

ENROLLED HOUSE
BILL NO. 1253

By: Roach, Toure, Gilbert,
Pope (Clay),
Deutschendorf, McCarter,
Kirby, Perry and
Hastings of the House

and

Fisher, Muegge and Henry
of the Senate

An Act relating to economic development; providing short title; defining terms; providing certain tax credits for investments and co-investments in qualified small business capital companies; providing for carry forward of tax credit for certain term; stating certain restrictions; stating certain investment criteria; requiring filing of annual report with Oklahoma Tax Commission and stating contents thereof; requiring certain written statement be furnished to certain persons; providing penalties; directing Commission to develop system for registration of certain tax credits; requiring Commission file certain report; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.60 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Small Business Capital Formation Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.61 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (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. As used in this act, "acquisition" does not mean the right to participate in the proceeds from 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;

2. "Capitalization" means a contractual commitment to provide funds with substantial economic penalties for breach of the commitment to provide such funds;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or

its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Oklahoma small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. is not primarily engaged in oil and gas exploration, real estate development, real estate sales or rentals, wholesale sales, retail sales, farming, ranching, banking, or lending or investing funds in other businesses. Provided, however, businesses which provide or intend to provide goods or services, including, but not limited to, goods or services involving new technology, equipment, or techniques to the businesses listed in this subparagraph, shall not be considered to be primarily engaged in the business listed in this subparagraph, and
- d. qualifies as a small business as defined by the federal Small Business Administration;

6. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 8 of this section;

7. "Qualified small business capital company" means 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, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its funds in any one company; and

8. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.62 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1997, and before January 1, 2005, there shall be allowed a credit against the

tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for qualified investment in qualified small business capital companies.

B. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified small business capital companies and may only be claimed for a taxable year during which the qualified small business capital company invests funds in an Oklahoma small business venture and for the funds invested. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ten (10) taxable years.

C. No taxpayer may claim the credit provided for in this section for investments in qualified small business capital companies made prior to the effective date of this act.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified small business capital company is used by an Oklahoma small business venture for the acquisition of any other legal entity.

E. No financial lending institution shall be eligible to claim the credit provided for in this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1997, and before January 1, 2005, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for qualified investment made in Oklahoma small business ventures in conjunction with investment in such ventures made by a qualified small business capital company.

B. The credit provided for in this section shall be twenty percent (20%) of the cash amount of qualified investment made in Oklahoma small business ventures in conjunction with investment in such ventures made by a qualified small business capital company. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ten (10) taxable years. To qualify for the credit authorized by this section, an investment shall be:

1. Made by a shareholder or partner of a qualified small business capital company that has invested funds in an Oklahoma small business venture;

2. Invested in the purchase of equity or near-equity in an Oklahoma small business venture;

3. Made under the same terms and conditions as the investment made by the qualified small business capital company; and

4. Limited to the lesser of:

a. two hundred percent (200%) of any investment by the taxpayer in the qualified small business capital company, or

b. two hundred percent (200%) of the investment made by the qualified small business capital company in the Oklahoma small business venture.

C. No taxpayer may claim the credit provided for in this section for investment made prior to the effective date of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.64 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each qualified small business capital company shall file an annual report with the Oklahoma Tax Commission no later than April 30 of each year which lists all funds invested in or in conjunction with such company which may qualify for the tax credit allowed by Section 3 or Section 4 of this act. The report shall state the amount of funds invested in or in conjunction with such company during the taxable year by persons, partnerships or corporations and the social security number of such person or the federal identification number of such partnership or corporation making such investments. The report shall also include a schedule listing the type and amount of investment made by or in conjunction with the small business capital company and such other information as the Tax Commission may prescribe.

B. Each qualified small business capital company shall furnish to each person, partnership or corporation which made an investment in or in conjunction with such company during the preceding year a written statement showing the name of the small business capital company, the name of the investor, the total amount of investment in or in conjunction with the company made by such person, partnership or corporation and such other information as the Tax Commission may require. The statement shall be attached to the income tax return of such person, partnership or corporation in order to qualify for the tax credit allowed by Section 3 or Section 4 of this act.

C. Any qualified small business capital company who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible to be a qualified small business capital company for purposes of this act.

D. Any taxpayer who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible for the tax credits granted in Sections 3 and 4 of this act.

E. The Tax Commission is directed to immediately develop a system for registration of any income tax credits issued pursuant to Sections 3 and 4 of this act and a system which permits verification that any tax credit claimed upon an income tax return is validly issued and properly taken in the year of claim.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.65 of Title 68, unless there is created a duplication in numbering, reads as follows:

On or before November 1 of each year subsequent to the effective date of this act, the Oklahoma Tax Commission shall file a report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of this act and the amount of credits likely to be claimed and allowed pursuant to this act for the following year.

SECTION 7. This act shall become effective January 1, 1998.

Passed the House of Representatives the 28th day of April, 1997.

Speaker of the House of Representatives

Passed the Senate the 14th day of April, 1997.

President of the Senate