OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

December 5, 2007

REDACTED LETTER RULING

Re: Our file number LR-07-190 / PORTFOLIO COMPANY

Dear

This letter ruling is in response to your letter ruling request dated November 19, 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 letter, are the specific rulings requested and our responses thereto.

Statement of Facts:

1. [redacted] is an Oklahoma limited liability company (the "Fund").. The purpose of the Fund is to raise venture capital from accredited investors (the "Investors") to be invested in Oklahoma small business capital companies and qualified rural small business capital companies as defined in Sections 2357.61 and 2357.72 of the Business Incentive Acts and Oklahoma small business ventures and Oklahoma rural small business ventures as defined in Sections 2357.61 and 2357.72 of the Business Incentive Acts (collectively the "Portfolio Companies"), which will qualify for certain Oklahoma tax credits (collectively the "Oklahoma Tax Credits") as provided under 68 Okla. Stat. §2357.60 et. seq. (the "Small Business Act") and §2357.70 et. seq. (the "Rural Act", together with the Small Business Act referred to as the "Business Incentive Acts").

2. [redacted], an Oklahoma limited liability company (the "Manager") is the manager of the Fund and [redacted], an Oklahoma limited liability company (the "Capital Company"). The Manager will be entitled to receive an annual management fee from the Fund.

3. [redacted], an Oklahoma limited liability company (the "Common Unit Holder") and the Investors will be the members of the Fund.

4. The Fund intends to issue two types of securities: (a) Common Units; and (b) Preferred Units. The Fund may issue multiple classes of Preferred Units. The Common Unit Holder will be issued Common Units. The Investors will be issued all of the Preferred Units (the "Preferred Units").

5. It is anticipated that 100% of the Oklahoma Tax Credits will be specially allocated to the Investors. Investors in the Preferred Units will have the opportunity for obtaining cash profits should the investments in the Portfolio Companies turn out to be successful.

6. The Fund will not borrow funds for its capital.

7. The Fund will raise all of its capital from Investors (the "Investor Capital").

8. Prior to investing in the Fund, it is expected that certain of the Investors will borrow capital to purchase the Preferred Units. Neither the Fund nor the Capital Company will be a borrower or guarantor of such proceeds.

9. The Investors will not own an equity interest in any Portfolio Company, other than indirectly through the Fund and the Capital Company after their investment in the Portfolio Company.

10. The Fund will be the sole member of the Capital Company.

11. The Capital Company is an Oklahoma limited liability company. The purpose of the Capital Company is to qualify as a "qualified small business capital company" and/or a "qualified rural small business capital company" as defined in the Business Incentive Acts and to make qualified investments of "equity," "near equity" or "subordinated debt," in companies qualifying as "Oklahoma rural small business ventures" or "Oklahoma small business ventures" as defined in the Business Incentive Acts. For purpose of this letter, the terms "equity," "near equity" or "subordinated debt," shall have the same meanings as provided in the Business Incentive Acts.

12. The Fund and the Capital Company will not elect to be treated as corporations for Federal income tax purposes. Therefore, the Fund will be treated as a partnership for both Federal and state income tax purposes.

13. Because the Fund will own 100% of the Capital Company, the Capital Company will be treated as a disregarded entity for both Federal and state income tax purposes. All distributions of cash and property from the Capital Company will be made to the Fund as the sole member of the Capital Company.

14. The Fund intends to transfer a portion of the Investor Capital to the Capital Company in return for all the ownership interest (common and/or preferred units) in the Capital Company.

15. In the event that the Capital Company qualifies as a small business capital company under Section 2357.61 of the Small Business Act, the diversification requirement is no more than twenty percent (20%) of the Capital Company funds invested in any one Portfolio Company. In the event the Capital Company qualifies as a qualified rural small business capital company under Section 2357.72 of the Rural Act, the diversification requirement is no more than twenty-five percent (25%) of the Capital Company funds invested in any one Portfolio Company.

16. In the event the Fund and/or the Capital Company makes an investment in Portfolio Companies under both the Small Business Act and the Rural Act, then the Fund and the Capital Company must follow the rules under the Small Business Act in order to receive the Oklahoma Tax Credits.

17. The Capital Company will make qualified investments in Portfolio Companies (collectively, the "Portfolio Company Investments" and individually, a "Portfolio Company Investment").

