

# OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION  
DAWN CASH, DIRECTOR

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November 7, 2007

## REDACTED LETTER RULING

Re: Our File No. LR-07-144

Dear

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

### I. Summary of Transaction.

A. Background Information. The Company ( [REDACTED] ) is an Oklahoma limited liability company whose principal office is located in [REDACTED], Oklahoma. The Company was formed to (i) [REDACTED]

[REDACTED]; and (ii) conduct or transact any or all lawful act or business for which limited liability companies may be organized under the Oklahoma Limited Liability Company Act. The Company's operating agreement further provides that the Company is organized and will be operated to: (i) [REDACTED]

[REDACTED]. The Company may not call more than twenty percent (20%) of any member's capital commitment in any period consisting of twelve (12) consecutive calendar months. The Company's operating agreement further provides that not more than twenty percent (20%) of the aggregate of the capital contributed to the Company and the capital contractually committed by the Fund ( [REDACTED] ) and ABCD ( [REDACTED] ) to be contributed to the Company shall be invested in any one portfolio company.

On the date of the submission of this request, the Company has capital commitments in place in the amount of \$10,500,000. The Company has obtained capital commitments from the Fund in the amount of \$8,750,000 and from [REDACTED] ("ABCD") in the amount of \$1,750,000. The Company expects to draw down its capital commitments over approximately five (5) years, making investments of approximately \$1,800,000 to \$2,100,000 per year. The Company anticipates that these investments will be

investments will result in between \$2,100,000 and \$3,150,000 of tax credits created depending upon whether the investments qualify for the 20% credit or the 30% credit. The Company expects that most, if not all, investments will qualify for the 20% credit and therefore the tax credits created each year over five (5) years will average \$440,000 per year. The amounts actually invested in any year will of course depend on the availability of suitable investments on suitable terms, but the Company considers these to be reasonable expectations based upon past experience. The Company may not call more than 20% of any member's capital commitment in any period consisting of twelve (12) consecutive calendar months.

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

B. The Fund. The Fund is an Oklahoma limited liability company that was formed for the purpose of raising equity capital from both taxable and tax-exempt accredited investors and aggregating those funds for investment in the Company. The Fund has obtained capital commitments from [REDACTED]

[REDACTED] (the "Exempt Investors") in the aggregate amount of \$6,500,000 and [REDACTED] (the "Non-Exempt Investors") in the aggregate amount of \$2,250,000. All of the funds received from both Non-Exempt Investors and Exempt Investors will be invested in the Company with the exception of funds that are used to pay certain fees and expenses of the Fund. The Fund will not borrow funds from any party. The Fund's operating agreement provides that the Oklahoma tax credits arising from qualifying capital contributions from the Fund into the Company will be specially allocated to the Non-Exempt Investors such that the Exempt investors will receive no allocations of Oklahoma tax credits and the Non-Exempt Investors will receive special allocations of all of the Oklahoma tax credits. The total amount of all credits allocated by the Fund to the Non-Exempt Investors shall not exceed the total amount of the credits to which the Fund is entitled.

C. VENTURE. VENTURE [REDACTED]

[REDACTED] . The Company is seeking a 5.4MM \$series A investment. Use of proceeds includes [REDACTED]

[REDACTED]

D. The Investment. The Company will invest \$600,000 in VENTURE as part of a total investment by a syndicate of venture capital funds of approximately \$5,497,116. The Company believes (but cannot be certain) that its \$600,000 investment is the only investment capital resulting in tax credits under the Small Business Act, so the venture capital financing of \$5,497,116 result in \$120,000 of tax credits under the Small Business Act. The Company played a central and critical role in identifying the VENTURE opportunity, building the business plan, and solidifying the \$5,497,116 venture capital syndicate. Certain confidential information has been redacted. At the time of the submission of this letter the investors and VENTURE are in the process of negotiating the final terms of the investment and the documents reflecting those terms, so the final documents may reflect terms that are different than those set forth in the term sheet. One difference that we are aware of is that the Company does not intend to invest until it has received a positive response to this letter ruling and therefore the remainder of the syndicate may close their investment while allowing the Company to invest within ninety (90) days of such closing on the same terms and conditions as the other investors in the syndicate. None of the owners or officers of VENTURE, prior to the closing, are investors in or affiliates of the Company or the Fund. None of the other investors in the investor syndicate are investors in or affiliates of the Company or the Fund.

