OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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October 24, 2007

REDACTED LETTER RULING

Re: Our File No. LR-07-167

Dear

This letter ruling is in response to your letter ruling request dated September 7, 2007 wherein you posed a series of ruling requests relating to the Small Business Capital Formation Incentive Act (68 O.S. §2357.60 et seq.) and the Rural Venture Capital Formation Incentive Act (68 O.S. §2357.70 et seq.). Following a verbatim restatement of the facts as outlined in your September 7th letter, are the specific rulings requested and our responses thereto.

I. Summary of Transaction.

A. The Company. The Company ([redacted] is an Oklahoma limited liability company whose principal office is located in [redacted], Oklahoma. The Company was formed to (i[redacted]; and (ii) conduct or transact any or all lawful act or business for which limited liability companies may be organized under the Oklahoma Limited Liability Company Act. The Company's operating agreement further provides that the Company is organized and will be operated to: (i) [redacted]. The Company's operating agreement further provides that not more than twenty percent (20%) of the aggregate of the capital contributed to the Company and the capital contractually committed by the Fund ([redacted]) and ABCD ([redacted] to be contributed to the Company shall be invested in any one portfolio company.

On the date of the submission of this request, the Company has capital commitments in place in the amount of $10,500,000. The Company has obtained capital commitments from the Fund in the amount of $8,750,000 and from [redacted] ("ABCD") in the amount of $1,750,000. The Company expects to draw down its capital commitments over approximately five (5) years, making investments of approximately $1,800,000 to $2,100,000 per year. The Company anticipates that these investments will be made in portfolio companies that qualify as either Oklahoma small business ventures or Oklahoma rural small business ventures, and as a result will create credits in the

Company expects that most, if not all, investments will qualify for the 20% credit and therefore the investments of tax credits over five (5) years or an average of $440,000 per year. The amounts actually invested in any year will of course depend on the availability of suitable investments on suitable terms, but the Company considers these to be reasonable expectations based upon past experience. The Company may not call more than twenty percent (20%) of any member's capital commitment in any period consisting of twelve (12) consecutive calendar months.

The Company will not borrow funds from any third party for purposes of making an investment in a portfolio company. The Company expects that all investments in portfolio companies will be equity or near equity investments and all of the Company's invested funds will be expended in the active conduct of the portfolio company's trades as businesses and will be at risk.

B. The Fund. The Fund is an Oklahoma limited liability company that was formed for the purpose of raising equity capital from both taxable and tax-exempt accredited investors and aggregating those funds for investment in the Company. The Fund has obtained capital commitments from [redacted] (the "Exempt Investors") in the aggregate amount of $6,500,000 and [redacted] (the "Non-Exempt Investors") in the aggregate amount of $2,250,000. All of the funds received from both Exempt Investors and Non-Exempt Investors will be invested in the Company with the exception of any funds that are used to pay fees and expenses of the Fund. The Fund will not borrow funds from any party. The Fund's operating agreement provides that the Oklahoma tax credits arising from qualifying capital contributions from the Fund into the Company will be specially allocated to the Non-Exempt Investors such that the Exempt Investors will receive no allocations of Oklahoma tax credits and the Non-Exempt Investors will receive special allocations of all of the Oklahoma tax credits. The total amount of all credits allocated by the Fund to the Non-Exempt Investors shall not exceed the total amount of the credits to which the Fund is entitled.

C. Step-by-Step Summary of Transaction Structure. Following is a step-by-step summary of the transaction structure described on Exhibit A below.

Step 1: Capital Commitments to the Fund		The Exempt Investors commit to make capital contributions to the Fund of $6,500,000 in the aggregate and, in return, become members of the Fund and receive (i) economic sharing ratios that are proportionate to the overall capital contributions to the Fund; and (ii) no allocations of Oklahoma tax credits. The Non-Exempt Investors commit to make capital contributions to the Fund of $2,250,000 in the aggregate and, in return become members of the Fund and receive (i) economic sharing ratios that are proportionate to the overall capital contributions to the Fund; and (ii) special allocations of Oklahoma tax credits.
Step 2: Capital Commitments from the Fund and ABCD to the		The Fund commits to the Company to request capital contributions from the Exempt Investors and the Non-Exempt Investors upon request of the Company and further commits to the Company to contribute the funds received from the Tax-Exempt Investors and the

