced materials" means materials with engineered properties
18 created through the development of specialized processing and
19 synthesis technology, including ceramics, high value-added metals,
20 electronic materials, composites, polymers, and biomaterials;

21 "Biotechnology" means the continually expanding body of
22 fundamental knowledge about the functioning of biological systems
23 from the macro level to the molecular and sub-atomic levels, as well
24 as novel products, services, technologies and sub-technologies
25 developed as a result of insights gained from research advances which
26 add to that body of fundamental knowledge;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 "Control," with respect to a corporation, means ownership, directly
2 or indirectly, of stock possessing 80% or more of the total combined
3 voting power of all classes of the stock of the corporation entitled to
4 vote; and "control," with respect to a trust, means ownership, directly
5 or indirectly, of 80% or more of the beneficial interest in the principal
6 or income of the trust. The ownership of stock in a corporation, of a
7 capital or profits interest in a partnership or association or of a
8 beneficial interest in a trust shall be determined in accordance with the
9 rules for constructive ownership of stock provided in subsection (c) of
10 section 267 of the federal Internal Revenue Code of 1986, 26
11 U.S.C. §267, other than paragraph (3) of subsection (c) of that section;

12 "Controlled group" means one or more chains of corporations
13 connected through stock ownership with a common parent corporation
14 if stock possessing at least 80% of the voting power of all classes of
15 stock of each of the corporations is owned directly or indirectly by one
16 or more of the corporations and the common parent owns directly
17 stock possessing at least 80% of the voting power of all classes of
18 stock of at least one of the other corporations;

19 "Director" means the Director of the Division of Taxation in the
20 Department of the Treasury;

21 "Electronic device technology" means a technology involving
22 microelectronics, semiconductors, electronic equipment, and
23 instrumentation, radio frequency, microwave, and millimeter
24 electronics, and optical and optic-electrical devices, or data and digital
25 communications and imaging devices;

26 "Environmental technology" means assessment and prevention of
27 threats or damage to human health or the environment, environmental
28 cleanup, or the development of alternative energy sources;

29 "Medical device technology" means a technology involving any
30 medical equipment or product (other than a pharmaceutical product)
31 that has therapeutic value, diagnostic value, or both, and is regulated
32 by the federal Food and Drug Administration;

33 "Partnership" means a syndicate, group, pool, joint venture or other
34 unincorporated organization through or by means of which any
35 business, financial operation or venture is carried on, and which is not
36 a trust or estate, a corporation or a sole proprietorship;

37 "Pilot scale manufacturing" means design, construction, and testing
38 of preproduction prototypes and models in the fields of advanced
39 computing, advanced materials, biotechnology, electronic device
40 technology, environmental technology, and medical device technology,
41 other than for commercial sale, excluding sales of prototypes or sales
42 for market testing if total gross receipts, as calculated pursuant to
43 section 6 of P.L.1945, c.162 (C.54:10A-6), from such sales of the
44 product, service or process do not exceed \$1,000,000;

45 "Qualified investment" means the non-refundable investment, at
46 risk in a small New Jersey-based high-technology business, of cash

1 that is transferred to the small New Jersey-based high-technology
2 business by a taxpayer that is not a related person of the small New
3 Jersey-based high-technology business, the transfer of which is in
4 connection with a transaction in exchange for stock, interests in
5 partnerships or joint ventures, licenses (exclusive or non-exclusive),
6 rights to use technology, marketing rights, warrants, options or any
7 items similar to those included herein, including but not limited to
8 options or rights to acquire any of the items included herein;

9 "Qualified research expenses" means qualified research expenses as
10 defined in section 41 of the federal Internal Revenue Code of 1986,
11 26 U.S.C. §41, as in effect on June 30, 1992, in the fields of advanced
12 computing, advanced materials, biotechnology, electronic device
13 technology, environmental technology, or medical device technology;

14 "Related person" means:

15 a. a corporation, partnership, association or trust controlled by the
16 taxpayer;

17 b. an individual, corporation, partnership, association or trust that
18 is in the control of the taxpayer;

19 c. a corporation, partnership, association or trust controlled by an
20 individual, corporation, partnership, association or trust that is in the
21 control of the taxpayer; or

22 d. a member of the same controlled group as the taxpayer;

23 "Small New Jersey-based high-technology business" means a
24 corporation doing business, employing or owning capital or property,
25 or maintaining an office, in this State that has qualified research
26 expenses paid or incurred for research conducted in this State or
27 conducts pilot scale manufacturing in this State, and has fewer than
28 225 employees, of whom 75% are New Jersey-based employees filling
29 a position or job in this State; and

30 "Tax year" means the fiscal or calendar accounting year of a
31 taxpayer.