. founded VENTURE in [REDACTED]

1. VENTURE has or will have, within 180 days after the investment by the Company is made, at least 50% of its employees or assets located in Oklahoma.

2. VENTURE is engaged in a lawful business activity under an Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classifications Manual, 1987 revision, with the following exceptions: (1) Major Group I of Division A, and (2) Major Group 2 of Division A.

3. VENTURE qualifies as a small business as defined by the federal Small Business Administration:

4. VENTURE will expend within 18 months after the date of the investment by the Company at least 50% of the proceeds of the Company's investment for the acquisition of "tangible assets" or "intangible assets" which are used in the active conduct of its business, each as defined in the Small Business Act:

5. VENTURE will not use the proceeds of the Company's investment for the "acquisition," as defined in the Small Business Act, of any other legal entity;

6. VENTURE will issue its Series A Preferred Stock to the Company within 30 days of the Company's investment in VENTURE; and

7. VENTURE will not enter into any agreement, formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly the return of a specific amount of the Company's investment to the Company or any other entity within 5 years from the date the Company makes the investment in VENTURE, other than the transaction documents pursuant to which the Company is purchasing Series A Preferred Stock and which, among other things, require VENTURE to expend at least fifty percent (50%) of the proceeds of the Company's investment for the acquisition of tangible or intangible assets which are used in the active conduct of its trade or business, as required by the Small Business Act; and

In addition to the foregoing, the investment by the Company in VENTURE will have the following features which will allow the investment to meet the requirements to qualify for Oklahoma tax credits pursuant to the Small Business Act:

The Company will reflect the investment in VENTURE as an asset in its accounting system;

The Company does not own, has never previously owned, and after the investment will not own more than 50% ownership, direct or indirect, of the voting interest entitled to elect the governing board of VENTURE; and

The Company will not enter into any agreement with VENTURE, formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly the return or a specific amount of the Company's investment to any other entity within 5 years from the date the Company makes the investment in VENTURE, other than the transaction documents pursuant to which the Company is purchasing Series A Preferred Stock and which, among other things, require VENTURE to expend at least fifty percent (50%) of the proceeds of the Company's investment for the acquisition of tangible or intangible assets which are used in the active conduct of its pharmaceutical trade or business, as required by the Small Business Act.

E. Requested Rulings. By separate letter dated [REDACTED] we requested rulings with respect to the qualification of the Company as a "qualified small business capital company," the qualification of the investments in the Company as "qualified investments," and that the amount of the capitalization of the Company is \$10,500,000, among other requested rulings. The purpose of this request is to obtain the rulings of the Oklahoma Tax Commission that the investment by the Company in VENTURE is a "qualified investment," VENTURE is an "Oklahoma small business venture" and such other matters as are addressed specifically in the "Rulings Requested" section of this letter below.

## II. Summary of Statutory Requirements.

A. Qualified Investments. In accordance with Section 2357.62 of the Small Business Act, Oklahoma tax credits can be generated by making a "qualified investment" in a "qualified small business capital company" (a "QSBCC") which is subsequently invested in an "Oklahoma small business venture" (an "SBV") by the QSBCC. Such credits are equal to 20% of the qualified investment in the QSBCC and are only allowed for the amount of the qualified

investment in an SBV provided the funds are used in pursuit of a legitimate business purpose of the SBV consistent with the SBV's organizational instrument, bylaws or other agreement responsible for the governance of the SBV.