Company		Non-Exempt Investors to the Company for purposes of making qualified investments in portfolio companies. ABCD commits to make capital contributions to the Fund of $1,750,000 and, in return, become a member of the Fund and receives (i) an economic sharing ratio that is proportionate to the overall capital contributions to the Fund; and (ii) allocations of Oklahoma tax credits based upon its pro rata capital contribution.
Step 3: The Company Negotiates Qualified Investments		The Company identifies a portfolio company that qualifies as an "Oklahoma small business venture" under the Small business Act or as an "Oklahoma rural small business venture" under the Rural Small Business Act and negotiates investment terms relating to an investment in the portfolio company that qualifies as a "qualified investment" under either the Small Business Act or the Rural Small Business Act.
Step 4: The Company and the Fund make Capital Calls		The Company makes a capital call to the Fund and ABCD. The Fund makes a corresponding capital call to the Exempt Investors and the Non-Exempt Investors. The Exempt Investors and the Non-Exempt Investors make capital contributions to the Fund pursuant to their capital commitments. The Fund and ABCD make capital contributions to the Company pursuant to their respective capital commitments.
Step 5: The Company Makes the Qualified Investment in the Portfolio Company		The Company makes a "qualified investment" in the portfolio company.

II. Summary of Statutory Requirements.

A. Direct Qualified Investments.

1. Small Business Act. In accordance with Section 2357.62 of the Small Business Act, Oklahoma tax credits can be generated by making a "qualified investment" in a "qualified small business capital company" (a "QSBCC") which is subsequently invested in an "Oklahoma small business venture" (an "SBV") by the QSBCC. Such credits are equal to 20% of the qualified investment in the QSBCC and are only allowed for the amount of the qualified investment in an SBV provided the funds are used in pursuit of a legitimate business purpose of the SBV consistent with the SBV's organizational instrument, bylaws or other agreement responsible for the governance of the SBV. The QSBCC is required to issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each qualified investment it makes in an SBV.

The tax credits may be used to offset the tax imposed by Section 2355 or 2370 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma statutes. The tax credits must be claimed for the taxable year in which the QSBCC makes the qualified investment in the

SBV and may be carried forward for three (3) years but may not be taken as a refund or transferred. The SBV may not use the capital provided by the QSBCC for the acquisition of any other legal entity. For this purpose, "acquisition" means the use of capital by an Oklahoma small business venture within 6 months after obtaining the capital to purchase 51% or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity, but excluding the right to participate in the proceeds from the sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law. Tax credits may not be claimed under the Small Business Act if credits are being claimed for the same qualified investment under the Rural Small Business Act. If a pass-through entity is entitled to a credit under the Small Business Act, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated by the pass-through entity to its shareholders, partners or members shall not exceed the amount of the credits to which the pass-through entity is entitled.

2. Rural Small Business Act. In accordance with Section 2357.73 of the Rural Small Business Act, Oklahoma tax credits can be generated by making a "qualified investment" in a "qualified rural small business capital company" (a "QRSBCC") which is subsequently invested in an "Oklahoma rural small business venture" (an "RSBV") by the QRSBCC. Such credits are equal to 30% of the qualified investment in the QRSBCC and are only allowed for the amount of qualified investment in an RSBV provided the funds are used in pursuit of a legitimate business purpose of the RSBV consistent with the RSBV's organizational instrument, bylaws or other agreement responsible for the governance of the RSBV. The QRSBCC is required to issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each qualified investment it makes in an RSBV.

The tax credits may be used to offset the tax imposed by Section 2355 or 2370 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma statutes. The tax credits must be claimed for the taxable year in which the QRSBCC makes the qualified investment in the RSBV and may be carried forward for three (3) years but may not be taken as a refund or transferred. The RSBV may not use the capital provided by the QRSBCC for the acquisition of any other legal entity. For this purpose, "acquisition" has the same meaning as described above with respect to the Small Business Act. Tax credits may not be claimed under the Rural Small Business Act if credits are being claimed for the same qualified investment under the Small Business Act. If a pass-through entity is entitled to a credit under the Rural Small Business Act, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated by the pass-through entity to its shareholders, partners or members shall not exceed the amount of the credit to which the pass-through entity is entitled.