32
33 3. a. A taxpayer shall be allowed a credit against the tax imposed
34 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
35 equal to 10% of the qualified investment made by the taxpayer during
36 'each of' the 'three' tax '[year] years beginning on or after January
37 1 next following enactment of this act.' in a small New Jersey-based
38 high-technology business, up to a maximum allowed credit of
39 '[\$1,000,000] \$500,000' for the tax year for each qualified
40 investment made by the taxpayer. An unused credit may be carried
41 forward for use in future years, subject to the '[\$1,000,000]
42 \$500,000' per year limitation.

43 b. A credit shall not be allowed pursuant to section 1 of P.L.1993,
44 c.175 (C.54:10A-5.24), for expenses paid from funds for which a
45 credit is allowed, or which are includable in the calculation of a credit
46 allowed, under this section.

1 The tax imposed for a tax year pursuant to section 5 of P.L.1945,
2 c.162, shall first be reduced by the amount of any credit allowed
3 pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any
4 credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13),
5 then by any credit allowed pursuant to section 42 of P.L.1987, c.102
6 (C.54:10A-5.3), then by any credit allowed under section 3 of
7 P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under
8 section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19),
9 then by any credit allowed under section 1 of P.L.1993, c.175
10 (C.54:10A-5.24), and then by any credit allowed under section 1 of
11 P.L.1993, c.150 (C.27:26A-15), prior to applying any credits
12 allowable pursuant to this section. Credits allowable pursuant to this
13 section shall be applied in the order of the credits' tax years. The
14 amount of the credits applied under this section against the tax
15 imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall
16 not exceed 50% of the tax liability otherwise due and shall not reduce
17 the tax liability to an amount less than the statutory minimum provided
18 in subsection (e) of section 5 of P.L.1945, c.162.

19 c. Except as provided in subsection d. of this section, the amount
20 of tax year credit otherwise allowable under this section which cannot
21 be applied for the tax year due to the limitations of subsection b. of
22 this section may be carried over, if necessary, to the 15 tax years
23 following a credit's tax year.

24 d. A taxpayer may not carry over any amount of credit or credits
25 allowed under subsection a. of this section to a tax year during which
26 a corporate acquisition with respect to which the taxpayer was a target
27 corporation occurred or during which the taxpayer was a party to a
28 merger or a consolidation, or to any subsequent tax year, if the credit
29 was allowed for a tax year prior to the year of acquisition, merger or
30 consolidation, except that if in the case of a corporate merger or
31 corporate consolidation the taxpayer can demonstrate, through the
32 submission of a copy of the plan of merger or consolidation and such
33 other evidence as may be required by the director, the identity of the
34 constituent corporation which was the acquiring person, a credit
35 allowed to the acquiring person may be carried over by the taxpayer.
36 As used in this subsection, "acquiring person" means the constituent
37 corporation the stockholders of which own the largest proportion of
38 the total voting power in the surviving or consolidated corporation
39 after the merger or consolidation.

40

41 ¹4. Prior to December 31, 2001, the State Treasurer shall submit
42 a report to the Governor and the Legislature regarding the
43 effectiveness of this and P.L. . c. . (C. .) (now pending before
44 the Legislature as Senate No.447 of 1996), and P.L. . c. (C. .),
45 (now pending before the Legislature as Senate No.449 of 1996).¹

1 ' [4.] Σ ' This act shall take effect immediately and sections 1
2 through 3 shall apply to tax years beginning on or after January 1 next
3 following enactment.

4

5

6

7 Provides corporation business tax credit for certain investments in
8 small New Jersey-based high-technology businesses.

[Passed Both Houses]

Chapter 334 Laws of N.J. 1997

[First Reprint]

Approved 11/2/98

SENATE, No. 446

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER, McGREEVEY, Kyrillos, Palaia, Inverso,
Assemblymen Felice, Imprevuduto, Cohen, Bucco, LeFevre,
Augustine and Suliga

1 AN ACT establishing a corporation business tax benefit certificate
2 transfer program to assist new or expanding emerging technology
3 and biotechnology companies in this State, and supplementing
4 P.L.1995, c.137 (C.34:1B-7.37 et seq.).