The tax credits may be used to offset the tax imposed by Section 2355 or 2370 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma statutes. The tax credits must be claimed for the taxable year in which the QSBCC makes the qualified investment in the SBV and may be carried forward for three (3) years but may not be taken as a refund or transferred. The SBV may not use the capital provided by the QSBCC for the acquisition of any other legal entity. For this purpose, "acquisition" means the use of capital by an Oklahoma small business venture within 6 months after obtaining the capital to purchase 51% or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity, but excluding the right to participate in the proceeds from the sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law. Tax credits may not be claimed under the Small Business Act if credits are being claimed for the same qualified investment under the Rural Small Business Act. If a pass-through entity is entitled to a credit under the Small Business Act, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated by the pass-through entity to its shareholders, partners or members shall not exceed the amount of the credits to which the pass-through entity is entitled.

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

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

(b) A QSBCC making a qualified investment must reflect the qualified investment in the SBV as an asset in its accounting system;

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

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

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

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

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

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

C. Recapture Events. Section 2357B of the Small Business Act provides for the recapture of the credits taken pursuant to the Small Business Act under certain circumstances. The Small Business Act defines a "recapture event" as follows:

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

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

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

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

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

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

D. "Qualified Investment." Section 2357.61(6) of the Small Business Act defines a qualified investment as an investment of funds in the form of "equity," "near-equity" or

"subordinated debt"; and further provide that an investment which is contingent upon the occurrence of an event or which is subject to being refunded or returned in the absence of such event shall only be deemed to have been made upon the occurrence of the event. Section 2357.61 (3) of the Small Business Act defines "equity" and "near-equity" to include, among other things, preferred stock. Both the investment in the QSBCC and the investment by the QSBCC in the SBV must be a qualified investment.

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

### III. Application to Facts.

A. Qualified Investment. The Company will invest cash, anticipated to be in the amount of \$600,000 in VENTURE in exchange for shares of series A preferred stock of VENTURE. The Company anticipates that the shares held by the Company immediately following the closing will represent approximately 8% of the outstanding shares of VENTURE. The investment may occur in one or more tranches. In the event there is more than one tranche, the series A preferred stock will be issued as the funds are invested by the Company. The shares of series A preferred stock will be convertible into common stock of VENTURE. The shares of series A preferred stock will accrue dividends at an 8% annual rate, and will participate with the common stock in any other dividends or distributions. The series A preferred stock will have a liquidation preference equal to one and one-half times the per share purchase price plus accrued or declared and unpaid dividends, and following payment of such preference will participate in liquidation proceeds on an as-converted basis with the common stock. The series A preferred stock is redeemable by the Company from funds legally available for distribution at the option of Company commencing any time on or after the fifth anniversary of the closing at a price per share equal to the purchase price, plus accrued or declared and unpaid dividends on such share.

The investment by the Company should be determined to meet the definition of "qualified investment" because it is an investment of funds in the form of equity and is not contingent upon the occurrence of an event or which is subject to being refunded or returned in the absence of such event. The investment may be funded in tranches, but no amount would be treated as a qualified investment by the Company until it is actually invested in VENTURE. The investment is being made in the form of "equity" because the Company is receiving series A preferred stock from VENTURE in exchange for the invested funds. In addition, the investment meets the additional requirements for a qualified investment set forth in Section 2357.63A, as follows:

1. The transaction documents will require VENTURE to issue its series A preferred stock to the Company within 30 days of the date on which the Company makes an investment in VENTURE;
2. The Company will reflect the investment in VENTURE as an asset in the Company's accounting system;
3. Neither prior to nor immediately following the investment by the Company in VENTURE will the Company have more than 50% ownership, directly or indirectly, of the voting interest entitled to elect the governing board of VENTURE;
4. The Company will not enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment by VENTURE to the 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 5 years from the time the Company makes the investment in VENTURE, other than the investment documents reflecting the investment by the Company in VENTURE and the issuance of the series A preferred stock in exchange therefore; and
5. The Company will require, as a condition precedent to its investment, that VENTURE agree not to enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment to the 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 5 years from the time the Company makes the qualified investment in VENTURE, other than the investment documents reflecting the investment by the Company in VENTURE and the issuance of the series A preferred stock in exchange therefore.

