

# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION  
DAWN CASH, DIRECTOR

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December 31, 2009

[REDACTED]

Re: Our File No. LR-09-228

Dear [REDACTED]

This letter ruling is in response to your inquiry of December 22, 2009 where 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 restatement of the facts outline in your letter, are the specific rulings requested and our responses thereto.

## I. Summary of Transaction.

A. The Fund. [REDACTED] Series B, LLC (the "Fund"), is an Oklahoma limited liability company that was formed on December 18, 2009, for the purpose of raising equity capital from accredited investors (the "Investors") for investment in a QRSBCC (defined below) and/or a QSBCC (defined below) and RSBVs (defined below), and/or SBVs (defined below).

1. The Fund will issue two classes of units, common units and preferred units. The members of the Fund will be the Investors and [REDACTED] an Oklahoma limited liability company ([REDACTED]). The manager of the Fund will be [REDACTED], an Oklahoma limited liability company ("Manager"). The preferred units of the Fund will be offered to Investors in exchange for contributions to capital of the Fund (together with the [REDACTED] described below, the "Investments"). The Fund anticipates that it will receive Investments in an amount ranging from \$7 million (consisting of \$1 million of cash equity and \$6 million of proceeds from the Investor Loans) to \$75 million (consisting of \$7.5 million of cash equity and \$67.5 million of

proceeds from the Investor Loans). However, the Fund cannot be certain of the aggregate amount of Investments it will ultimately obtain. The aggregate amount of Investments may differ materially from the amount the Fund currently expects to accept. The Fund will not elect to be treated as an association taxable as a corporation for federal income tax purposes.

2. [REDACTED] will receive the common units of the Fund in exchange for a contribution of capital to the Fund of not less than \$10,000 [REDACTED]. Manager will be the manager of the Fund and will receive a management fee from the Fund in that capacity.

3. As owner of the preferred units in the Fund, Investors will receive 100% of all distributions of cash and property from the Fund until they have received a certain specified return (the "Preferred Return"). In calculating the Preferred Return, the value of the Credits (defined below) available to the Investors of the Fund will be included. As the owner of the common units in the Fund, [REDACTED] will receive no distributions from the Fund until the Preferred Return is received. However, [REDACTED] will receive an allocation of the Credits (defined below), as described below. Once the Preferred Return is received, all distributions of cash and property from the Fund will be made to [REDACTED] (as the owner of the common units) and the Investors (as the owner of the preferred units). The percentage of distributions paid to [REDACTED] after the Preferred Return is received by the Investors will be no more than 80% and the distributions paid to the Investors after the Preferred Return is received will be no less than 20%.

4. The Credits will be allocated among the Investors and [REDACTED] based on the percentage of the Investments that each Investor and [REDACTED], as applicable, contributed.

5. It is expected that each Investor will not be a "pass-through entity" as defined in section 2357.62G and Section 2357.63E of the Small Business Act or Sections 2357.73G and 2357.74E of the Rural Act. The Investors who purchase preferred units issued by the Fund will obtain most of the monies utilized to purchase such preferred units through borrowings (the "Investor Loans") from banks, other financial institutions and other persons, including individual lenders (each a "Lender"). Such borrowings will be made on such terms and conditions as may be negotiated with the Lender, and it is expected that such loans will be on a full or partial non-recourse basis. Such loans may be secured in whole or in part by a pledge of the preferred units purchased by the Investor. In addition, the performance and payment of such loans are expected to be further collateralized by a guaranty provided by the Business to which such loan relates, which guaranty is expected to be secured by a pledge of all or a portion of the assets of the Business.

6. The total amount of the Investor Loans is not certain but the Investors intend that it will be equal to an amount that is approximately 85% to 90% of the aggregate amount of the investments that are contributed to [REDACTED], an Oklahoma limited liability company (the "Capital Company") as

described below. The actual amount of the Investor Loans could be more or less than these amounts, depending in part on the amount of the Investments. The Investor Loans will allow prepayment which may or may not result in premium or penalty. The Investors expect to refinance the Investor Loans as described below.

7. Immediately following the Fund's contribution to the Capital Company, as described below, the Capital Company may hold the Investments in an account or use the Investments to purchase one or more certificates of deposits which, in either case, will be pledged to secure the Investor Loans. In addition, each Investor Loan will be collateralized by a guarantee from each of the Investors which will be limited in recourse to a pledge of that Investor's preferred units in the Fund (each, an "Investor Guarantee").

