ENROLLED HOUSE
BILL NO. 1680

By: Johnson, Hyman, Roan, Shoemake, Walker, Hilliard, McMullen, Covey, Hickman, McCarter, Winchester, Braddock, Sweeden and Calvey of the House

and

Gumm, Johnson, Lawler, Myers, Anderson and Kerr of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.25, which relates to certain tax credits for agricultural activity; modifying entities authorized to claim credit; modifying amount of available credits; imposing limitation upon exercise of certain credits; modifying definitions; imposing limitation upon use of certain credits by recreational activities group; amending 68 O.S. 2001, Sections 2357.62, as amended by Section 2, Chapter 508, O.S.L. 2004, 2357.63, as amended by Section 3, Chapter 508, O.S.L. 2004, 2357.73, as amended by Section 5, Chapter 508, O.S.L. 2004 and 2357.74, as amended by Section 6, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, Sections 2357.62, 2357.63, 2357.73 and 2357.74), which relate to the Small Business Capital Formation Incentive Act and the Rural Venture Capital Formation Incentive Act; modifying taxes for which credit may be claimed; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.25, is amended to read as follows:

Section 2357.25 A. There shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title for direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, or Oklahoma producer-owned agricultural processing marketing associations or Oklahoma-owned and -based corporations or partnerships created and designed to develop and advance the production, processing, handling and marketing of agricultural commodities grown, made or manufactured in Oklahoma. For calendar years 1997 and 1998, the amount of the credit shall be thirty percent (30%) of the amount of the investment by the Oklahoma

agricultural producer in Oklahoma producer-owned agricultural processing cooperatives, ventures, or marketing associations.

B. For calendar year ~~1999~~ 2006, and all subsequent years, the credit percentage, not to exceed thirty percent (30%), shall be adjusted annually so that the total estimate of credits does not exceed ~~One Million Dollars ($1,000,000.00)~~ Two Million Dollars ($2,000,000.00) annually. The formula to be used for the percentage adjustment shall be thirty percent (30%) times ~~One Million Dollars ($1,000,000.00)~~ Two Million Dollars ($2,000,000.00) divided by the credits claimed in the preceding year. In no event shall the credit be claimed more than once by a taxpayer each taxable year.

C. In the event the total tax credits authorized by this section exceed ~~One Million Dollars ($1,000,000.00)~~ Two Million Dollars ($2,000,000.00) in any calendar year, the Oklahoma Tax Commission shall permit any excess over ~~One Million Dollars ($1,000,000.00)~~ Two Million Dollars ($2,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

~~B.~~ D. The credits authorized by this act may only be claimed for taxable years beginning after December 31, 2006, and ending before January 1, 2010. The provisions of this subsection shall not be applicable to any credits earned, but not utilized, prior to the effective date of this act.

E. If the credit allowed pursuant to this section exceeds the amount of state income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding six (6) years following the year in which the investment was originally made.

~~C.~~ F. The Oklahoma Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section. The Oklahoma Tax Commission shall be authorized to conduct an investigation of the relevant facts as may be required in order to verify the eligibility of a claimant to receive a credit for any applicable income tax year.

~~D.~~ G. 1. For any taxable year during which a taxpayer sells or otherwise disposes of the ownership interest for which a tax credit has previously been allowed to the taxpayer or for which a tax credit will be allowed to the taxpayer for the year in which the sale or other disposition of the ownership interest is made, the taxpayer shall be required to reduce the cost of the ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association, as reported upon the applicable income tax return, by the amount of the tax credit which has previously been granted or for which the taxpayer is claiming credit if the credit is allowable for the year during which the sale or other disposition is made.

2. If a taxpayer sells or otherwise disposes of an ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association for which the tax credit authorized by this section may be taken in a taxable year following the year in which the ownership interest in the Oklahoma

producer-owned agricultural processing cooperative, venture, or marketing association is sold or otherwise disposed of, the credit authorized by this section shall be reduced to account for the prior sale or other disposition.

