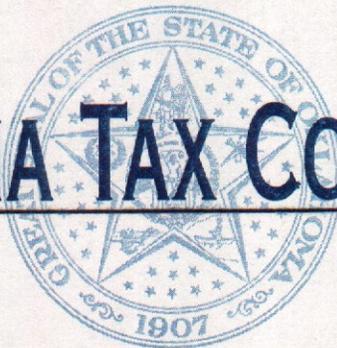


# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION  
DAWN CASH, DIRECTOR

PHONE (405) 521-3133  
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January 23, 2008

## REDACTED LETTER RULING

Re: Our file number LR-07-154  
[REDACTED]

Dear [REDACTED]:

This letter ruling is in response to your inquiry dated August 30, 2007 wherein you posed a series of ruling requests relating to the Small Business Capital Formation Incentive Act (68 Okla. Stat. §2357.60 et. seq.). Following a restatement of the facts outlined in your letters, are the specific rulings requested and our responses thereto

### FACTS

Pursuant to a letter from Tony Mastin dated January 30, 2007 (the "Prior Determination Letter") the Commission has already made a determination that (i) [REDACTED], an Oklahoma limited partnership ("CAPITAL COMPANY"), meets the definition of a "qualified small business capital company" under the Small Business Capital Formation Incentive Act, 68 Okla. Stat. §2357.60 et seq. (the "Act"); (ii) [REDACTED], an Oklahoma corporation (the "Company") meets the definition of an "Oklahoma small business venture" under the Act; and (iii) a transfer of funds by CAPITAL COMPANY to the Company in October 2006 met the definition of a "qualified investment" under the Act.

The Investors (CAPITAL COMPANY, [REDACTED] are collectively referred to as the "Investors") made an additional equity investment in the Company in August 2007. The purpose of this letter is to request a determination that (i) CAPITAL COMPANY continues to meet the definition of a "qualified small business capital company" under the Act; (ii) [REDACTED], an Oklahoma limited liability company ("CAPITAL COMPANY II"), meets the definition of a "qualified small business capital company" under the Act; (iii) the Company continues to meet the definition of an "Oklahoma small business venture" under the Act; (iv) the transfer of funds by CAPITAL COMPANY and CAPITAL COMPANY II to the Company in August 2007 met the definition of a "qualified investment" under the Act; and (v) the transfer of funds by [REDACTED], an individual and limited partner of CAPITAL COMPANY

("INDIVIDUAL") to the Company in conjunction with the qualified investment of CAPITAL COMPANY met the definition of a "qualified investment" under the Act.

Oklahoma Tax Commission Rule 710:1-3-73(f) provides that a taxpayer may request a letter ruling on the treatment of specific fact situations under Oklahoma tax law. Section 2357.63D of the Act provides that the Commission shall promulgate rules establishing the procedures by which a person or entity may request a determination letter under the Act. Pursuant to Section 2357.63D, the Commission has promulgated Rule 710:50-15-86.1 of the Rules of the Oklahoma Tax Commission (the "Rule") setting forth the procedures by which a determination letter may be requested.

In accordance with the Act, Oklahoma Tax Commission Rule 710:1-3-73(f) and the Rule, CAPITAL COMPANY submits the following:

I. CAPITAL COMPANY – Qualified Small Business Capital Company.

With respect to the Statement of Facts in the Prior Determination Letter, all of the facts in subparts A. through E. are correct, except that subpart B. is revised to read, in full, as follows:

B. CAPITAL COMPANY was organized to provide for and make direct investment of equity or near-equity funds in companies within the State of Oklahoma (see Section 6 of the Certificate of Limited Partnership attached to the Prior Determination Letter). To date, CAPITAL COMPANY has invested \$4,280,000.00 in Oklahoma entities (which includes a total aggregate amount of \$1,800,000 in the Company) and has invested a total of \$5,820,000.00 in the aggregate in Oklahoma and non-Oklahoma entities. The investments made by CAPITAL COMPANY were in the form of equity, involving the purchase of common stock or preferred stock of the company in which it invested. All of the investments to date have been for an equity position of less than 50% of the venture.

II. CAPITAL COMPANY II – Qualified Small Business Capital Company

As set forth below, CAPITAL COMPANY II satisfies the definition of a "qualified small business capital company" under Section 2357.61(7) of the Act and is therefore entitled to request this letter ruling.

A. CAPITAL COMPANY II is a limited liability company organized under the laws of the State of Oklahoma on [REDACTED]. A copy of CAPITAL COMPANY II's Articles of Organization is attached.

