

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2669:

Braddock

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.62 and 2357.63, which relate to the Small Business Capital Formation Incentive Act; extending duration of tax credit; allowing for claiming of credit as transferee; providing for transferability of credit; stating conditions of transfer; requiring written agreement for transfer; providing for promulgation of rules by Oklahoma Tax Commission; extending duration of tax credit; amending 68 O.S. 2001, Sections 2357.73 and 2357.74, which relate to the Rural Venture Capital Formation Incentive Act; extending duration of tax credit; allowing for claiming of credit as transferee; providing for transferability of credit; stating conditions of transfer requiring written agreement for transfer; providing for promulgation of rules by Oklahoma Tax Commission; extending duration of tax credit; and providing effective date.

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

SECTION 1. 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.

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 or with respect to amounts claimed as a tax credit transferee pursuant to subsection G of this section.

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.

G. For taxable years beginning January 1, 2005, the amount of the credit allowed but not used by governmental units and Oklahoma corporations not subject to those taxes described in subsection A of this section shall be freely transferable to subsequent transferees at any time during the five (5) years following the year of qualification; provided, however, that such credits cannot be transferred for an amount that is less than ninety percent (90%) of the amount of such credit. Any person to whom or entity to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the person

or entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period, nor shall the tax credit rights of the transferee to claim and use such credit be reduced or restricted solely because the tax credit transferor was, by law, not subject to liability for such taxes. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit.

SECTION 2. 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.

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 3. 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~~ 2015, 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.

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 or with respect to amounts claimed as a tax credit transferee pursuant to subsection G of this section.

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.

G. For taxable years beginning January 1, 2005, the amount of the credit allowed but not used by governmental units and Oklahoma corporations not subject to those taxes described in subsection A of this section shall be freely transferable to subsequent transferees at any time during the five (5) years following the year of qualification; provided, however, that such credits cannot be transferred for an amount that is less than ninety percent (90%) of the amount of such credit. Any person to whom or entity to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the person or entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period, nor shall the tax credit rights of the transferee to claim and use such credit be reduced or restricted solely because the tax credit transferor was, by law, not subject to liability for such taxes. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not

promulgate any rules which unduly restrict or hinder the transfers of such tax credit.

SECTION 4. 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~~ 2015, 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.

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 5. This act shall become effective January 1, 2005.

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