~~E.~~ H. The tax credit authorized by this section shall not be available or taken for any calendar year during which the claimant of the credit received any incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

~~F.~~ I. As used in this section:

1. "Direct investment" means the payment of money in an Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association or the transfer of any form of economic value, whether tangible or intangible, other than money;

2. "Oklahoma producer-owned agricultural processing cooperative" means a legal entity in the nature of a partnership or business undertaking agricultural transactions or agricultural commercial enterprises for mutual profit which are owned and controlled by Oklahoma agricultural producers. An Oklahoma producer-owned agricultural processing cooperative requires a community of interest in the performance of the undertaking, transaction or enterprise, a right to direct and govern the policy in connection therewith and the duty, which may be altered by agreement, to share both in profit and losses. The term does not include a cooperative that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

3. "Oklahoma producer-owned agricultural processing venture" means a legal entity in the nature of a corporation or company organized to invest in or operate an agricultural commodity processing facility operated primarily for the processing or production of marketable products from agricultural commodities. The term shall include a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars ($250,000.00) and which produces milk from dairy cows. The term does not include a venture that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

4. "Oklahoma producer-owned agricultural processing marketing association" means:

a. a legal entity owned by Oklahoma producers of agricultural commodities and organized to jointly market agricultural commodities and/or natural-resource-based recreational activities, facilitate the marketing process and to promote and stimulate the processing, sales, and marketing of agricultural commodities, or

b. a legal entity owned by Oklahoma producers of agricultural commodities and organized for collective marketing and improvement of land for natural-resource-based recreational activity;

The term does not include a marketing association that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

5. "Oklahoma agricultural producer" means any person who produces agricultural commodities in this state;

6. "Oklahoma-based corporation or partnership" means an entity created pursuant to the Oklahoma General Corporation Act or other laws of the state authorizing either a corporate entity or an entity with limited liability or any form of partnership, whether general, limited or other authorized partnership form having either its principal place of business within the state or substantial assets located within the state. For the purpose of this section, the definition contained in this paragraph shall not include an Oklahoma-based corporation or partnership that engages only in and nothing more than the storage, cleaning, and transportation or production of its commodity;

7. "Agricultural commodities" means a farm or ranch product, including but not limited to, wheat, corn, soybeans, cotton, timber, cattle, hogs, sheep, horses, poultry, animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group produced in farming or ranching operations or a product of such crop or livestock in its unmanufactured state such as ginned cotton, wool-dip, maple syrup, milk and eggs, or any other commodity listed under any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual; and

~~7.~~ 8. "Dairy operation" means and includes equipment and facilities to store and prepare feed, dairy cows, milking parlors, bulk cooling tanks, buildings, and all such depreciable investment commonly utilized in the dairy industry.

~~G.~~ J. For purposes of this section, an agricultural commodity shall be deemed to be produced within this state if it is substantially produced, by any person, partnership, company, association or corporation:

1. Authorized to do and doing business under the laws of this state;

2. Paying all taxes duly assessed; and

3. Domiciled within this state by having a location of production within this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.25A of Title 68, unless there is created a duplication in numbering, reads as follows:

No recreational activities group as described in Section 1 of this act can receive more than fifteen percent (15%) of the tax credits allowed pursuant to Section 1 of this act.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.62, as amended by Section 2, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, 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, 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, or effective July 1, 2006, against the taxes imposed by Sections 1001, 1101 or 1102 of this title, 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 4. AMENDATORY 68 O.S. 2001, Section 2357.63, as amended by Section 3, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, 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, 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, or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of 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. 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 5. AMENDATORY 68 O.S. 2001, Section 2357.73, as amended by Section 5, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, 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<u>, or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title,</u> 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, as amended by Section 6, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, 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<u>, or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title,</u> 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. Sections 1 and 2 of this act shall become effective January 1, 2006.

SECTION 8. Sections 3 through 6 of this act shall become effective July 1, 2006.

Passed the House of Representatives the 25th day of May, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the 25th day of May, 2005.

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Presiding Officer of the Senate