5
6 BE IT ENACTED by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. a. The New Jersey Economic Development Authority shall
10 establish within the New Jersey Emerging Technology and
11 Biotechnology Financial Assistance Program established pursuant to
12 P.L.1995, c.137 (C.34:1B-7.37 et seq.) , a corporation business tax
13 benefit certificate transfer program to allow new or expanding
14 emerging technology and biotechnology companies in this State with
15 unused amounts of research and development tax credits otherwise
16 allowable which cannot be applied for the credit's tax year due to the
17 limitations of subsection b. of section 1 of P.L.1993, c.175
18 (C.54:10A-5.24) and unused net operating loss carryover pursuant to
19 subparagraph (B) of paragraph (6) of subsection ¹[k.] ^(k) of section
20 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for
21 use by other corporation business taxpayers in this State on the
22 corporation business tax returns to be filed by those taxpayers in
23 exchange for private financial assistance to be provided by the
24 corporation business taxpayer that is the recipient of the corporation
25 business tax benefit certificate to assist in the funding of costs incurred
26 by the new or expanding emerging technology and biotechnology

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SNR committee amendments adopted May 9, 1996.

1 company.

2 b. The authority, in cooperation with the Division of Taxation in
3 the Department of the Treasury, shall review and approve applications
4 by new or expanding emerging technology and biotechnology
5 companies in this State with unused but otherwise allowable carryover
6 of research and development tax credits pursuant to section 1 of
7 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable
8 net operating loss carryover pursuant to paragraph (6) of subsection
9 ¹[k.] (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender
10 those tax benefits in exchange for private financial assistance to be
11 made by the corporation business taxpayer that is the recipient of the
12 corporation business tax benefit certificate in an amount equal to at
13 least 75% of the amount of the surrendered tax benefit. The private
14 financial assistance shall be used to fund expenses incurred in
15 connection with the operation of the new or expanding emerging
16 technology or biotechnology company in the State, including but not
17 limited to the expenses of fixed assets, such as the construction and
18 acquisition and development of real estate, materials, start-up, tenant
19 fit-out, working capital, salaries, research and development
20 expenditures and any other expenses determined by the authority to be
21 necessary to carry out the purposes of the New Jersey Emerging
22 Technology and Biotechnology Financial Assistance Program.

23 c. The authority, in cooperation with the Division of Taxation in
24 the Department of the Treasury, shall review and approve applications
25 by taxpayers under the Corporation Business Tax Act (1945),
26 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax
27 benefits approved pursuant to subsection b. of this section which shall
28 be issued in the form of corporation business tax benefit transfer
29 certificates, in exchange for private financial assistance to be made by
30 the taxpayer in an amount equal to at least 75% of the amount of the
31 surrendered tax benefit of an emerging technology or biotechnology
32 company in the State. The private financial assistance shall assist in
33 funding expenses incurred in connection with the operation of the new
34 or expanding emerging technology or biotechnology company in the
35 State, including but not limited to the expenses of fixed assets, such as
36 the construction and acquisition and development of real estate,
37 materials, start-up, tenant fit-out, working capital, salaries, research
38 and development expenditures and any other expenses determined by
39 the authority to be necessary to carry out the purposes of the New
40 Jersey Emerging Technology and Biotechnology Financial Assistance
41 Program.

42 d. The authority shall coordinate the applications for surrender and
43 acquisition of unused but otherwise allowable tax benefits pursuant to
44 this section in a manner that can best stimulate and encourage the
45 extension of private financial assistance to new and expanding
46 emerging technology and biotechnology companies in this State. The

1 applications shall be submitted and the authority shall approve or
2 disapprove the applications pursuant to the process and criteria
3 established under section 6 of the "New Jersey Emerging Technology
4 and Biotechnology Financial Assistance '[Act,] Act.'" P.L.1995,
5 c.137 (C.34:1B-7.42). The authority shall require a corporation
6 business taxpayer that acquires a corporation business tax benefit
7 certificate to enter into a written agreement with the new or expanding
8 emerging technology or biotechnology company concerning the terms
9 and conditions of the private financial assistance made in exchange for
10 the certificate. The written agreement may contain terms concerning
11 the maintenance by the new or expanding emerging technology or
12 biotechnology company of a headquarters or a base of operation in this
13 State.

14
15 2. a. Notwithstanding the provisions of paragraph (6) of
16 subsection '[k.] (k)' of section 4 of P.L.1945, c.162 (C.54:10A-4) to
17 the contrary, a taxpayer that has acquired a corporation business tax
18 benefit certificate pursuant to the provisions of section 1 of P.L.
19 '[1996]', c. (C.) ('[Now] now' pending before the Legislature
20 as this bill), that includes the right to a net operating loss carryover
21 deduction shall attach that certificate to any return the taxpayer is
22 required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall
23 otherwise apply the net operating loss carryover deduction as
24 evidenced by the certificate according to the provisions of subsection
25 '[k.] (k)' of section 4 of P.L.1945, c.162 and any rules or regulations
26 the director may adopt to carry out the provisions of this section.