B. Qualified Investments In Conjunction With Direct Investments.

1. Small Business Act. In accordance with Section 2357.63 of the Small Business Act, Oklahoma tax credits can be generated by making a "qualified investment" in an SBV in conjunction with a qualified investment in such SBV made by a QSBCC. Such credits are equal to 20% of the "qualified investment" made in the SBV in conjunction with a qualified investment in such SBV by a QSBCC. As with the direct qualified investment, the tax credits must be claimed for the taxable year in which the

investment is made in an SBV and may be carried forward for three (3) years but may not be taken as a refund or transferred. In addition, the qualified investment made into the SBV in conjunction with a qualified investment in such SBV by a QSBCC must meet the following additional requirements: (i) the qualified investment must be made by a shareholder, member or partner of a QSBCC that has made a qualified investment in the SBV, as those terms are defined in the Small Business Act; (ii) the funds must be invested in the purchase of "equity" or "near-equity" in an SBV; (iii) the qualified investment must be made under the same terms and conditions as the qualified investment made by the QSBCC; and (iv) the qualified investment is limited to the lesser of 200% of the qualified investment by the taxpayer in the QSBCC or 200% of the qualified investment made by the QSBCC in the SBV. Tax credits may not be claimed under the Small Business Act if credits are being claimed for the same qualified investment under the Rural Small Business Act. If a pass-through entity is entitled to a credit under the Small Business Act, the pass through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated by the pass-through entity to its shareholders, partners or members shall not exceed the amount of the credits to which the pass-through entity is entitled.

2. Rural Small Business Act. In accordance with Section 2357.74 of the Rural Small Business Act, Oklahoma tax credits can be generated by making a "qualified investment" in an RSBV in conjunction with a qualified investment in such RSBV made by a QRSBCC. Such credits are equal to 30% of the cash amount of the "qualified investment" made in the RSBV in conjunction with a qualified investment in such RSBV by a QRSBCC. As with the direct investment, the tax credits must be claimed for the taxable year in which the qualified investment is made in an RSBV and may be carried forward for three (3) years but may not be taken as a refund or transferred. In addition, the investment made into the RSBV in conjunction with a qualified investment in such RSBV by a QRSBCC must meet the following additional requirements: (i) the investment must be made by a shareholder or partner of a QRSBCC that has made a qualified investment in an RSBV; (ii) the funds must be invested in the purchase of "equity" or "near-equity" in an RSBV; (iii) the investment must be made under the same terms and conditions as the qualified investment made by the QRSBCC; and (iv) the qualified investment is limited to the lesser of 200% of the qualified investment by the taxpayer in the QRSBCC or 200% of the qualified investment made by the QRSBCC in the RSBV. Tax credits may not be claimed under the Rural Small Business Act if credits are being claimed for the same qualified investment under the Small Business Act. If a pass-through entity is entitled to a credit under the Rural Small Business Act, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated by the pass-through entity to its shareholders, partners or members shall not exceed the amount of the credits to which the pass-through entity is entitled.

C. Requirements Applying to Both Direct Investments and Investments In Conjunction with Direct Investments.

1. Small Business Act.

(a) Section 2357.63A provides that for purposes of claiming tax credits authorized by the Small Business Act, any funds invested in an SBV shall be subject to the following requirements:

(i) The SBV must issue its equity securities or subordinated debt instruments in exchange for a qualified investment within thirty (30) days of the date on which the qualified investment occurs;

(ii) A QSBCC making a direct qualified investment or any entity making a qualified investment in conjunction with a direct investment by a QSBCC must reflect the qualified investment in the SBV as an asset in its accounting system;

(iii) A QSBCC shall not make a qualified investment in an SBV in which it has, at any time, more than fifty percent (50%) ownership, whether directly or indirectly, of the voting interest entitled to elect the governing board of any SBV;

(iv) A QSBCC cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment by the SBV to the QSBCC or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the date the qualified investment is made available to the SBV; and

(v) The SBV cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment to the QSBCC or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the time the qualified investment is made available to the SBV.

(b) The Oklahoma Tax Commission has the authority to make an independent determination that any proposed use of monies, assets, funds or other things of value which are to be used for purposes of claiming credits authorized by the Small Business Act are for a legitimate business purpose of the SBV and not for the primary purpose of obtaining the tax credits authorized by the Small Business Act on the basis of activity which does not have substantial economic profit-based potential.

(c) The Oklahoma Tax Commission has the authority to recapture the credits otherwise authorized by the Small Business Act if it finds that the transaction does not meet the requirements of the Small Business Act.

(d) These requirements do not prohibit a QSBCC from using near equity or subordinated debt in a direct investment if the near equity or subordinated debt is a contractual obligation owed by the SBV directly to the QSBCC and if the agreement governing the obligation complies with all of the other requirements of the Act.

(e) These requirements do not prohibit a shareholder or partner of a QSBCC from using near equity or subordinated debt in an investment in conjunction with a direct investment if the near equity or subordinated debt is a contractual obligation owed by the SBV directly to the shareholder or partner of the QSBCC making the direct investment and if the agreement governing the obligation complies with all of the other requirements of the Act.