B. Oklahoma Small Business Venture. The Company believes the following requirements are or will be met by VENTURE and the Company will require, as a condition precedent to its investment in VENTURE, that VENTURE provide, with respect to each such requirement, a representation that such requirement is met or a covenant that such requirement will be met, as appropriate:

1. Within 180 days after the investment by the Company in VENTURE at least 50% of VENTURE employees or assets will be located in Oklahoma;
2. VENTURE needs financial assistance in order to commence or expand its [REDACTED];



3. VENTURE is engaged in a lawful business activity under an 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 I or 2 of Division A;

4. VENTURE qualifies as a small business as defined by the federal Small Business Administration; and

5. VENTURE will expend within 18 months after the date the Company makes its investment at least 50% of the proceeds of such investment on the following items which will be used in the active conduct of its trade or business:

(a)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

With respect to meeting this last requirement the Company will require as a condition precedent to making the investment that the funds that it invests be separately accounted for and the expenditures for qualifying items under the Small Business Act will be documented and the records provided to the Company so that the Company will have information available to show to the Oklahoma Tax Commission that the funds invested by it in VENTURE were used by VENTURE for the purposes described above.

#### RULINGS REQUESTED

1. 'The Oklahoma Tax Commission finds that VENTURE meets the definition of an "Oklahoma small business venture."

*Yes. It is the ruling of the Tax Policy Division that VENTURE meets the definition of an "Oklahoma small business venture" within the meaning of §2357.61(5) based on the following representations:*

1. *VENTURE will have at least 50% of its assets or employees located within Oklahoma;*
2. *VENTURE needs financial assistance in order to commence or expand its business which intends to provide goods or services;*
3. *VENTURE is engaged in a lawful business activity under an Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classifications Manual, 1987 revision, with the following exceptions: (1) Major Group I of Division A, and (2) Major Group 2 of Division A;*
4. *VENTURE meets the definition of a small business by the federal Small Business Administration; and*
5. *VENTURE 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.*

2. The Oklahoma Tax Commission finds that the investment by the Company in VENTURE will constitute "equity" or "near-equity" and will meet the definition of a "qualified investment".

*It is the ruling of the Tax Policy Division that the investment by the Capital Company in VENTURE 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 or near-equity; and*
- 2. The funds will be used for a legitimate business purpose of VENTURE consistent with its operating agreement.*

3. The Oklahoma Tax Commission finds that the investment by the Fund in the Company, for purposes of funding the investment in VENTURE, will qualify for the credits against tax provided in 68 Okla. Stat. §2357.62. The amount of the credits is 20% of the lesser of the fund's qualified investment in the Company or the Company's qualified investment in VENTURE. Therefore, if the Company invests \$600,000 in VENTURE, the amount of the tax credits will be \$ 120,000 ( $\$600,000 \times 20\%$ ).

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

4. The Oklahoma Tax Commission finds that the tax credits resulting from the Fund's qualified investment in the Company, for purposes of funding the investment in VENTURE, will be available to offset the Oklahoma tax liabilities, as defined in the Act, of the members of the Fund and may be specially allocated among the members of the Fund such that the Exempt Investors receive no allocations of tax credits, and the Non-Exempt Investors receive allocations of all of the tax credits.