8. The Fund intends to contribute the proceeds of the Investments (which will include cash equity from the Investors and the proceeds from the Investor Loans), less organizational and other expenses of the Fund, to the Capital Company. The Capital Company will use those funds to invest in an entity the Capital Company believes to be a RSBV or SBV (each, a "Business"), as described below. In addition, the Fund may make investments in Businesses in conjunction with the investment in such Businesses made by the Capital Company, as described below.

9. It is anticipated that the Investor Loans will be refinanced within eighteen (18) months after the investment by the Fund in the Capital Company and the investment by the Capital Company in a Business, either with the same lender(s) or a different lender(s) (with the refinanced loans being referred to as the "Project Loans") such that each Project Loan may be secured by (a) a pledge of assets of and a guarantee from the Business to which the Project Loan relates, (b) Investor Guarantees, (c) a pledge of the Fund's assets, including its interest in the Capital Company or a portion thereof, based on the amount invested by the Capital Company in that Business and any interest in a Business to which the Project Loan relates, and/or (d) a guarantee by the Capital Company and a pledge of the Capital Company's interest in the Business to which the Project Loan relates. Once the Project Loans have been obtained, the Investors expect to decrease or eliminate the Investor Loans. Thus, the Fund anticipates that the Investor Guarantees of the Investor Loans will be released as the Project Loans, guarantees of the Businesses, and other guarantees of the Project Loans are given.

10. A Lender may, in its sole discretion, agree that, after the investment by the Fund in the Capital Company and the investment by the Capital Company in a Business and at such time as the applicable Project Loan is secured, to the satisfaction of the Lender, by assets of the Business to which it relates (in an amount and of a type specified by the Lender), including, without limitation and among other assets, tangible assets (consisting of real property and/or construction of improvements upon real property) or intangible assets (consisting of computer software, licenses, patents, copyrights and/or similar items) used in the active conduct of the Business and acquired with a portion of the proceeds of the Capital Company's investment in the Business or an Additional Investment in the Business, the Lender will release all or a portion of the Investor Guarantees of such Project Loan. This release may occur within five (5) years

after the investments have been made. Any such release would be in the sole discretion of the Lender; however, Manager intends to use its best efforts to obtain such release. In addition, Manager intends to select Businesses that it believes are likely to obtain the types of assets and create value sufficient to cause the Lender to provide such releases.

B. The Capital Company. The Capital Company is an Oklahoma limited liability company whose principal place of business and headquarters are located within the State of Oklahoma. The Capital Company was formed on February 22, 2007 for the purpose of making “qualified investments” in RSBVs and/or SBVs.

1. The Capital Company will issue a special class of units. The only member of that special class of units in the Capital Company will be the Fund.

2. The Fund will own a special class of limited liability membership units in the Capital Company. [REDACTED] [REDACTED] [REDACTED] Series A (the “Series A Fund”) and [REDACTED] are also members of the Capital Company holding different classes of limited liability membership units in the Capital Company. The Capital Company will be treated as a “partnership” for income tax purposes. Thus, the Fund and the Capital Company are separate legal entities and both the Fund and the Capital Company will maintain segregated transactions accounts and separate books of accounts for reporting purposes. All the assets and related items of income, deductions, and credits of the special class of units of the Capital Company for income tax purposes will flow through to the Fund for United States federal and Oklahoma income tax purposes. All distributions of cash and property from the special class of units of the Capital Company will be made to the Fund as the sole owner of the special class of units in the Capital Company.

3. After the Fund has received a minimum amount of proceeds from the Investments (which includes cash equity from the Investors and the proceeds from the Investor Loans), the Fund may enter into a contractual commitment (the “Fund Commitment”) to provide funds to the Capital Company sufficient to allow the Capital Company to meet the requirements that (a) it have a minimum of \$1 million of capitalization and (b) the Capital Company at no time invest more than (i) 25% of its capitalization in any one Business, in the event that the Capital Company has only invested in RSBVs, or (ii) 20% of its capitalization in any one Business, from such time as the Capital Company makes an investment in any SBV. This contractual commitment will require the Fund to contribute such amounts on demand and subject to an economic penalty equal to 5% of the requested capital for breach of this commitment. The Fund’s contribution of the Investments will be made as provided above.

4. The Capital Company intends to qualify as a “qualified rural small business capital company” under the Rural Act. In the event that the Capital Company makes any investment in a SBV, it also intends to qualify as a “qualified small business capital company” under the Small Business Act. The Capital Company will be capitalized, as described above, with the contributions by the Fund as well as the Fund

Commitment, as well as with prior contributions by [REDACTED] the Series A [REDACTED].

