

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1904

By: Roach

COMMITTEE SUBSTITUTE

An Act relating to public finance; amending Section 11, Chapter 342, O.S.L. 1992, as last amended by Section 3, Chapter 351, O.S.L. 2000 and Section 17, Chapter 342, O.S.L. 1992, as amended by Section 7, Chapter 351, O.S.L. 2000 (62 O.S. Supp 2000, Sections 860 and 866), which relate to the Local Development Act; specifying written agreement between property owners and the governing body; adding items that may be contained in the written agreement; amending Section 3, Chapter 167, O.S.L. 1997, as last amended by Section 1, Chapter 241, O.S.L. 2000, Section 2, Chapter 339, O.S.L. 2000, Section 3, Chapter 339, O.S.L. 2000 and Section 4, Chapter 339, O.S.L. 2000 (68 O.S. Supp. 2000, Sections 2357.62, 2357.72, 2357.73 and 2357.74), which relate to certain income tax credits; modifying restriction related to eligible tax credit claimants; modifying definition; providing for certain tax imposed upon financial institutions as eligible for tax credits; and providing effective dates.

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

SECTION 1. AMENDATORY Section 11, Chapter 342, O.S.L. 1992, as last amended by Section 3, Chapter 351, O.S.L. 2000 (62 O.S. Supp. 2000, Section 860), is amended to read as follows:

Section 860. A. A project plan may contain a provision that certain local taxes may be subject to incentives or may be exempted in reinvestment areas, historic preservation areas or enterprise areas.

B. The governing body may grant incentives or exemptions from local taxation only on the new investment made. No ad valorem tax incentives or exemptions may be granted on the value of property which has been assessed or which is subject to assessment prior to

the adoption of the project plan. No ad valorem tax incentives or exemptions authorized in this section may be granted for retail establishments. If a retail establishment is located in property which otherwise qualifies for an incentive or exemption pursuant to this section, the incentive or exemption shall not be allowed for that portion of the property used for such retail establishment. As used in this subsection, "retail establishment" shall not include an establishment that provides lodging, including but not limited to a hotel, apartment hotel, public rooming house or motel. No ad valorem tax incentives or exemptions authorized in this section may be granted if the property is located in an increment district or if the property is subject to the ad valorem tax exemption for new or expanding manufacturing facilities as authorized by Section 6B of Article X of the Oklahoma Constitution. In the event of disposition by lease or sublease to a lessee not entitled to an ad valorem tax exemption, the improvements placed thereon shall not be entitled to an ad valorem tax exemption provided for in Section 850 et seq. of this title. The incentives or exemptions, which may be full or partial, may be granted for a period not to exceed five (5) years; however, in enterprise zones incentives or exemptions may be granted for a period not to exceed six (6) years.

C. No incentives or exemptions may be granted to any business or firm that is relocating from within the state and is subject to or in the process of recruitment by two or more governmental entities within the state unless the governmental entity in which the business or firm does not locate adopts a resolution giving their approval to the granting of incentives or exemptions to the business or firm locating in the competing governmental entity. No incentives or exemptions may be granted to an out-of-state business or firm that is subject to or in the process of recruitment by two or more governmental entities within the state except as otherwise provided for in this subsection. The prohibition against incentives

or exemptions to a business or firm relocating within the state may be waived upon application by the governing body to, and approval of, the Director of the Oklahoma Department of Commerce. In order for the Director to approve the waiver, the Director must find that the incentives or exemptions are necessary and sufficient to attract the business or firm and that the benefits generated by the business location outweigh the costs of the business location.

D. A project plan may contain a provision that ad valorem taxes may be exempted in a ~~historic~~ commercial preservation area that is adjacent to and serves designated historical residential areas for neighborhood commercial preservation purposes in order for the neighborhood to retain its basic character and scale. No ad valorem tax exemption may be granted on the value of property which has been assessed or which is subject to assessment prior to the adoption of the project plan. No ad valorem tax exemption shall be granted pursuant to the provisions of this subsection for single-family residences. The governing body may grant the exemption only on the increase in value of the property. The exemptions may be granted for a specific period of time as determined by ~~the~~ a written agreement between the property owners of the area and the governing body and may be renewed. Uses of the property eligible for this exemption may include but not be limited to commercial, office or multifamily residential use.

SECTION 2. AMENDATORY Section 17, Chapter 342, O.S.L. 1992, as amended by Section 7, Chapter 351, O.S.L. 2000 (62 O.S. Supp. 2000, Section 866), is amended to read as follows:

Section 866. A. There shall be a written agreement between the governing body and the property owners who are granted tax incentives or exemptions pursuant to Section 860 of this title. The written agreement may include, but shall not be limited to, the following:

1. List the kind, number, and location of all proposed improvements to the property;

2. Provide access to and authorize inspection of the property by city, town or county employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreement;

3. Limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the area during the period that the tax incentives or exemptions or the increment financing are in effect;

4. Provide for recapturing the local tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement; and

5. Include any other requirement deemed by the governing body necessary to carry out the agreement.

B. There shall be a written agreement between the governing body and the property owners in historic preservation areas who are granted ad valorem tax exemptions pursuant to subsection D of Section 860 of this title. The written agreement shall include the following:

1. List the location of the property;

2. Provide access to and authorize inspection of the property by city, town or county employees to ensure that the property is being maintained according to the specifications and conditions of the agreement;

3. Limit the uses of the property consistent with the general purpose of encouraging neighborhood commercial preservation of the area during the period that the ad valorem tax exemptions are in effect;

4. Provide for recapturing the ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to maintain the property as provided by the agreement; and

5. Specify the time frame of the agreement including whether renewals can occur, at what time such renewals can occur and under what conditions renewals can occur;

6. Specify rehabilitations, preservation efforts and other specific actions that should be taken by the property owners on an individual or collective basis;

7. Provide for reciprocal actions by public entities to protect, enhance and improve the commercial preservation area and the surrounding residential areas served by such districts;

8. Provide review and approval procedures that may be used when usage or ownership of the property changes; and

9. Include any other requirement deemed by the governing body necessary to carry out the agreement.

C. The governing body shall enter into written agreements with active project participants of increment projects. The written agreement may include, but shall not be limited to, the provisions specified in paragraphs 1 through 5 of subsection A of this section.

SECTION 3. AMENDATORY Section 3, Chapter 167, O.S.L. 1997, as last amended by Section 1, Chapter 241, O.S.L. 2000 (68 O.S. Supp. 2000, 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 or Section 2370 of 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 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 except with respect to amounts invested in a qualified small business capital company ~~in which the financial lending institution is a shareholder or partner.~~

SECTION 4. AMENDATORY Section 2, Chapter 339, O.S.L. 2000 (68 O.S. Supp. 2000, Section 2357.72), is amended to read as follows:

Section 2357.72 As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma rural 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. "Nonmetropolitan area" means an area which is not an "urbanized area" as defined by the United States Bureau of the Census. An urbanized area comprises one or more places ("central places") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of fifty thousand (50,000) persons. An urban fringe generally consists of contiguous territory having a density of at least one thousand (1,000) persons per square mile. An urban fringe also includes outlying territory of such density if it was connected to the core of the contiguous area by road and is within one and one-half road miles of that core, or within five (5) road miles of the core but separated by water or other undevelopable territory. Other territory with a population density of fewer than one thousand (1,000) people per square mile is included within an urban fringe if it eliminates an enclave or closes an indentation in the boundary of the urbanized area;

6. "Oklahoma rural 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 rural 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. has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state,
- d. except as otherwise provided by this subparagraph, 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 with the following exceptions:
 - (1) Major Group 1 of Division A, and
 - (2) Major Group 2 of Division A, and
- e. qualifies as a small business as defined by the federal Small Business Administration;

7. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 9 of this section;

8. "Qualified rural 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 ~~rural small business entities~~ 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 Five Hundred Thousand Dollars (\$500,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty-five percent (25%) of its funds in any one company; and

9. "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 5. AMENDATORY Section 3, Chapter 339, O.S.L. 2000 (68 O.S. Supp. 2000, Section 2357.73), is amended to read as follows:

Section 2357.73 A. For taxable years beginning after December 31, 2000, and before January 1, 2008, there shall be allowed a credit against the tax imposed by Section 2355 or Section 2370 of ~~Title 68 of the Oklahoma Statutes~~ this title for qualified investment in qualified rural small business capital companies.

B. The credit provided for in subsection A of this section shall be thirty percent (30%) of the cash amount invested in qualified rural small business capital companies and may only be claimed for a taxable year during which the qualified rural small business capital company invests funds in an Oklahoma rural small business venture and the credit shall be allowed for the amount of funds invested in an Oklahoma rural 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 rural small business capital companies made prior to January 1, 2001.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified rural small business capital company is used by an Oklahoma rural 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 except with respect to amounts invested in a qualified ~~rural~~ small business capital company ~~in which the financial lending institution is a shareholder or partner.~~

SECTION 6. AMENDATORY Section 4, Chapter 339, O.S.L. 2000 (68 O.S. Supp. 2000, Section 2357.74), is amended to read as follows:

Section 2357.74 A. For taxable years beginning after December 31, 2000, and before January 1, 2008, there shall be allowed a credit against the tax imposed by Section 2355 or Section 2370 of ~~Title 68 of the Oklahoma Statutes~~ this title for qualified investment made in Oklahoma rural small business ventures in conjunction with investment in such ventures made by a qualified rural small business capital company.

B. The credit provided for in this section shall be thirty percent (30%) of the cash amount of qualified investment made in Oklahoma rural small business ventures in conjunction with investment in such ventures made by a qualified rural small business capital company and shall be allowed for a taxable year during which the investment is made in an Oklahoma rural 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 rural small business capital company that has invested funds in an Oklahoma rural small business venture;

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

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

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

C. No taxpayer may claim the credit provided for in this section for investment made prior to January 1, 2001.

SECTION 7. Sections 1 and 2 of this act shall become effective November 1, 2001.

SECTION 8. Sections 3 through 6 of this act shall become effective January 1, 2001.

48-1-6359 MAH 6/12/15