(f) Offering materials involving the solicitation of qualified investments in a QSBCC are required to include the following statement:

> "Any favorable determination letter obtained from the Oklahoma Tax Commission does not guarantee the granting of tax credits under the provisions of the Small business Capital Formation Incentive Act. In the event applicable provisions of the Small Business Capital Formation Incentive Act are violated, the Tax Commission may require forfeiture of unused tax credits and recapture or repayment of tax credits as provided by law."

2. Rural Small Business Act. Section 2357A of the Rural Small Business Act provides similar requirements with respect to direct qualified investments and qualified investments made in conjunction with direct qualified investments by a QRSBCC in an RSBV.

D. Recapture Events.

1. Small Business Act. Section 2357B of the Small Business Act provides for the recapture of the credits taken pursuant to the Small Business Act under certain circumstances.

(a) The Small Business Act defines a "recapture event" as follows:

(i) The SBV fails to expend at least fifty percent (50%) of the proceeds of the qualified investment for acquisition of tangible or intangible assets to be used in the active conduct of the trade or business of the SBV within eighteen (18) months after the qualified investment is made or within an extended period of up to an additional six (6) months if such extension is specifically approved by the Oklahoma Tax Commission;

(ii) The investment in the SBV is transferred, withdrawn or otherwise returned within five (5) years, unless such transfer, withdrawal or return of an investment is a result of a "market based liquidity event" defined as follows:

(iii) The SBV sells all or substantially all of its assets to, or is acquired by share acquisition, share exchange, merger, consolidation or other similar transaction by another person or entity other than (A) a person or entity controlled by a person that made a qualified investment in the QSBCC that provided funds for use by the SBV; or (B) a person or entity controlled by a person that made an investment in conjunction with a qualified investment made by the QSBCC that provided funds for use by the SBV;

(iv) The SBV conducts an initial public offering of a class of its equity securities pursuant to the requirements of the United States Securities and Exchange Commission or other applicable federal law governing the sale of securities in interstate commerce; or

(v) The SBV makes an amortization payment under the terms of a subordinated debt instrument; or

(vi) The Oklahoma Tax Commission finds that the qualified investment does not meet the requirements of the Small Business Act.

(b) If a recapture event occurs, the tax imposed shall be increased to the extent of the recaptured credit amount. The recapture amount shall be equal to the sum of the following:

(i) The aggregate decrease in the previously allowed credits for all prior periods which would have resulted if no credit had been authorized with respect to the qualified investment; plus

(ii) Interest at the rate prescribed by Section 217 of Title 68 of the Oklahoma Statutes on the amount determined pursuant to the previous subsection for each prior taxable period for the period beginning on the due date for the filing of the applicable report or return for the prior taxable period.

(c) The tax shall be increased only with respect to tax credits which were used to reduce tax liability. If the credits were not used to reduce tax liability, the carryforwards shall be adjusted accordingly.

(d) If a transaction is audited by the Oklahoma Tax Commission and credits are required to be recaptured, the Oklahoma Tax Commission is required to disallow any and all credits claimed in violation of the Small Business Act for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed, and any applicable statutes of limitations are extended accordingly.

2. Rural Small Business Act. Section 2357.74B of the Rural Small Business Act provides similar rules with respect to the recapture of tax credits taken pursuant to the Rural Small Business Act.

E. Record Keeping and Reporting Requirements.

1. Small Business Act. Sections 2357.63C and 2357.64 of the Small Business Act provide record keeping and reporting requirements applicable to a QSBCC.

(a) A QSBCC is required to prepare and maintain on a current basis the following records and make them available to the Oklahoma Tax Commission on request:

(i) Files for each director and principal of the QSBCC including the name, address, social security number or federal identification number and such other identifying information as the Oklahoma Tax Commission may require;

(ii) Records concerning all securities and subordinated debt issued by the QSBCC which include:

(iii) The type of the security and subordinated debt issued;

(iv) The name, address and telephone number of the investor;

(v) The date of the transaction; and

(vi) The total amount of the qualified investment.

(vii) Records relating to each person making a qualified investment which shall include the social security number or federal tax identification number of each investor;

(viii) Records relating to each SBV in which the QSBCC made a qualified investment which includes:

(ix) The name of the SBV;

(x) The location of the headquarters and principal business operations of the SBV;

(xi) A description of the type of business in which engaged;

(xii) Evidence that the venture meets the definition of an SBV;

(xiii) A copy of any contractual agreement entered into between the QSBCC and the SBV;

(xiv) The amount of the qualified investment in the SBV;

(xv) The type of qualified investment along with supporting documentation;

(xvi) The date of the investment; and

(xvii) The source of the funds invested.