5. The Capital Company intends to make qualified investments, in the form of equity, near equity or subordinated debt into various "Oklahoma rural small business ventures" as defined in the Rural Act (each, a "RSBV") and/or "Oklahoma small business ventures" (each, a "SBV") as defined in the Small Business Act. At any time during which the Capital Company has invested in RSBVs (and has not invested in any SBV), the Capital Company will not at any time invest more than 25% of its capitalization in a single Business. At any time during which the Capital Company has invested in any SBV, the Capital Company will not at any time invest more than 20% of its capitalization in a single Business. When the Capital Company makes an investment in a Business, the Capital Company will include provisions in its investment documents that (1) provide that the Business must issue its equity securities or subordinated debt instruments in exchange for the investment within 30 days of the date the investment occurs, (2) restrict the Capital Company's ability to elect more than 50% of the members of the governing board of the Business, and (3) require that the Business expend within 18 months after the date of the investment (or an extended period of up to an additional six months if approved by the Oklahoma Tax Commission) at least 50% of the proceeds of the investment for the acquisition of tangible assets (consisting of real property and/or construction of improvements upon real property) or intangible assets (consisting of computer software, licenses, patents, copyrights and/or similar items) used in the active conduct of the Business. The Capital Company will reflect any investment made in a Business as an asset on its accounting system. The Capital Company will not enter into any agreement, other than equity, near equity or subordinated debt instruments allowed by the Acts, the purpose of which is to control the return of a specific amount of qualified investment by a Business to the Capital Company 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 and the investment documents will prohibit the Business from entering into such an agreement as well. The offering materials utilized by the Capital Company will include the statements required by Section 2357.74A(F) of the Rural Act and Section 2357.63A(F) of the Small Business Act.

C. Manager; [REDACTED]. Manager will serve as manager of both the Capital Company and the Fund. Manager will receive management fees from the Fund and/or the Capital Company for such services. [REDACTED] will contribute capital to the Fund in exchange for common units, as described above. Also, as described above, [REDACTED] will be allocated Credits based on the percentage of Investments represented by [REDACTED]'s contribution to the Fund.

D. Fund Investments in Businesses. The Fund may invest directly in certain Businesses in conjunction with the investments in such Businesses by the Capital Company ("Additional Investments"). In the event the Fund makes Additional Investments, such Additional Investments will (A) be used to purchase "equity" or "near-equity" of the Business, (B) be made on the same terms and conditions as the investment in such Business by the Capital Company, (C) be made in an amount

that is no more than 200% of the lesser of (i) the investments by the Fund in the Capital Company or (ii) the investments by the Capital Company in the Business. The Fund will reflect any Additional Investments as assets on its accounting system.

## II. Summary of Statutory Requirements.

### A. Direct Investment.

1. Rural Act. In accordance with Section 2357.73(A) and (B) of the Rural Act, Oklahoma tax credits can be generated by making a “qualified investment” in a “qualified rural small business capital company” (a “QRSBCC”). Such credits are equal to 30% of the cash amount invested in the QRSBCC that is subsequently invested in a RSBV. The tax credits must be claimed for the taxable year in which the QRSBCC invests funds in the RSBV and may be carried forward for three 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.

2. Small Business Act. In accordance with Section 2357.62(A) and (B) 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”). Such credits are equal to 20% of the cash amount invested in the QSBCC that is subsequently invested in a SBV. The tax credits must be claimed for the taxable year in which the QSBCC invests funds in the SBV and may be carried forward for three 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.

### B. Investments in Conjunction with Direct Investments.

1. Rural Act. In accordance with Section 2357.74 of the Rural Act, Oklahoma tax credits (collectively with the Oklahoma tax credits generated as described in paragraph II.A.1 in accordance with Section 2357.73 of the Rural Act, the “Rural Credits”) can be generated by making a “qualified investment” in a RSBV in conjunction with an 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. As with the direct investment, the tax credits must be claimed for the taxable year in which the investment is made in a RSBV and may be carried forward for three years but may not be taken as a refund or transferred. In addition, the investment made into the RSBV must meet the following requirements: (i) the investment must be made by a shareholder or partner of a QRSBCC that has invested funds in a RSBV; (ii) the funds must be invested in the purchase of “equity” or “near-equity” in a RSBV; (iii) the investment must be made under the same terms and conditions as the investment made by the QRSBCC; and (iv) the investment must be limited to the lesser of 200% of any qualified investment by the taxpayer in the QRSBCC or 200% of the qualified investment made by the QRSBCC in the RSBV.

