

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2124

By: Pope of the House

and

Rabon, Monson and Fair of
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 2357.61, 2357.62 and 2357.63, which relate to the Small Business Capital Formation Incentive Act; modifying definition; modifying taxable years for which certain credits may be claimed; authorizing investments using certain capitalization; imposing restriction on claim of credits for certain period; amending 68 O.S. 2001, Sections 2357.72, 2357.73 and 2357.74, which relate to the Rural Venture Capital Formation Incentive Act; modifying definitions; authorizing investments using certain capitalization; imposing restriction on claim of credits for certain period; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.61, is amended to read as follows:

Section 2357.61 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~~ the amount of:

- a. any funds that have actually been contributed or loaned to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b) (1) (C) of the Internal Revenue Code of 1986, as amended;

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~~ 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
- 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~~ capitalization 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 2. AMENDATORY 68 O.S. 2001, 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~~ 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes for qualified investment in qualified small business capital companies. Credits shall be allowed based upon

investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title; however, no credits may be claimed based upon investments using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title prior to July 1, 2005.

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.

F. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.73 or 2357.74 of this title.

SECTION 3. AMENDATORY 68 O.S. 2001, 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~~ 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 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. Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title; however, no credits may be claimed for an investment in conjunction with capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title prior to July 1, 2005.

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 January 1, 1998.

D. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.73 or 2357.74 of this title.

SECTION 4. AMENDATORY 68 O.S. 2001, 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~~ the amount of:

- a. any funds that have actually been contributed or loaned to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

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 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~~ capitalization 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 68 O.S. 2001, 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, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes for qualified investment in qualified rural small business capital companies. Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title; however, no credits may be claimed based upon investments using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title prior to July 1, 2005.

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.

F. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

SECTION 6. AMENDATORY 68 O.S. 2001, 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, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes 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. Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title; however, no credits may be claimed for an investment in conjunction with capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title prior to July 1, 2005.

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.

D. No taxpayer may claim the credit authorized by this section for the same invested amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

SECTION 7. 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.

49-2-9238

MAH

05/20/04