18. The Portfolio Company Investments will be in the form of equity (i.e. common stock, redeemable convertible preferred stock, preferred stock, warrants, or subordinated debt,

collectively the "Portfolio Company Stock"). The funds from the Portfolio Company Investment will be deposited by the Portfolio Company in its corporate accounts. The funds will be used for a legitimate business purpose of the Portfolio Company consistent with its operating agreement.

19. The offering materials utilized by the Capital Company will include the statements required by Section 2357.74A (F) and Section 2357.63A (F) of the Business Incentive Acts.

20. The Capital Company intends to notify the Fund immediately when a Portfolio Company Investment is made. The Fund will then notify the Investors of their proportionate shares of the Oklahoma Tax Credits earned from the Portfolio Company Investment.

21. The Fund may also make a qualified investment of cash in the Portfolio Companies (collectively the "Direct Investments"). The Direct Investments will be in exchange for Portfolio Company Stock.

22. The Direct Investments will (a) be used to purchase "equity" or "near-equity" of the Portfolio Company, (b) be made on the same terms and conditions as the investment in such Portfolio Company 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 Portfolio Company.

Statement of Facts for Investment in PORTFOLIO COMPANY:

23. The Capital Company and the Fund intend to make an investment in PORTFOLIO COMPANY (the "Portfolio Company") in return for Portfolio Company Stock which qualifies for the Oklahoma Tax Credits.

24. The Portfolio Company is a limited liability company formed under the laws of the State of Oklahoma on [redacted]. The Capital Company and the Fund intend for the Portfolio Company to qualify as an "Oklahoma rural small business venture" as defined in the Rural Act. The operations of the Portfolio Company are governed by its Articles of Organization filed with the Oklahoma Secretary of State on [redacted] and its Operating Agreement.

25. The Portfolio Company will not be engaged in oil and gas exploration, real estate development, real estate sales or rentals, wholesale sales, retail sales, farming, ranching, banking or lending, investing funds in other businesses or in any other type of business which would prevent the Portfolio Company Investment or Direct Investment from qualifying for the Oklahoma Tax Credits.

26. The Portfolio Company will have at least fifty percent (50%) of its employees or assets located in Oklahoma within one hundred eighty (180) days after the qualified investment in the Portfolio Company.

27. The Portfolio Company needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services.

28. The Portfolio Company will expend within eighteen (18) months of the qualified investment in the Portfolio Company at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets to be used in the Portfolio Company's business; provided, that the Portfolio Company may extend the eighteen

(18) month period by no more than six (6) months upon request and demonstration to the Oklahoma Tax Commission.

29. It is anticipated that the Portfolio Company will use the proceeds from the qualified investment in the Portfolio Company to acquire the tangible or intangible assets.

30. The Portfolio Company will be 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.

31. The Portfolio Company will qualify as a small business as defined by the Federal Small Business Administration.

Rulings Requested:

The Fund, the Capital Company and the Investors respectfully request a letter ruling from the Tax Policy and Research Division of the Oklahoma Tax Commission, after review of the Executive Summary, the Articles of Organization, the Operating Agreement and any other agreements responsible for the governance of the Portfolio Company and in light of the facts and assumptions set forth in this letter ruling request, that:

1. The Capital Company will qualify as a "qualified rural small business capital company" as that term is defined in 68 Okla. Stat. § 2357.72(8).

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.*

However, in order to qualify as both a "qualified small business capital company" as defined in 68 Okla. Stat. §2357.61(7) and a "qualified rural small business capital company" as defined in 68 Okla. Stat. §2357.72(8), the capital company must meet the stricter requirements of a "qualified small business capital company". The capitalization of the capital company cannot be less than One Million Dollars ($1,000,000.00) and the capital company cannot have more than twenty percent (20%) of its capitalization invested in any one company at any time during the calendar year of the capital company. Thus, it is the ruling of the Tax Policy Division that the Capital Company described in the letter ruling request qualifies as both a "qualified small business capital company" as defined in 68 Okla. Stat. §2357.61(7) and a "qualified rural small business capital company" as defined in 68 Okla. Stat. §2357.72(8)) so long as it meets the definition of a "qualified small business capital company":

1. *The Capital Company is a C corporation or a subchapter S corporation, 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;;*
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.*

2. The Capital Company will qualify as a "qualified small business capital company" as that term is defined in 68 Okla. Stat. § 2357.61 (7).

See number one above.

3. The Portfolio Company will qualify as an Oklahoma rural small business venture as that term is defined in 68 Okla. Stat. §2357.72(6).