2. Small Business Act. In accordance with Section 2357.63 of the Small Business Act, Oklahoma tax credits (collectively with the Oklahoma tax credits

generated as described in paragraph II.A.2 in accordance with Section 2357.62 of the Small Business Act, the “Small Business Credits” and, collectively with the Rural Credits, the “Credits”) can be generated by making a “qualified investment” in a SBV in conjunction with an investment in such SBV made by a QSBCC. Such credits are equal to 20% of the cash amount of the “qualified investment” made in the SBV. As with the direct investment, the tax credits must be claimed for the taxable year in which the investment is made in a SBV and may be carried forward for three years but may not be taken as a refund or transferred. In addition, the investment made into the SBV must meet the following requirements: (i) the investment must be made by a shareholder or partner of a QSBCC that has invested funds in a SBV; (ii) the funds must be invested in the purchase of “equity” or “near-equity” in a SBV; (iii) the investment must be made under the same terms and conditions as the investment made by the QSBCC; and (iv) the investment must be limited to the lesser of 200% of any qualified investment by the taxpayer in the QSBCC or 200% of the qualified investment made by the QSBCC in the SBV.

### III. Application of Facts to Statutory Requirements.

#### A. “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 Rural Act: (A) 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; (B) it must be organized to provide the direct investment of “equity” and “near-equity” funds to companies within Oklahoma; (C) its principal place of business must be located within Oklahoma; (D) its capitalization must be not less than \$500,000; and (E) it must not at any time have more than 25% of its capitalization invested in any one company. For purposes of the Rural Act, “capitalization” includes (i) any funds that have actually been contributed to the QRSBCC, (ii) 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, (iii) any allocation of tax credit authority awarded to the QRSBCC by the Community Development Financial Institutions Fund of the U.S. Treasury pursuant to Section 45D of the Internal Revenue Code of 1986, 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 (iv) any funds loaned to the QRSBCC which is licensed as a rural business investment company under 7 U.S.C. § 2009cc et seq., or any successor statute, by the U.S. Small Business Administration or the U.S. Department of Agriculture.

2. Application to Facts. The Fund will make the investment in the Capital Company on substantially the terms described in paragraph I.A above. The Capital Company will be organized as a limited liability company. The Capital Company’s articles of organization and governing documents will provide that it was organized for the purpose of making qualified investments in RSBVs, within the meaning

of the Rural Act, and/or SBVs, and that its principal place of business must be located within Oklahoma. The Capital Company will then make the investments described in paragraph I.B above.

B. “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: (A) 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; (B) it must be organized to provide the direct investment of “equity” and “near-equity” funds to companies within Oklahoma; (C) its principal place of business must be located within Oklahoma; (D) its capitalization must be not less than \$1,000,000; and (E) it must not at any time have more than 20% of its capitalization invested in any one company. For purposes of the Small Business Act, “capitalization” includes, (i) any funds that have actually been contributed to the QSBCC, (ii) 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 (iii) any allocation of tax credit authority awarded to the QSBCC by the Community Development Financial Institutions Fund of the U.S. Treasury pursuant to Section 45D of the Internal Revenue Code of 1986, 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 Fund will make the investment in the Capital Company on substantially the terms described in paragraph I.A above. The Capital Company will be organized as a limited liability company. The Capital Company’s articles of organization and governing documents will provide that it was organized for the purpose of making qualified investments in SBVs, within the meaning of the Small Business Act, and/or RSBVs, and that its principal place of business must be located within Oklahoma. The Capital Company will then make the investments described in paragraph I.B above.

C. Pass-Through Entity.

1. Statutory Requirements. Pursuant to the Acts, if a pass-through entity is entitled to Credits, the pass-through entity shall allocate such Credits to one or more of the shareholders, partners or members of the pass-through entity. The Credits may be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom such Credit is allocated has a legal obligation to repay the borrowed funds. The allocation of Credits to a shareholder, partner or member may not exceed such shareholder’s, partner’s or member’s pro-rata equity share of the pass-through entity even if the taxpayer’s legal obligation to repay the borrowed funds is in excess of such amount.



Sections 2357.62G and 2357.63E of the Small Business Act, and Sections 2357.73G and 2357.74E of the Rural Act, were amended to provide, in part, in that the tax credits created by the Small Business Act and the Rural Act could be claimed for funds borrowed by a pass-through entity to make a qualified investment only if a shareholder, partner or member to whom the credit is allocated has an unlimited and continuing legal obligation to repay the borrowed funds.