(xviii) Organizational documents of the QSBCC and any additional documents relating to the organization or operation of the QSBCC as requested by the Oklahoma Tax Commission;

(xix) Records relating to all capitalization of the QSBCC which is not invested in SBVs.

(xx) Records relating to all distributions made by the QSBCC which includes the date of the distribution, the amount of the distribution, to whom the distribution was paid, and the purpose of the distribution; and

(xxi) All other records that may be requested by the Oklahoma Tax Commission.

(b) These records are required to be preserved for ten (10) years.

(c) A QSBCC shall file an annual report with the Oklahoma Tax Commission no later than April 30 of each year listing all qualified investments in or in conjunction with the QSBCC which may qualify for tax credits under the Small Business Act.

(d) A QSBCC shall furnish to each person which made a qualified investment in or in conjunction with the QSBCC during the preceding year a written statement showing the name of the QSBCC, the name of the investor, the total amount of qualified investment, the amount of the qualified investment subsequently invested by the QSBCC in an SBV, the date of such qualified investment and the name of the SBV invested in. This statement shall be attached to the applicable tax return of such person.

(e) On or before April 30 of each year, the QSBCC is required to provide to the Oklahoma Tax Commission a copy of its annual financial statements, including documentation which shall address, to the satisfaction of the Oklahoma Tax Commission, the methods of operation and conduct of the business of the capital company to determine whether the capital company s complying with the terms of the Small Business Act and any rules promulgated by the Oklahoma Tax Commission. No tax credits are allowed under the Small Business Act if this report is not made.

(f) A QSBCC or an entity making an investment in conjunction with a direct investment by a QSBCC must notify the Oklahoma Tax Commission within twenty (20) business days if: (1) the investment in an SBV is transferred, withdrawn or otherwise returned; or (2) an occurrence upon which an investment is contingent has taken place.

2. Rural Small Business Act. Sections 2357.74C and 2357.75 of the Rural Small Business Act provide similar record keeping and reporting requirements for QRSBCCs.

III. Application of Facts to Statutory Requirements.

A. "Qualified Small Business Capital Company."

1. Statutory Requirement. In order to be a QSBCC, a company must meet the following requirements set forth in Section 2357.61(7) of the Small

Business Act: (i) it must be a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, a limited liability company or a registered business partnership with a certificate of partnership filed as required by law; (ii) it must be organized to provide the direct investment of "equity" and "near-equity" funds to companies within Oklahoma; (iii) its principal place of business must be within Oklahoma; (iv) its capitalization must be not less than $1,000,000; and (v) it must not have more than 20% of its capitalization invested in any one company at any time during the calendar year of the QSBCC. For purposes of the Act, "capitalization" is defined to mean, (A) any funds that have actually been contributed to the QSBCC, (B) any contractual commitment to provide funds to the QSBCC to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and (C) any allocation of tax credit authority awarded to the QSBCC by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code, as amended, to the extent that such allocation has not been previously designated by the QSBCC as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code.

2. Application to Facts. The Company is an Oklahoma limited liability company that has filed articles of organization with the Oklahoma Secretary of State. The Company's operating agreement specifically provides that it is organized to provide the direct investment of "equity" and "near-equity" funds to companies within Oklahoma. The Company's principal place of business is located at [redacted] The Company has a capital commitment of $8,750,000 from the Fund and a capital commitment of $1,750,000 from ABCD. The Company's operating agreement requires the Fund to make a requested capital contribution within fifteen (15) days of receipt of a request for a capital contribution from the Company. The Fund's operating agreement requires the members of the Fund to make a requested capital contribution within fifteen (15) days of receipt of a request for a capital contribution from the Fund. The Non-Exempt Investors have the ability to require, prior to making their capital contribution, the receipt of an acceptable letter ruling from the Oklahoma Tax Commission that the investment by the Company in a portfolio company is a "qualified investment" and the portfolio company is either an "Oklahoma small business venture" or an "Oklahoma rural small business venture." The Company's operating agreement and the Fund's operating agreement each provide that unpaid capital contributions will bear interest at a default rate of interest equal to the lesser of (i) the prime rate of interest plus four percent (4%) per annum; or (ii) the maximum rate permitted by law. If an unpaid capital commitment remains unpaid for thirty (30) days, the member's entire remaining capital commitment (not just the amount called with respect to that particular portfolio company investment) becomes immediately due and payable. The Company's operating agreement restricts the amount of capital that may be called during any twelve (12) month period providing that the Company may not call more than twenty percent (20%) of any member's capital commitment in any period consisting of twelve (12) consecutive calendar months. The Company's operating agreement restricts the investments that may be made by the Company by providing that the Company may not invest more than 20% of its capitalization in any one portfolio company.

