

ENROLLED HOUSE
BILL NO. 3205

By: Roach, Sullivan
(Leonard), Smith (Dale),
Settle, Tyler and Covey
of the House

and

Fisher of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 2357.7 and 2357.8, which relate to qualified venture capital companies; modifying taxable years for which credit may be claimed; modifying requirement related to percentage of certain investable funds; conforming references; amending Sections 3 and 4, Chapter 167, O.S.L. 1997 (68 O.S. Supp. 1997, Sections 2357.62 and 2357.63), which relate to the Small Business Capital Formation Incentive Act; prescribing procedure for determining taxable years for which credit may be claimed upon income tax returns; providing credit allowed for certain investment; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 2357.7, is amended to read as follows:

Section 2357.7 A. For taxable years beginning after December 31, 1986, and before January 1, ~~1999~~ 2004, there shall be allowed a credit against the tax imposed by Section 2355 of this title or Section 624 of Title 36 of the Oklahoma Statutes for investments in qualified venture capital companies whose purpose is to establish or expand the development of business and industry within Oklahoma. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury.

B. For purposes of this section:

1. "Qualified venture capital company" means a C corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma or a registered business partnership with a certificate of partnership filed as required by law if such corporation or partnership is organized to provide the direct investment of debt and equity funds to companies within this state, with its principal place of business located within this state and which meets the following criteria:

a. capitalization of not less than Five Million Dollars (\$5,000,000.00),

- b. having a purpose and objective of investing at least ~~fifty-five percent (55%)~~ a portion, as specified herein, of its capitalization in Oklahoma business ventures. Such portion shall be at least fifty-five percent (55%) for capitalization occurring before January 1, 1999, and at least seventy-five percent (75%) for capitalization occurring on and after January 1, 1999. Investment capital received by such venture capital company shall be invested pursuant to said objective within five (5) years after receipt of such capital. Provided, of the ~~fifty-five percent (55%)~~ portion of capitalization required to be invested in Oklahoma business ventures, as specified herein, ten percent (10%) of capitalization may be reserved for additional investment, within ten (10) years after receipt of capital, in portfolio companies which are Oklahoma business ventures. The temporary investment of funds by a qualified venture capital company in obligations of the United States, state and municipal bonds, bank certificates of deposit, or money market securities pending investment in Oklahoma business ventures is hereby authorized, and
- c. investment of not more than ten percent (10%) of its funds in any one company;

2. "Oklahoma 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 venture 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, and
- c. is not engaged in oil and gas exploration, real estate development, real estate sales, retail sales of food or clothing, 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 such businesses listed in this subparagraph, and investments in the development of tourism facilities in the form of amusement parks, entertainment parks, theme parks, golf courses, or museums shall not be subject to said prohibition;

3. "Direct investment" means the purchase of securities of a private company, or securities of a public company if the securities constitute a new issue of a public company and such public company had previous year sales of less than Ten Million Dollars (\$10,000,000.00); and

4. "Debt and equity funds" means investments in debt securities; including unsecured, undersecured, subordinated or convertible loans or debt securities; and/or equity securities, including common and preferred stock, royalty rights, limited partnership interest, and any other securities or rights that evidence ownership in businesses.

C. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified venture capital companies. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a

qualified venture capital company and to certify an investment to be a qualifying Oklahoma business venture for purposes of complying with subsection B of this section. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service. 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 as a credit against subsequent tax liability for a period not to exceed three (3) years. No investor in a venture capital company organized after July 1, 1992, may claim tax credits under the provisions of this section.

D. No taxpayer may claim the credit provided for in subsection A of this section for investments in qualified venture capital companies made prior to January 1, 1987.

E. No investor whose capital is guaranteed by the Oklahoma Capital Investment Board may claim or transfer the credit provided for in subsection A of this section for investments in such guaranteed portfolio.

F. The credit provided for in subsection A of this section, to the extent not previously utilized, shall be freely transferable to and by subsequent transferees for a period of three (3) years from the date of investment.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2357.8, is amended to read as follows:

Section 2357.8 A. Each qualified venture capital company, as defined in Section 2357.7 of this title, shall file an annual report within one hundred twenty (120) days after each successive calendar year end with the Oklahoma Tax Commission which lists all funds invested in such company which may qualify for the tax credit allowed by Section 2357.7 of this title. Said report shall state the amount of funds invested in such company during the taxable year by persons or corporations, the Social Security number of such person or the federal identification number of such corporation making such investments, and shall include a schedule listing the type and amount of investments made by said venture capital company together with such other information as the Tax Commission may prescribe.

B. Each qualified venture capital company shall furnish to each person or corporation who made an investment in such company during the preceding year a written statement showing the name of the venture capital company, the name of the investor, the total amount of investments in the company made by such person or corporation and such other information as the Tax Commission may require. Said statement shall be attached to the income tax return of such person or corporation in order to qualify for said tax credit.

C. Any qualified venture 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 venture capital company for purposes of Section 2357.7 of this title. If a venture capital company does not invest its funds in Oklahoma business ventures as provided for in paragraph 1 of subsection B of Section 2357.7 of this title within five (5) years after receipt of capital, the venture capital company shall pay to the ~~Oklahoma~~ Tax Commission a penalty equal to the aggregate amount of tax credit provided to investors in such venture capital company multiplied by a fraction, the numerator of which is a percentage

equal to the difference between ~~fifty-five percent (55%)~~ the percentage of capitalization required to be invested in Oklahoma business ventures and the percentage of funds invested in Oklahoma business ventures calculated in accordance with subparagraph b of paragraph 1 of subsection B of Section 2357.7 of this title and the denominator of which is ~~fifty-five percent (55%)~~ the percentage of capitalization required to be invested in Oklahoma business ventures. Provided, to the extent that the penalty cannot be collected from the venture capital company, the penalty shall be collected from the taxpayers to whom the tax credits have been granted or transferred.

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 credit granted in Section 2357.7 of this title.

E. The ~~Oklahoma~~ Tax Commission is directed to immediately develop a system for registration of any income tax credits issued pursuant to Section 2357.7 et seq. of this title 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 and ensures that any transfers of the income tax credit are not unduly restricted or hindered.

SECTION 3. AMENDATORY Section 3, Chapter 167, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.62), is amended to read as follows:

Section 2357.62 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~~ this title 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 the credit shall be allowed for the amount of funds invested in an Oklahoma small business venture. 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~~ January 1, 1998.

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. AMENDATORY Section 4, Chapter 167, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.63), is amended to read as follows:

Section 2357.63 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~~ this title 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 and shall be allowed for a taxable year during which the investment is made in an Oklahoma small business venture. 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~~ January 1, 1998.

SECTION 5. Sections 1 and 2 of this act shall become effective January 1, 1999.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 14th day of May, 1998.

Speaker of the House of
Representatives

Passed the Senate the 14th day of May, 1998.

President of the Senate