2. Application to Facts. Neither the Fund nor the Capital Company intends to be a borrower on the Investor Loans. The Investors will be the borrowers on the Investor Loans, and none of the Investors will be a "pass-through entity" as defined in Sections 2357.62G and 2357.63E of the Small Business Act or Sections 2357.73G and 2357.74E of the Rural Act, as applicable. As such, Sections 2357.62G and 2357.63E of the Small Business Act, and Sections 2357.73G and 2357.74E of the Rural Act, each as amended, should be inapplicable to the circumstances described in this letter, and accordingly tax credits should be allocated by the Fund to an Investor who is not a "pass-through entity" based on the total investment by the Investor in the Fund, using in part borrowed funds, under the circumstances described in this letter in relation to the total investments in the Fund.

D. "Qualified Investment."

1. Statutory Requirements. Section 2357.72(7) of the Rural Act and Section 2357.61(6) of the Small Business Act defines a qualified investment as "equity," "near-equity" or "subordinated debt." Section 2357.72(3) of the Rural Act and Section 2357.61(3) of the Small Business Act define "equity" and "near-equity" to include common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a limited liability company, partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, a royalty or net profits interest, or an interest in a limited liability company or partnership. Section 2357.72(9) of the Rural Act and Section 2357.61(8) of the Small Business Act define "subordinated debt" to mean indebtedness with a maturity date of not less than five years and a repayment schedule that is not faster than a level principal amortization over five (5) years and 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 Acts).

2. Application to Facts. The Fund's investment in the Capital Company will result in a special class of limited liability company units of the Capital Company being issued to the Fund. Pursuant to the Capital Company's Operating Agreement the Fund will receive 100% of the profits and losses associated with the special class of units in the Capital Company's investment in the Businesses. Therefore, the Fund's investment in the Capital Company should qualify as an interest in a limited liability company and "equity" or "near-equity" under the Act.

E. “Oklahoma Rural Small Business Venture.”

1. Statutory Requirement. In order to be a 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, 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 eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible assets (consisting of real property and/or construction of improvements upon real property) or intangible assets (consisting of computer software, licenses, patents, copyrights and/or similar items) which are used in the active conduct of the business.

2. Application to Facts. The Capital Company will only invest in entities that it and the Manager believe satisfy the requirements of a RSBV set forth in the Rural Act or a SBV.

F. “Oklahoma Small Business Venture.”

1. Statutory Requirement. In order to be a 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, 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 eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible assets (consisting of real property and/or construction of improvements upon real property) or intangible assets (consisting of computer software, licenses, patents, copyrights and/or similar items) which are used in the active conduct of the business.

2. Application to Facts. The Capital Company will only invest in entities that it and the Manager believe satisfy the requirements of a SBV set forth in the Small Business Act or a RSBV.

G. “Recapture Events.”

1. Rural Act Provisions. Section 2357.74B of the Rural Act provides for the recapture of the Rural Credits taken pursuant to the Rural Act under certain circumstances.

(a) The Rural Act defines a “recapture event” as follows:

(i) The RSBV fails to expend at least 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 RSBV within 18 months after the qualified investment is made or within an extended period of up to an additional 6 months if such extension is specifically approved by the Oklahoma Tax Commission;

(ii) The investment in the RSBV is transferred, withdrawn or otherwise returned within five years, unless such transfer, withdrawal or return of an investment is a result of a “market based liquidity event”; or

(iii) The Oklahoma Tax Commission finds that the qualified investment does not meet the requirements of the Rural Act.

(b) The Rural Act defines a “market-based liquidity event” as follows:

(i) The RSBV 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 QRSBCC that provided funds for use by the RSBV; or (B) a person or entity controlled by a person that made an investment in conjunction with a qualified investment made by the QRSBCC that provided funds for use by the RSBV;

(ii) The RSBV 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

(iii) The RSBV makes an amortization payment under the terms of a subordinated debt instrument.

(c) If a recapture event occurs, the tax imposed shall be increased to the extent of the recaptured credit amount. 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 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. Small Business Act Provisions. Section 2357.63B of the Small Business Act provides similar rules with respect to the recapture of Small Business Credits taken pursuant to the Small Business Act.

3. Application to Facts. The Investor Loans will be repaid when the Project Loans are obtained. The Investor Loans will be made to the Investors and not the Businesses or the Fund or the Capital Company. Therefore, the refinancing or prepayment of the Investor Loans by the Investors and the release of the Investor Guarantees of the Investor Loans (at the time the Project Loans, Investor Guarantees of the Project Loans, and other guarantees of the Project Loans are obtained) should not constitute a recapture event. In addition, amortization payments by a Business under the terms of a subordinated debt instrument are specifically excluded from the definition of recapture events. Thus, payments by a Business to the Capital Company under a subordinated debt instrument or distributions of revenues of a Business with respect to equity or near equity should not constitute a recapture event, provided such payments or distributions do not reduce the Capital Company's or Fund's (as applicable) ownership interest in the Business. Further, distributions from the Capital Company to the Fund, as the holder of the special class of units of the Capital Company, of amounts received from a Business, as described in the preceding sentence, should not constitute a recapture event.