B. "Qualified Rural Small Business Capital Company."

1. Statutory Requirement. In order to be a QRSBCC, a company must meet the following requirements set forth in Section 2357.72(8) of the Act: (i) it must be a C corporation or a subchapter S corporation, as defined by the Internal Revenue

Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, a limited liability company or a registered business partnership with a certificate of partnership filed as required by law; (ii) it must be organized to provide the direct investment of "equity" and "near-equity" funds to companies within Oklahoma; (iii) its principal place of business must be within Oklahoma; (iv) its capitalization must be not less than $500,000; and (v) it must not have more than 25% of its capitalization invested in any one company. For purposes of the Act, "capitalization" is defined to mean, (A) any funds that have actually been contributed to the QRSBCC; (B) any contractual commitment to provide funds to the QRSBCC to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds; (C) any allocation of tax credit authority awarded to the QRSBCC by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code, as amended, to the extent that such allocation has not been previously designated by the QRSBCC as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code; and (D) any funds loaned to the QRSBCC, which is licensed as a rural business investment company under 7 U.S.C., Section 2009cc et seq., or any successor statute, by the U.S. Small Business Administration or U.S. Department of Agriculture.

2. Application to Facts. The Company is an Oklahoma limited liability company that has filed articles of organization with the Oklahoma Secretary of State. The Company's operating agreement specifically provides that it is organized to provide the direct investment of "equity" and "near-equity" funds to companies within Oklahoma. The Company's principal place of business is located at [redacted]. The Company has a capital commitment of $8,750,000 from the Fund and a capital commitment of $1,750,000 from ABCD. The Company's operating agreement requires the Fund to make a requested capital contribution within fifteen (15) days of receipt of a request for a capital contribution from the Company. The Fund's operating agreement provides that the members of the Fund will make a requested capital contribution within fifteen (15) days of receipt of a request for a capital contribution from the Fund. The Company's operating agreement and the Fund's operating agreement each provide that unpaid capital contributions will bear interest at a default rate of interest equal to the lesser of (i) the prime rate of interest plus four percent (4%) per annum; or (ii) the maximum rate permitted by law. If the unpaid capital commitment remains unpaid for thirty (30) days, the member's entire remaining capital commitment (not just the amount called with respect to that particular portfolio company investment) becomes immediately due and payable. The Company's operating agreement restricts the amount of capital that may be called during any twelve (12) month period providing that the Company may not call more than twenty percent (20%) of any member's capital commitment in any period consisting of twelve (12) consecutive calendar months. The Company's operating agreement restricts the investments that may be made by the Company by providing that the Company may not invest more than 20% of its capitalization in any one portfolio company.

C. "Qualified Investment."

1. Statutory Requirement. Section 2357.61(6) of the Small Business Act and Section 2357.72(7) of the Rural Small Business Act each define a qualified investment as an investment of funds in the form of "equity," "near-equity" or "subordinated debt"; and further provide that an investment which is contingent upon the occurrence of an event or which is subject to being refunded or returned in the absence of such event shall only be deemed to have been made upon the occurrence of the event. Section 2357.61(3) of the

Small Business Act and Section 2357.72(3) of the Rural Small Business Act each define "equity" and "near-equity" to include, among other things, an interest in a limited liability company. Section 2361(8) of the Small Business Act and Section 2357.72(9) of the Rural Small Business Act each defines "subordinated debt" to mean indebtedness with a maturity date of not less than five (5) years that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution (as defined in the Act); and further provide that such indebtedness shall not have a repayment schedule that is faster than a level principal amortization over five (5) years. Both the investment in the QSBCC/QRSBCC and the investment by the QSBCC/QRSBCC in the SBV/RSBV must be a qualified investment.

2. Application to Facts.

(a) Qualified Investments in the Company. The investments by the Fund and ABCD in the Company result in limited liability company interests (treated as partnership interests for federal income tax purposes) in the Company being issued to the Fund and ABCD. These limited liability company interests entitle the Fund and ABCD to receive all of the profits and losses associated with the Company's investments in the portfolio companies. The funds which will be used to make qualified investments and with respect to which tax credits will be created under the Small Business Act or the Rural Small Business Act will only be called by the Company for the purpose of making a qualified investment in a portfolio company, or paying the Company's operating expenses, and will not be subject to being refunded or returned.

(b) Qualified Investments by the Company in SBVs/RSBVs. The Company intends to make investments in portfolio companies in a manner that meets the definition of a "qualified investment" under either the Small Business Act or the Rural Small Business Act.