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

5. The Oklahoma Tax Commission finds that the tax credits arising from the qualified investment by the Company in VENTURE will be immediately usable by the Non-Exempt Investors, or the ultimate taxpayers if the Non-Exempt Investors are pass-through entities, against any tax liability arising in the taxable year of such taxpayer in which the qualified investment is made by the Company in VENTURE or any subsequent year, subject to the 3 year carry-forward limitations, under 68 Okla. Stat. §2355 (the "Oklahoma Income Tax") or 68 Okla. Stat. § 2370 (the "Bank Privilege Tax") and 36 Okla. Stat. §§ 624 and 628 (the "Insurance Premium Tax"), including estimated tax payments.

*The tax credits resulting from the qualified investment in VENTURE by the Capital Company, once allocated, will be immediately usable by the members of the Fund, or the ultimate taxpayers if the members of the Fund are flow-through entities, against any tax liability then*

*due from such taxpayer under 68 Okla. Stat. § 2355 (the "Oklahoma income tax"), 68 Okla. Stat. § 2370 (the "bank privilege tax"), and 36 Okla. Stat. §§ 624 and 628 (the "insurance premium tax"), including estimated tax payments.*

6. The Oklahoma Tax Commission finds that payments or distributions from VENTURE from time to time, with respect to the series A preferred stock of VENTURE, including preferred dividends or dividends that are also payable with respect to the common stock, shall not result in a "recapture event" under the Small Business Act.

*It is the ruling of the Tax Policy Division that the payment of dividends or distributions from VENTURE with respect to the series A preferred stock, shall not constitute a "recapture event" under the Small Business Act.*

7. The Oklahoma Tax Commission finds that VENTURE' proposed use of the Company's monies invested in VENTURE are for a legitimate business purpose of VENTURE which has a substantial economic profit-based potential and not for the primary purpose of obtaining the tax credits authorized by the Small Business Act on the basis of activity which does not have substantial economic profit-based potential.

*Based upon the facts and other assertions contained in your September 7<sup>th</sup> request, it is the ruling of the Tax Policy Division that VENTURE' proposed use of the Capital Company's monies invested in VENTURE are for a legitimate business purpose and not for the primary purpose of obtaining the tax credits.*

8. The Oklahoma Tax Commission finds that the redemption of the VENTURE stock held by the Company at any time on or after five (5) years from the date of the investment by the Company shall not constitute a recapture event under the Small Business Act.

*It is the ruling of the Tax Policy Division that the redemption of the VENTURE stock held by the Company at any time on or after five (5) years from the date of the investment by the Company shall not constitute a recapture event under the Small Business Act.*

9. The Oklahoma Tax Commission finds that if VENTURE separately accounts for the funds invested by the Company and the Company can show through documentation that at least 50% of the funds invested by it were spent by VENTURE on [REDACTED], or other items qualifying as tangible or intangible assets under the Small Business Act within 18 months of the date on which the funds are invested in VENTURE then the requirement that VENTURE spend 50% of the funds invested by the Company within 18 months of the investment will be met, regardless of how VENTURE spends funds from the other venture capital investors or from other sources.

Yes.

10. The Oklahoma Tax Commission finds that the investment by the Company in VENTURE does meet all of the requirements of the Small Business Act.

*The Tax Policy Division does not find any reason in the facts and other assertions contained in your September 7<sup>th</sup> request to suggest that the investment does not meet the requirements of the Act.*

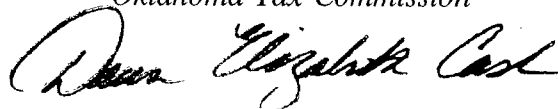
11. The rulings requested herein may be relied upon by the Company, the Fund, ABCD, the Exempt Investors, the Non-Exempt Investors and the members or partners of the Non-Exempt Investors, including any indirect investors through pass-through entities.

*This response applies only to the circumstances set out in your request dated September 7, 2007. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued and its investors, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.*

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

Sincerely,

Oklahoma Tax Commission

A handwritten signature in black ink, appearing to read "Dawn Elizabeth Cash". The signature is written in a cursive style with a large initial "D".

Dawn Cash, Director  
Tax Policy & Research Division