### RULINGS REQUESTED

1. The Capital Company meets the definition of a "qualified rural small business capital company" under the Rural Act.

*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. §2357.72 based on the following representations:*

- a) The Capital Company is an Oklahoma limited liability company;*
- b) The Capital Company is organized to provide the direct investment of equity and near-equity funds to companies within this state;*
- c) The principal place of business of the Capital Company is in the state of Oklahoma;*
- d) The capitalization of the Capital Company is not less than Five Hundred Thousand Dollars (\$500,000.00); and*
- e) 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 Capital Company meets the definition of a "qualified small business capital company" under the Small Business Act.

*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 based on the following representations:

- a) The Capital Company is an Oklahoma limited liability company;
- b) The Capital Company is organized to provide the direct investment of equity and near-equity funds to companies within this state;
- c) The principal place of business of the Capital Company is in the state of Oklahoma;
- d) The capitalization of the Capital Company is not less than One Million Dollars (\$1,000,000.00); and
- e) 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.

3. For so long as the Capital Company has made investments only in RSBVs, and has not made any investment in a SBV, the limit on the amount of investment that the Capital Company may make in any single Oklahoma rural small business venture is 25% of the Capital Company's capitalization.

Yes.

4. The limit on the amount of investment that the Capital Company may make in any single Oklahoma rural small business venture to 25% of the Capital Company's capitalization (or, in the event an investment is or has been made in a SBV, the limit on the amount of investment that the Capital Company may make in any single Oklahoma rural small business venture or Oklahoma small business venture to 20% of the Capital Company's capitalization) can be determined by the aggregate capitalization of the Capital Company, including funds actually invested in the Capital Company by all of its members, including, without limitation, [REDACTED], the Series A Fund, [REDACTED] and the Fund, plus funds contractually committed by the Fund to the Capital Company under terms substantially similar to those described in this ruling request.

Yes.

5. The investment by the Fund in the Capital Company will constitute "equity" or "near-equity" and will meet the definition of a "qualified investment" within the meaning of 68 Okla. Stat. § 2357.72.

Yes.

6. The investment by the Fund in the Capital Company will constitute "equity" or "near-equity" and will meet the definition of a "qualified investment" within the meaning of 68 Okla. Stat. § 2357.61.

Yes.

7. The investments by the Capital Company in the Businesses, on terms substantially similar to those described in this ruling request, will, so long as the Business is an "Oklahoma rural small business venture," meet the definition of a

“qualified investment,” in each case within the meaning of 68 Okla. Stat. § 2357.72.

*Yes, it meets the definition of “qualified investment” within the meaning of 68 O.S. §2357.72(7).*

8. The investments by the Capital Company in the Businesses, on terms substantially similar to those described in this ruling request, will, so long as the Business is an “Oklahoma small business venture,” meet the definition of a “qualified investment,” in each case within the meaning of 68 Okla. Stat. § 2357.61.

*Yes, it meets the definition of “qualified investment” within the meaning of 68 O.S. §2357.61(6).*

9. The investments by the Fund in the Businesses, on terms substantially similar to those described in this ruling request (including but not limited to the requirements that the Fund invest in the purchase of “equity” or “near-equity” of the Business, that the Business constitute an “Oklahoma rural small business venture” and that the investment be made on the same terms and conditions as the investment in the Business made by the Capital Company, in each case within the meaning of 68 Okla. Stat. § 2357.72), will meet the definition of a “qualified investment” within the meaning of 68 Okla. Stat. § 2357.72 and will be an investment made “in conjunction with” a qualified investment by a qualified rural small business capital company, within the meaning of 68 Okla. Stat. § 2357.74.

*Yes.*

10. The investments by the Fund in the Businesses, on terms substantially similar to those described in this ruling request (including but not limited to the requirements that the Fund invest in the purchase of “equity” or “near-equity” of the Business, that the Business constitute an “Oklahoma small business venture” and that the investment be made on the same terms and conditions as the investment in the Business made by the Capital Company, in each case within the meaning of 68 Okla. Stat. § 2357.61), will meet the definition of a “qualified investment” within the meaning of 68 Okla. Stat. § 2357.61 and will be an investment made “in conjunction with” a qualified investment by a qualified small business capital company, within the meaning of 68 Okla. Stat. § 2357.63.