D. "Oklahoma Small Business Venture."

1. Statutory Requirement. In order to be an SBV, a business must meet the following requirements: (a) the business has or will have, within 180 days after a qualified investment is made by a QSBCC, at least 50% of its employees or assets located in Oklahoma; (b) the business needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services; (c) the business is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision ("SIC Manual"), other than Major Group 1 or 2 of Division A; (d) the business qualifies as a small business as defined by the federal Small Business Administration; and (e) the business expends within 18 months after the date the qualified investment is made at least 50% of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification was made; provided that the 18 month time period can be extended by the Oklahoma Tax Commission for a period not to exceed 6 months. The Small Business Administration defines a "small business concern" as a business entity organized for profit, with a place of business located in the United States, which operates primarily within the United States and meets the size standard applicable for the NAICS code in which the business entity primarily operates. The Small Business Act defines "tangible assets" to

include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the SBV. The Small Business Act defines "intangible assets" as limited to computer software, licenses, patents, copyrights and similar items.

2. Application to Facts. The Company intends to make investments in portfolio companies that meet the definition of an "Oklahoma small business venture" under the Small Business Act or the definition of an "Oklahoma rural small business venture" under the Rural Small Business Act.

E. "Oklahoma Rural Small Business Venture."

1. Statutory Requirement. In order to be an RSBV, a business must meet the following requirements: (a) the business has or will have, within 180 days after a qualified investment is made by a QRSBCC, at least 50% of its employees or assets located in Oklahoma; (b) the business needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services; (c) the business has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least 75% of its gross annual revenue from a nonmetropolitan area of the state; (d) the business is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision ("SIC Manual"), other than Major Group 1 or 2 of Division A; (e) the business qualifies as a small business as defined by the federal Small Business Administration; and (f) the business expends within 18 months after the date the qualified investment is made at least 50% of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification was made; provided that the 18 month time period can be extended by the Oklahoma Tax Commission for a period not to exceed 6 months. Section 2357.72(5) of the Act defines "nonmetropolitan area" as all areas of the state except a county having a population in excess of 100,000 persons according to the most recent Federal Decennial Census. The Small Business Administration defines a "small business concern" as a business entity organized for profit, with a place of business located in the United States, which operates primarily within the United States and meets the size standard applicable for the NAICS code in which the business entity primarily operates. The Rural Small Business Act defines "tangible assets" to include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified in vestment in the RSBV. The Rural Small Business Act defines "intangible assets" as limited to computer software, licenses, patents, copyrights and similar items.

2. Application to Facts. The Company intends to make investments in portfolio companies that meet the definition of an "Oklahoma small business venture" under the Small Business Act or the definition of an "Oklahoma rural small business venture" under the Rural Small Business Act.

RULINGS REQUESTED

1. The Company meets the definition of a "qualified small business capital company" and the definition of a "qualified rural small business capital company."

It is the ruling of the Tax Policy Division that the Capital Company described in the letter ruling request meets the definition of a "qualified small business capital company" as defined in 68 Okla. Stat. §2357.61(7) if the following are met:

1. *The Capital Company is an Oklahoma limited liability company;*
2. *The Capital Company is organized to provide the direct investment of equity and near-equity funds to companies within this state;*
3. *The principal place of business of the Capital Company is in the state of Oklahoma;*
4. *The capitalization of the Capital Company is not less than One Million Dollars ($1,000,000.00); and*
5. *The Capital Company has investment of not more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year of the Capital Company.*

It is the ruling of the Tax Policy Division that the Capital Company described in the letter ruling request meets the definition of a "qualified rural small business capital company" as defined in 68 Okla. Stat. §2357.72(8) if the following are met:

1. *The Capital Company is an Oklahoma limited liability company;*
2. *The Capital Company is organized to provide the direct investment of equity and near-equity funds to companies within this state;*
3. *The principal place of business of the Capital Company is in the state of Oklahoma;*
4. *The capitalization of the Capital Company is not less than Five Hundred Thousand Dollars ($500,000.00); and*
5. *The Capital Company has investment of not more than twenty-five percent (25%) of its capitalization in any one company at any time during the calendar year of the Capital Company.*

2. The Company's "capitalization" is $10,500,000.

Yes, as long as the contractual commitments to provide funds to the Company are payable on demand and have substantial economic penalties for breach of the commitments to provide such funds.

3. The investments by the Fund and ABCD in the Company will constitute "equity" or "near-equity" and will meet the definition of a "qualified investment".

Yes.

