OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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

November 24, 2009

[redacted]

Re: LR-09-182
[redacted]

Dear [redacted]:

This letter ruling is in response to your letter ruling request dated October 14, 2009, 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. §2357.71 et seq.). Following a verbatim restatement of the facts as outlined in your letter, are the specific rulings requested and our responses thereto.

FACTS

For purposes of this letter, the term "qualified small business capital company" shall have the meaning provided in the Small Business Act and the term "qualified rural small business capital company" shall have the meaning provided in the Rural Venture Act, as appropriate.

CAPITAL COMPANY is an Oklahoma limited liability company with a principal place of business of Oklahoma City. CAPITAL COMPANY was organized primarily to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma. CAPITAL COMPANY secondarily may provide investments in companies in other geographical locations. CAPITAL COMPANY was organized on [redacted]. The "capitalization," as defined in both the Small Business Act and the Rural Venture Act, of CAPITAL COMPANY is greater than $1,000,000. The Class B Members have subscribed to make contributions to capital of up to $120,000,000. The members are subject to capital calls, as provided in Sections 4.2(a)(iv), 4.2(b)(iv) and 5.4 of the Agreement, and penalties for failing to meet such capital calls, as provided in

Section 5.4(a)(ii)(C) of the Agreement. At no time will any investment made by CAPITAL COMPANY: (1) under the Small Business Act, be more than 20% of CAPITAL COMPANY's "capitalization," as defined in the Small Business Act; or (2) under the Rural Venture Act, be more than 25% of CAPITAL COMPANY's "capitalization," as defined in the Rural Venture Act.

The following documents are enclosed for your review:

- CAPITAL COMPANY Capital Investments, LLC Articles of Organization
- CAPITAL COMPANY Capital Investments, LLC Amended Articles of Organization
- CAPITAL COMPANY Capital Investments, LLC Operating Agreement

DISCUSSION

The Common Members of CAPITAL COMPANY are subject to two differing capital calls. The Common Member General Capital Call ("General Call") applies to all Common Members equally, as provided in Section 5.4(a)(i) of the Agreement. The Common Member Subscription Capital Call ("Subscription Call") applies only to Common Members with outstanding Class B Capital Subscriptions, as provided in Section 5.4(a)(ii) of the Agreement.

If a common member fails to meet a Subscription Call the following results occur: (1) upon any such failure, the member failing to meet the Subscription Call loses the right to receive allocations of any Series Fee Performance relating to the new Series giving rise to the call; (2) upon the first such failure, the member's future allocations of Series Fee Performance for all other CAPITAL COMPANY Series outstanding at the time of such failure shall be reduced by fifty percent (50%); and (3) upon the second such failure, the member's future allocations of Series Fee Performance for all other CAPITAL COMPANY Series outstanding at the time of such failure shall be reduced by one hundred percent (100%), or to zero (0), and the member shall lose all of such member's voting rights as a Common Member. See Section 5.4(a)(ii)(C) of the Agreement. The penalty for failure to meet a General Call is the possibility of dilution by issuance of additional common shares.

RULINGS REQUESTED

1. CAPITAL COMPANY meets the definition of a "qualified small business capital company" within the meaning of 68 O.S. 2357.61(7).

It is the ruling of the Tax Policy Division that CAPITAL COMPANY, as 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) based on the following representations:

1. *CAPITAL COMPANY is a limited liability company;*
2. *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 CAPITAL COMPANY is in the state of Oklahoma, specifically Oklahoma City;*
4. *The capitalization of CAPITAL COMPANY is not less than One Million Dollars ($1,000,000.00); and*
5. *CAPITAL COMPANY has investments 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. CAPITAL COMPANY meets the definition of a "qualified rural small business capital company" within the meaning of 68 O.S. 2357.72(8).

It is the ruling of the Tax Policy Division that CAPITAL COMPANY, as 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) based on the following representations:

1. *CAPITAL COMPANY is a limited liability company;*
2. *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 CAPITAL COMPANY is in the state of Oklahoma, specifically Oklahoma City;*
4. *The capitalization of CAPITAL COMPANY is not less than Five Hundred Thousand Dollars ($500,000.00); and*
5. *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.*

This response applies only to the circumstances set out in your request dated October 14, 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

Dawn Elizabeth Cash

Dawn Elizabeth Cash, Director
Tax Policy & Research Division