*Yes.*

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

*Yes, the amount of the investment by the Fund 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 O. S. §2357.73.*

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

*Yes, the amount of the investment by the Fund in the Capital Company which is subsequently invested in an Oklahoma small business venture will qualify for the Oklahoma Tax Credits described in 68 O. S. §2357.62.*

13. The Additional Investment by the Fund in an Oklahoma rural small business venture, on substantially the terms described in this ruling request, will qualify for the credit against tax provided in 68 Okla. Stat. § 2357.74. The amount of the credit is 30% of the amount of such Additional Investment by the Fund in the Oklahoma rural small business venture.

*Yes.*

14. The Additional Investment by the Fund in an Oklahoma small business venture, on substantially the terms described in this ruling request, will qualify for the credit against tax provided in 68 Okla. Stat. § 2357.63. The amount of the credit is 20% of the amount of such Additional Investment by the Fund in the Oklahoma small business venture.

*Yes.*

15. The investors of the Fund, including the Investors and [REDACTED] [REDACTED] are partners of the Fund for tax purposes and the tax credits resulting from the qualified investment in a RSBV by the Capital Company (and/or the investment in a RSBV by the Fund) will be available to offset the Oklahoma tax liabilities, as defined in the Rural Act, of the investors in the Fund and may be allocated among the Investors and [REDACTED], as members of the Fund, pro rata according to their contribution of capital to the Fund, on the date the qualified investment in a RSBV by the Capital Company (or in the case of credits obtained under 68 Okla. Stat. § 2357.74, the date the qualified investment in a RSBV by the Fund) is made.

*The Tax Policy Division agrees that shareholders, partners or members of pass-through entities that are entitled to a credit under §§2357.73 and 2357.74 of Title 68 may receive an allocation of the credits from the pass-through entity under the terms of the cited statutory provisions.*

16. The investors of the Fund, including the Investors and [REDACTED] [REDACTED], are partners of the Fund for tax purposes and the tax credits resulting from the qualified investment in a SBV by the Capital Company (and/or the investment in a SBV by the Fund) will be available to offset the Oklahoma tax liabilities, as defined in the

Small Business Act, of the investors in the Fund and may be allocated among the Investors and [REDACTED], as members of the Fund, pro rata according to their contribution of capital to the Fund, on the date the qualified investment in a SBV by the Capital Company (or in the case of credits obtained under 68 Okla. Stat. § 2357.63, the date the qualified investment in a SBV by the Fund) is made.

*The Tax Policy Division agrees that shareholders, partners or members of pass-through entities that are entitled to a credit under §§2357.62 and 2357.63 of Title 68 may receive an allocation of the credits from the pass-through entity under the terms of the cited statutory provisions.*

17. The tax credits resulting from the qualified investment in a RSBV by the Capital Company and/or the qualified investment in a RSBV by the Fund will be immediately usable by the members of the Fund 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.

*Once allocated to the shareholders, partners or members, the credits may immediately be used to offset various Oklahoma tax liabilities for the same year in which the investment was made, including Oklahoma income taxes, bank privilege taxes and insurance company premium taxes when due. The credit may also be used to offset estimated income taxes; however, if the credit exceeds the amount of taxes due, the amount of the claim not used may be carried forward to a future taxable year but may not be used to offset estimated tax liabilities to generate a refund of the credits.*

18. The tax credits resulting from the qualified investment in a SBV by the Capital Company and/or the qualified investment in a SBV by the Fund will be immediately usable by the members of the Fund 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.

*Once allocated to the shareholders, partners or members, the credits may immediately be used to offset various Oklahoma tax liabilities for the same year in which the investment was made, including Oklahoma income taxes, bank privilege taxes and insurance company premium taxes when due. The credit may also be used to offset estimated income taxes; however, if the credit exceeds the amount of taxes due, the amount of the claim not used may be carried forward to a future taxable year but may not be used to offset estimated tax liabilities to generate a refund of the credits.*

19. If the Capital Company makes a qualified investment in an “Oklahoma rural small business venture” in the form of “equity” or “near equity” the Capital Company may receive payments or distributions of revenues of the Oklahoma rural small business venture, provided such payments or distributions do not reduce the Capital Company’s ownership interest in the Oklahoma rural small business venture, and such payments or distributions shall not result in a “recapture event” under the Rural Act.