B. CAPITAL COMPANY II was organized to provide for and make direct investment of equity or near-equity funds in companies within the State of Oklahoma. To date, CAPITAL COMPANY II has invested \$1,746,251 in three (3) Oklahoma companies (including the Company). The investments made by CAPITAL COMPANY II were in the form of equity, involving the purchase of common stock or preferred stock of the company in which it invested. All of the investments to date have been for an equity position of less than 50% of the venture.

C. CAPITAL COMPANY II's principal place of business is located at [REDACTED] Oklahoma.

D. The capitalization of CAPITAL COMPANY II is in excess of One Million Dollars (\$1,000,000).

E. CAPITAL COMPANY II has not invested more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year.

### III. The Company – Oklahoma Small Business Venture.

Section 2357.61(5) of the Act sets forth the requirements for qualification of a business as an "Oklahoma small business venture." Pursuant to Section 2357.61(5), CAPITAL COMPANY submits the following:

A. The Company is primarily engaged in the for-profit business of [REDACTED] for wholesale distribution and retail sale. The customer base of the Company consists of wholesalers and distributors of [REDACTED] and is located throughout the United States and abroad. The Company employs fourteen (14) workers who perform design, sales, and administrative functions for the Company. All of the employees of the Company are residents of the State of Oklahoma. The assets of the Company consist of [REDACTED] totaling \$946,538.00, and 100% of these assets are located within the State of Oklahoma. The Company, which had a small division that included ten retail stores in which it sold [REDACTED], has closed all but two of such stores.

B. The primary focus of the Company is [REDACTED]

C. [REDACTED]

D. Under Section 632 of Title 15 of the United States Code, a small business is defined as "one which is independently owned and operated and which is not dominant in its field of operation..." The federal Small Business Association (the "SBA") defines a business concern eligible for assistance from the SBA as a small business as "a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor." 13 C.F.R. §121.105(a) (1). In addition, the SBA has specified size criteria to determine whether a business concern is small and thus eligible for Government programs and preferences reserved for small business concerns. 13 C.F.R. § 121.101 (a). The small business size standard is established under the North American Industry Classification System ("NAICS"). 13 C.F.R. § 121.101(a). [REDACTED]

E. As previously stated, the Company is a for-profit [REDACTED]

Accordingly, the Company qualifies as a small business as defined by the SBA,

F. In order to assist the Company in financing its operations, CAPITAL COMPANY and the other Investors made a direct investment in the Company in [REDACTED] of \$1,800,000. More than 50% of the proceeds of such investment will be used by the Company, within eighteen months of the date of the investment, [REDACTED]

IV. Qualified Investment of CAPITAL COMPANY and CAPITAL COMPANY II.

The Rule provides that a "person or entity may request whether a transfer of funds qualifies for the credit and is determined to be a 'qualified investment'" under the Act.

A Under Section 2357.61(6) of the Act, a "qualified investment" includes an investment of funds in the form of "equity or near-equity" or "subordinated debt". Section 2357.61(3) defines "equity or near-equity" as common or preferred stock, warrants or other rights to subscribe to stock or its equivalent.

B. CAPITAL COMPANY and CAPITAL COMPANY II invested funds in [REDACTED] in the Company in the aggregate amount of \$1,300,000 to purchase 1,300,000 shares of the Series A Preferred Stock of the Company (which shares were issued simultaneous with the investments). This investment of funds in exchange for preferred stock in the Company constitutes a qualified investment under Section 2357.61 of the Act.

V. Qualified investment of INDIVIDUAL.

Section 2357.63 of the Act provides that a credit shall be allowed for a qualified investment in an Oklahoma small business venture made by a shareholder, member or partner of a qualified small business capital company in conjunction with an investment by the small business capital company in the same Oklahoma small business venture. As set forth below, and pursuant to Section 2357.63 of the Act, the investment in the Company by INDIVIDUAL met the definition of a qualified investment.

A. INDIVIDUAL is a limited partner of CAPITAL COMPANY.

B. As set forth in Section I, above, CAPITAL COMPANY meets the definition of a "qualified small business capital company".

C. As set forth in Section III, above, the Company meets the definition of an "Oklahoma small business venture".

D. As set forth in Section IV, above, the transfer of funds by CAPITAL COMPANY in exchange for preferred stock of the Company constitutes a "qualified investment" by CAPITAL COMPANY in the Company.

E. The investment made by INDIVIDUAL in the Company was in the form of equity, specifically, the investment of funds in the amount of \$500,000 to purchase [REDACTED] shares of the Series A Preferred Stock of the Company (which shares were issued simultaneous with the investment).