27 b. A new or expanding emerging technology or biotechnology
28 company that has surrendered an unused net operating loss carryover
29 pursuant to the provisions of section 1 of P.L. '[1996]', c. (C.)
30 ('[Now] now' pending before the Legislature as this bill), shall not
31 be allowed a net operating loss carryover deduction based upon the
32 right to such a deduction as evidenced by the corporation business tax
33 benefit certificate and shall attach a copy of the certificate to any
34 return the taxpayer is required to file under P.L.1945, c.162
35 (C.54:10A-1 et seq.).

36
37 3. a. Notwithstanding the provisions of section 1 of P.L.1993,
38 c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired
39 a corporation business tax benefit certificate pursuant to the provisions
40 of section 1 of P.L. '[1996]', c. (C.) ('[Now] now' pending
41 before the Legislature as this bill), that includes the right to a research
42 and development tax credit carryover shall attach that certificate to
43 any return the taxpayer is required to file under P.L.1945, c.162
44 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as
45 evidenced by the certificate according to the provisions of section 1 of
46 P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the

1 director may adopt to carry out the provisions of this section.

2 b. A new or expanding emerging technology or biotechnology
3 company that has surrendered an unused research and development tax
4 credit carryover pursuant to the provisions of section 1 of P.L.
5 '[1996]', c. (C.)('Now now' pending before the Legislature
6 as this bill), shall not be allowed a research and development tax credit
7 carryover based upon the right to such a credit carryover as evidenced
8 by the corporation business tax benefit certificate and shall attach a
9 copy of the certificate to any return the taxpayer is required to file
10 under P.L.1945, c.162 (C.54:10A-1 et seq.)

11

12 4. This act shall take effect immediately and sections 1 through 3
13 shall apply to tax years beginning on or after January 1 next following
14 enactment.

15

16

17

18

19 Provides for establishment of a corporation business tax benefit
20 certificate transfer program to assist new or expanding emerging
21 technology and biotechnology companies in this State.

[Passed Both Houses]

[First Reprint]

SENATE, No. 447

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER, McGREEVEY, Kyrillos, Palaia, Inverso,
Assemblymen Felice, Imprevuto, Cohen, Bucco, LeFevre, Augustine,
Suliga and Corodemus

1 AN ACT extending for certain taxpayers the carryforward of the net
2 operating loss deduction under the corporation business tax, and
3 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).
4

5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. Notwithstanding the provisions of paragraph (6) of subsection
9 k. of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a
10 taxpayer that has for the fiscal or calendar accounting period (referred
11 to hereafter as the "tax year"), qualified research expenses as defined
12 in section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C.
13 § 41, as in effect on June 30, 1992, paid or incurred for research
14 conducted in this State, in the fields of advanced computing, advanced
15 materials, biotechnology, electronic device technology, environmental
16 technology, or medical device technology, shall be allowed to carry
17 over a net operating loss for that tax year to each of the 15 tax years
18 following the year of the loss.

19 b. As used in this section:

20 "Advanced computing" means a technology used in the designing
21 and developing of computing hardware and software, including
22 innovations in designing the full spectrum of hardware from hand-held
23 calculators to super computers, and peripheral equipment;

24 "Advanced materials" means materials with engineered properties
25 created through the development of specialized processing and
26 synthesis technology, including ceramics, high value-added metals,
27 electronic materials, composites, polymers, and biomaterials;

28 "Biotechnology" means the continually expanding body of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 fundamental knowledge about the functioning of biological systems
2 from the macro level to the molecular and sub-atomic levels, as well
3 as novel products, services, technologies and sub-technologies
4 developed as a result of insights gained from research advances which
5 add to that body of fundamental knowledge ;

6 "Electronic device technology" means a technology involving
7 microelectronics, semiconductors, electronic equipment, and
8 instrumentation, radio frequency, microwave, and millimeter
9 electronics, and optical and optic-electrical devices, or data and digital
10 communications and imaging devices;

11 "Environmental technology" means assessment and prevention of
12 threats or damage to human health or the environment, environmental
13 cleanup, or the development of alternative energy sources; and

14 "Medical device technology" means a technology involving any
15 medical equipment or product (other than a pharmaceutical product)
16 that has therapeutic value, diagnostic value, or both, and is regulated
17 by the federal Food and Drug Administration.

18

19 2. This act shall take effect immediately ¹ [and section 1 shall apply
20 to tax years beginning on or after January 1 next following enactment]
21 but shall apply only to net operating losses which occur during
22 privilege periods which begin on or after July 1, 1998, but no later
23 than June 30, 2001 ¹.

24

25

26

27 Provides 15 year net operating loss deduction carryforward under
28 corporation business tax for certain high-technology companies.