4. The investments by the Fund and ABCD in the Company will qualify for the credits against tax provided in 68 Okla. Stat. §2357.62 when the Company makes a qualified investment in an Oklahoma small business venture. The amount of the credits is 20% of the lesser of the qualified investment in the Company or the qualified investment by the Company in the Oklahoma small business venture.

Based upon the facts and other assertions contained in your September 7th request and the attached exhibits, only the amount of the investment by the Fund and ABCD in the Capital Company which is subsequently invested in an Oklahoma small business venture will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62. The amount of the credit is 20% of the qualified investment in the Capital Company which is subsequently invested in an Oklahoma small business venture.

5. The investments by the Fund and ABCD in the Company will qualify for the credits against tax provided in 68 Okla. Stat. § 2357.73 when the Company makes a qualified investment in an Oklahoma rural small business venture. The amount of the credit is 30% of the lesser of the qualified investment in the Company or the qualified investment by the Company in the Oklahoma small business venture.

Based upon the facts and other assertions contained in your September 7th request and the attached exhibits, only the amount of the investment by the Fund and ABCD in the Capital Company which is subsequently invested in an Oklahoma rural small business venture will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.73. The amount of the credit is 30% of the qualified investment in the Capital Company which is subsequently invested in an Oklahoma rural small business venture.

6. A qualified investment by a member of the Fund in an "Oklahoma small business venture" or "Oklahoma rural small business venture" in conjunction with a qualified investment by the Company will qualify for the credits against tax provided in 68 Okla. Stat. § 2357.63 or §2357.74, as appropriate.

Yes, as long as the provisions of 68 Okla. Stat. §2357.63 or §2357.74 are met.

7. The tax credits resulting from the Fund's qualified investment in the Company will be available to offset the Oklahoma tax liabilities, as defined in the Act, of the member(s) of the Fund, or the ultimate taxpayers if the members are pass-through entities, and may be specially allocated among the members of the Fund such that the Tax-Exempt Investors receive no allocations of tax credits, and the Non-Exempt Investors receive a special allocation of all of the tax credits.

The Tax Policy Division agrees that shareholders, partners or members of a pass-through entity that are entitled to a credit under §2357.62 or §2357.73 of Title 68 may receive an allocation of the credits from the pass-through entity, subject to the provisions of §2357.62(G) and §2357.73(G). Once allocated to the shareholders, partners or members, the credits may be claimed to offset Oklahoma tax liabilities as defined in the Act. If the members of the Fund are pass-through entities, the allocation of credits is subject to the provisions of §2357.62(G) and §2357.73(G).

8. The tax credits arising from qualified investments by the Company will be immediately usable by the members of the Fund, or the ultimate taxpayers if the members are pass-through entities, against any tax liability arising in the taxable year of the taxpayer in which the qualified investment is made in the Oklahoma small business venture or the Oklahoma rural small business venture or any subsequent year, subject to the 3 year carryforward limitations, from such taxpayer under 68 Okla. Stat. §2355 (the "Oklahoma Income Tax") or 68 Okla. Stat. § 2370 (the "Bank Privilege Tax") and 36 Okla. Stat. §§624

and 628 (the "Insurance Premium Tax"), including estimated tax payments.

The tax credits resulting from the qualified investment in an Oklahoma small business venture or Oklahoma rural small business venture by the Capital Company will be immediately usable by the members of the Fund, or upon allocation the ultimate taxpayers if the members of the Fund are flow-through entities, against any tax liability then due from such taxpayer under 68 Okla. Stat. § 2355 (the "Oklahoma income tax"), 68 Okla. Stat. § 2370 (the "bank privilege tax"), and 36 Okla. Stat. §§ 624 and 628 (the "insurance premium tax"), including estimated tax payments.

9. If the Company makes a qualified investment in an "Oklahoma small business venture" or an "Oklahoma rural small business venture" in the form of "equity" or "near equity" the Company may receive payments or distributions of revenues of the Oklahoma small business venture or Oklahoma rural small business venture provided such payments or distributions do not reduce the Company's ownership interest in the Oklahoma small business venture or Oklahoma rural small business venture, and such payments or distributions shall not result in a "recapture event" under either the Small Business Act or the Rural Small Business Act.

It is the ruling of the Tax Policy Division that the payment of dividends or distributions from the Oklahoma small business venture or Oklahoma rural small business venture shall not constitute a "recapture event" under either the Small Business Act or the Rural Small Business Act.

10. The rulings requested herein may be relied upon by the Company, the Fund, ABCD, the Exempt Investors and the Non-Exempt Investors and any other investors in the Fund, including any indirect investors through pass-through entities.

This response applies only to the circumstances set out in your request dated September 7, 2007. 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

Dawn Cash, Director
Tax Policy & Research Division