F. The investment made by INDIVIDUAL in the Company was made pursuant to the Series A Preferred Stock Purchase Agreement (Phase II) dated [REDACTED], between the Company, CAPITAL COMPANY, INDIVIDUAL and

CAPITAL COMPANY II (the "Agreement") and, pursuant to the Agreement and other documents ancillary thereto, the investment in the Company by INDIVIDUAL was made under the same terms and conditions as the qualified investment by CAPITAL COMPANY in the Company.

G. The investment by INDIVIDUAL in the Company is limited to the lesser of (i) two hundred percent (200%) of any qualified investment by INDIVIDUAL in CAPITAL COMPANY or (ii) two hundred percent (200% of the qualified investment made by CAPITAL COMPANY in the Company.

#### V. Rulings Requested

CAPITAL COMPANY respectfully requests that the Commission make the following determination:

1. CAPITAL COMPANY meets the definition of a "qualified small business capital company" under the Act.

*Yes, it is the ruling of the Tax Policy Division that CAPITAL COMPANY meets the definition of a "qualified small business capital company" within the meaning of §2357.61(7) based on the following representations:*

1. CAPITAL COMPANY is a limited partnership organized under the laws of the State of Oklahoma on [REDACTED];
2. CAPITAL COMPANY is organized to provide the direct investment of equity and near-equity funds to companies within this state;
3. CAPITAL COMPANY's principal place of business is located within Oklahoma;
4. CAPITAL COMPANY's capitalization is in excess of One Million Dollars (\$1,000,000.00), and
5. CAPITAL COMPANY has not invested more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year.

2. CAPITAL COMPANY II meets the definition of a "qualified small business capital company" under the Act.

*Yes, it is the ruling of the Tax Policy Division that CAPITAL COMPANY II, meets the definition of a "qualified small business capital company" within the meaning of §2357.61(7) based on the following representations:*

1. CAPITAL COMPANY II is a limited partnership organized under the laws of the State of Oklahoma on [REDACTED];
2. CAPITAL COMPANY II is organized to provide the direct investment of equity and near-equity funds to companies within this state;
3. CAPITAL COMPANY II's principal place of business is located within Oklahoma;
4. CAPITAL COMPANY II's capitalization is in excess of One Million Dollars (\$1,000,000.00), and

5. *CAPITAL COMPANY II has not invested more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year.*

3. The Company meets the definition of an "Oklahoma small business venture under the Act.

*THE COMPANY meets the definition of an "Oklahoma small business venture" within the meaning of §2357.61(5) based on the following representations*

1. *THE COMPANY has at least 50% of its assets or employees located within Oklahoma;*

2. *THE COMPANY needs financial assistance in order to* [REDACTED]

[REDACTED];

3. *THE COMPANY is engaged in a lawful business activity under Division [REDACTED] of the Standard Industrial Classification Manual;*

4. *THE COMPANY meets the definition of a small business by the federal Small Business Administration; and*

5. *THE COMPANY will spend, within eighteen (18) months after the date of the qualified investment, at least fifty percent (50%) of the proceeds of the qualified investment on the acquisition of tangible or intangible assets (which does not include the payment of debts) and which will be used in the active conduct of the trade or business.*

4 The direct investment in the Company by CAPITAL COMPANY and CAPITAL COMPANY II through the transfer of funds in exchange for equity in the Company meets the definition of a "qualified investment" under Section 2357.62 of the Act.

*The investment by CAPITAL COMPANY and CAPITAL COMPANY II in THE COMPANY will be a "qualified investment" within the meaning of 68 O.S. §2357.61(6) based, in part, on the following representations:*

1. *The qualified investment will be in the form of equity, near-equity or subordinated debt; and*

2. *The funds will be used for a legitimate business purpose of THE COMPANY, consistent with its operating agreement.*

5. The direct investment in the Company by INDIVIDUAL through the transfer of funds in exchange for equity in the Company meets the definition of a "qualified investment" under Section 2357.63 of the Act.

*The direct investment in THE COMPANY, by INDIVIDUAL, will qualify for the tax credits under 68 O.S. §2357.63 based, in part, on the following representations:*

1. *The qualified investment was made by INDIVIDUAL, a limited partner of CAPITAL COMPANY;*

2. *CAPITAL COMPANY has made a qualified investment in THE COMPANY.;*

3. *The investment was in the form of equity;*

4. *The investment was made under the same terms and conditions as the qualified investment by CAPITAL COMPANY in THE COMPANY;*

5. *The investment was limited to the lesser of (i) two hundred percent (200%) of any qualified investment by INDIVIDUAL in CAPITAL COMPANY or (ii) two hundred percent (200%) of the qualified investment made by CAPITAL COMPANY in the Company.*

This response applies only to the circumstances set out in your request dated August 30, 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 Cash, Director  
Tax Policy & Research Division