*Yes.*

20. If the Capital Company makes a qualified investment in an “Oklahoma small business venture” in the form of “equity” or “near equity” the Capital Company may receive payments or distributions of revenues of the Oklahoma small business venture, provided such payments or distributions do not reduce the Capital Company’s ownership interest in the Oklahoma small business venture, and such payments or distributions shall not result in a “recapture event” under the Small Business Act.

*Yes.*

21. If the Capital Company makes a qualified investment in an “Oklahoma rural small business venture” in the form of “subordinated debt” (with a maturity date of not less than five years and a repayment schedule that is not faster than a level principal amortization over five years) the Capital Company may receive amortization payments from the Oklahoma rural small business venture under the terms of the subordinated debt instrument, and such payments shall not result in a “recapture event” under the Rural Act.

*Yes.*

22. If the Capital Company makes a qualified investment in an “Oklahoma small business venture” in the form of “subordinated debt” (with a maturity date of not less than five years and a repayment schedule that is not faster than a level principal amortization over five years) the Capital Company may receive amortization payments from the Oklahoma small business venture under the terms of the subordinated debt instrument, and such payments shall not result in a “recapture event” under the Small Business Act.

*Yes.*

23. If the Fund makes a qualified investment in an “Oklahoma rural small business venture” in the form of “equity” or “near equity” the Fund may receive payments or distributions of revenues of the Oklahoma rural small business venture, provided such payments or distributions do not reduce the Fund’s ownership interest in the Oklahoma rural small business venture, and such payments or distributions shall not result in a “recapture event” under the Rural Act.

*Yes.*

24. If the Fund makes a qualified investment in an “Oklahoma small business venture” in the form of “equity” or “near equity” the Fund may receive payments or distributions of revenues of the Oklahoma small business venture, provided such payments or distributions do not reduce the Fund’s ownership interest in the Oklahoma small business venture, and such payments or distributions shall not result in a “recapture event” under the Small Business Act.

*Yes.*

25. The refinancing or prepayment of the Investor Loans made to the Investors will not result in a "recapture event" under either of the Acts.

*Yes.*

26. Distributions from the Capital Company to the Fund, as sole member of the special class of limited liability membership units in the Capital Company of amounts received from a RSBV or SBV will not constitute a recapture event under either of the Acts.

*Yes.*

27. The release of the guarantees of the Investors of the Fund given to secure the repayment of the Investor Loans when (a) the Investor Loans are refinanced or repaid and (b) the Investors of the Fund provide guarantees of and the Businesses provide guarantees of and grant security interests in their respective assets to secure the Project Loans, will not constitute a "recapture event" under either of the Acts.

*Yes.*

28. Under the Acts, and under the circumstances described above, tax credits available to the Fund maybe allocated by the Fund to an Investor of the Fund who is not a "pass-through entity" based on the total investment by the Investor using, in part, borrowed funds under the circumstances described in this letter, in relation to the total investments in the Fund. At this time the Fund does NOT expect to have any Investors who are "pass-through entities" and therefore we are specifically not requesting the Commission's advice with respect to the application of the Acts to such investors under the circumstances described in this letter.

*See responses to requests 15 and 16 above.*

29. A lender's agreement that, after the investment by the Fund in the Capital Company and the investment by the Capital Company in an Oklahoma rural small business venture and/or Oklahoma small business venture and at such time as the applicable Project Loan is secured, to the satisfaction of the lender, by assets (of a type and in an amount specified by the lender) of the Oklahoma rural small business venture or Oklahoma small business venture to which it relates, including, without limitation and among other assets, tangible assets (consisting of real property and/or construction of improvements upon real property) or intangible assets (consisting of computer software, licenses, patents, copyrights and/or similar items) used in the active conduct of the business of the Oklahoma rural small business venture and/or Oklahoma small business venture and acquired with a portion of the proceeds of the Capital Company's or the Fund's investment in the Oklahoma rural small business venture and/or Oklahoma small business venture, the lender will release all or a portion of the Investor Guarantees of a Project Loan, and such release will not constitute a recapture event under either of the

Acts and the investment by the Fund in the Capital Company will continue to qualify for the credits against tax provided in 68 Okla. Stat. § 2357.73 and/or the credits against tax provided in 68 Okla. Stat. § 2357.62, respectively, as provided in paragraphs 11 and 12 above.

See responses to requests 17 and 18 above.

30. The rulings requested herein may be relied upon by the Capital Company, the Fund, [REDACTED], Manager and the Investors in the Fund.

*This response applies only to the circumstances set out in your requests dated December 22 and December 30, 2009. 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

A handwritten signature in black ink that reads "Dawn Elizabeth Cash". The signature is written in a cursive style.

Dawn Cash, Director  
Tax Policy and Research Division