Yes. It is the ruling of the Tax Policy Division that PORTFOLIO COMPANY meets the definition of an "Oklahoma rural small business venture" within the meaning of §2357.72(6) based on the following representations:
1. *PORTFOLIO COMPANY will have at least 50% of its assets or employees located within Oklahoma;*
2. *PORTFOLIO COMPANY needs financial assistance to construct additional facilities and to fund operations of the venture;*
3. *At least seventy-five percent (75%) of PORTFOLIO COMPANY's gross annual revenues will be a result of activities conducted in [redacted] County or in areas deemed to be non-metropolitan areas;*
4. *PORTFOLIO COMPANY is engaged in a lawful business activity under Division [redacted] of the Standard Industrial Classification Manual;*
5. *PORTFOLIO COMPANY meets the definition of a small business by the federal Small Business Administration; and*
6. *PORTFOLIO COMPANY will expend within eighteen (18) months after the date of the qualified investment at least 50% of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business. The Oklahoma Tax Commission may extend the eighteen (18) month period by no more than six (6) months upon request and demonstration.*

4. The total investment by the Fund of the Investor Capital in the Capital Company followed by the investment by the Capital Company in the Portfolio Company can be utilized in the calculation of available tax credits and will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62 and 68 Okla. Stat. §2357.73.

Based upon the facts and other assertions contained in your November 19th request and the attached exhibits, only the amount of the total investment by the Fund in the Capital Company which is subsequently invested in a Portfolio Company will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62 and 68 Okla. Stat. §2357.73.

5. The Direct Investment in the Portfolio Company will qualify for the Oklahoma Tax Credits described in 68 Okla. Stat. §2357.63 and 68 Okla. Stat. §2357.74.

Yes, to the extent allowable under the provisions of Sections 2357.63 and 2357.74 of Title 68.

6. The Portfolio Company Investment and the Direct Investment satisfies a legitimate business purpose of the Portfolio Company which is consistent with its organizational instrument, bylaws and other agreements responsible for the governance of the business venture, as stated in 68 Okla. Stat. §2357.62(B) and §2357.73(B).

The [redacted] satisfies a legitimate business purpose of PORTFOLIO COMPANY which is consistent with its organizational instrument, bylaws and other agreements responsible for the governance of the business venture.

7. The Investors may claim Oklahoma Tax Credits described in 68 Okla. Stat. §2357.62 and 68 Okla. Stat. §2357.73 earned by the Fund.

The Tax Policy Division agrees that shareholders, partners or members of pass-through entities 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. Once allocated to the shareholders, partners or members, the credits may be claimed. If the Investors are pass-through entities, the allocation of credits is subject to the provisions of §2357.62(G) and §2357.73(G).

8. The Investors may claim Oklahoma Tax Credits described in 68 Okla. Stat. §2357.63 and 68 Okla. Stat. §2357.74 earned by the Fund.

The Tax Policy Division agrees that shareholders, partners or members of pass-through entities that are entitled to a credit under §2357.63 or §2357.74 of Title 68 may receive an allocation of the credits from the pass-through entity. Once allocated to the shareholders, partners or members, the credits may be claimed. If the Investors are pass-through entities, the allocation of credits is subject to the provisions of §2357.63(E) and §2357.74(E).

9. The investment by the Fund in the Capital Company will be a "qualified investment" within the meaning of 68 Okla. Stat. §2357.61(6) and 68 Okla. Stat. §2357.72(7).

It is the ruling of the Tax Policy Division that the investment by the Fund in the Capital Company followed by the investment in the Portfolio Company will be a "qualified investment" within the meaning of 68 O.S. §§ 2357.61(6) and 2357.72(7) based, in part, on the following representations:

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

b. The funds will be used for a legitimate business purpose of the Portfolio Company consistent with its operating agreement

10. Both the investment by the Capital Company in the Portfolio Company and the Direct Investment by the Fund in the Portfolio Company in exchange for Portfolio Company Stock will be a "qualified investment" within the meaning of 68 Okla. Stat. §2357.61(6) and 68 Okla. Stat. §2357.72(7).

Yes, see number 9 above.

11. Assuming the Fund is a partnership for federal income tax purposes; the Investors will be partners in the Fund for state income tax purposes and will be entitled to be specially allocated 100% of the Oklahoma Tax Credits available to the Fund.

See number 7 above.

12. The rulings requested herein may be relied upon by the Capital Company, the Fund and the Investors, including any indirect investors through pass-through entities.

This response applies only to the circumstances set out in your request dated November 19, 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