

**SUBCOMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB2129 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Ron Peterson \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 PROPOSED SUBCOMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 2129

6 By: Mazzei of the Senate

7 and

8 Peterson (Ron) and Brown  
9 of the House

10 PROPOSED SUBCOMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68  
12 O.S. 2001, Section 2357.7, as last amended by Section  
13 2, Chapter 281, O.S.L. 2006 and Section 5, Chapter  
14 281, O.S.L. 2006 (68 O.S. Supp. 2007, Sections 2357.7  
15 and 2357.8A), which relate to income tax credits for  
16 certain venture capital investments; modifying  
17 definition; modifying certain applicability;  
18 clarifying limitation on credit; modifying  
19 requirements relating to borrowed funds for which  
20 credits may be claimed; modifying circumstances which  
21 qualify for tax credit recapture event; amending 68  
22 O.S. 2001, Sections 2357.61 and 2357.62, as last  
23 amended by Sections 7 and 8, Chapter 281, O.S.L. 2006  
24 (68 O.S. Supp. 2007, Sections 2357.61 and 2357.62),  
which relate to the Small Business Capital Formation  
Incentive Act; modifying definitions; defining term;  
modifying requirements relating to borrowed funds for  
which credits may be claimed; amending 68 O.S. 2001,  
Sections 2357.72, 2357.73 and 2357.74, as last  
amended by Sections 18, 19 and 20, Chapter 281,  
O.S.L. 2006 and Section 22, Chapter 281, O.S.L. 2006  
(68 O.S. Supp. 2007, Sections 2357.72, 2357.73,  
2357.74 and 2357.74B), which relate to the Rural  
Venture Capital Formation Incentive Act; modifying  
definition; clarifying limitation on credit;  
modifying requirements relating to borrowed funds for  
which credits may be claimed; modifying circumstances  
which qualify for tax credit recapture event;

1 amending Section 1, Chapter 458, O.S.L. 2005 (68 O.S.  
2 Supp. 2007, Section 2357.201), which relates to  
3 income tax credits for certain qualified business  
4 enterprises; modifying taxable years during which  
5 qualifying expenditures for tax credit may be  
6 incurred; modifying procedures related to claim of  
7 credits; amending 68 O.S. 2001, Section 2902, as last  
8 amended by Section 1, Chapter 352, O.S.L. 2007 (68  
9 O.S. Supp. 2007, Section 2902), which relates to ad  
10 valorem exemptions; modifying starting date for  
11 certain exemption period; providing an effective  
12 date; and declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.7, as  
15 last amended by Section 2, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
16 2007, Section 2357.7), is amended to read as follows:

17 Section 2357.7 A. For taxable years beginning after December  
18 31, 1986, and before January 1, 2009, there shall be allowed a  
19 credit against the tax imposed by Section 2355 of this title or  
20 Section 624 of Title 36 of the Oklahoma Statutes for investments in  
21 qualified venture capital companies whose purpose is to establish or  
22 expand the development of business and industry within Oklahoma.  
23 Provided, tax credits against liabilities imposed pursuant to  
24 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           1. "Qualified venture capital company" means a C corporation,  
2 as defined by the Internal Revenue Code of 1986, as amended,  
3 incorporated pursuant to the laws of Oklahoma or a registered  
4 business partnership with a certificate of partnership filed as  
5 required by law if such corporation or partnership is organized to  
6 provide the direct investment of debt and equity funds to companies  
7 within this state, with its principal place of business located  
8 within this state and which meets the following criteria:

- 9           a. capitalization of not less than Five Million Dollars  
10                 (\$5,000,000.00),
- 11           b. having a purpose and objective of investing at least  
12                 seventy-five percent (75%) of its capitalization in  
13                 Oklahoma business ventures. The temporary investment  
14                 of funds by a qualified venture capital company in  
15                 obligations of the United States, state and municipal  
16                 bonds, bank certificates of deposit, or money market  
17                 securities pending investment in Oklahoma business  
18                 ventures is hereby authorized, and
- 19           c. investment of not more than ten percent (10%) of its  
20                 funds in any one company;

21           2. "Oklahoma business venture" means a business, incorporated  
22 or unincorporated, which:

- 23           a. has or will have, within one hundred eighty (180) days  
24                 after an investment is made by a qualified venture

1 capital company, at least fifty percent (50%) of its  
2 employees or assets located in Oklahoma,

3 b. needs financial assistance in order to commence or  
4 expand such business which provides or intends to  
5 provide goods or services,

6 c. is not engaged in oil and gas exploration, real estate  
7 development, real estate sales, retail sales of food  
8 or clothing, farming, ranching, banking, or lending or  
9 investing funds in other businesses. Provided,  
10 however, businesses which provide or intend to provide  
11 goods or services, including, but not limited to,  
12 goods or services involving new technology, equipment,  
13 or techniques to such businesses listed in this  
14 subparagraph, and investments in the development of  
15 tourism facilities in the form of amusement parks,  
16 entertainment parks, theme parks, golf courses, or  
17 museums shall not be subject to said prohibition, and

18 d. expends within eighteen (18) months after the date of  
19 the investment at least fifty percent (50%) of the  
20 proceeds of the investment for the acquisition of  
21 tangible or intangible assets which are used in the  
22 active conduct of the trade or business of the  
23 Oklahoma business venture or to provide working  
24 capital for the active conduct of such trade or

1           business. For purposes of this subparagraph, "working  
2           capital" shall not include consulting, brokerage or  
3           transaction fees. Provided, that the Oklahoma Tax  
4           Commission, upon request and demonstration of need by  
5           a qualified venture capital company or an Oklahoma  
6           business venture, may extend the eighteen-month period  
7           otherwise required by this subparagraph for a period  
8           not to exceed six (6) months. Provided, the  
9           expenditure of the invested funds by the Oklahoma  
10          business venture shall otherwise comply with the  
11          requirements applicable to the usage of tax credits  
12          for investment in the Oklahoma business venture. As  
13          used in this subparagraph, "tangible assets" shall  
14          include the acquisition of real property and the  
15          construction of improvements upon real property if  
16          such acquisition and construction otherwise complies  
17          with the requirements applicable to the usage of tax  
18          credits for investment in the Oklahoma business  
19          venture and "intangible assets" shall be limited to  
20          computer software, licenses, patents, copyrights, and  
21          similar items;

22          3. "Direct investment" means the purchase of securities of a  
23          private company, or securities of a public company if the securities  
24          constitute a new issue of a public company and such public company

1 had previous year sales of less than Ten Million Dollars  
2 (\$10,000,000.00); and

3 4. "Debt and equity funds" means investments in debt  
4 securities; including unsecured, undersecured, subordinated or  
5 convertible loans or debt securities; and/or equity securities,  
6 including common and preferred stock, royalty rights, limited  
7 partnership interest, and any other securities or rights that  
8 evidence ownership in businesses; provided such investment of debt  
9 and equity funds shall not have a repayment schedule that is faster  
10 than a level principal amortization over five (5) years.

11 C. The credit provided for in subsection A of this section  
12 shall be twenty percent (20%) of the cash amount invested in  
13 qualified venture capital companies which is subsequently invested  
14 in an Oklahoma business venture by the qualified venture capital  
15 company and may only be claimed for a taxable year during which the  
16 qualified venture capital company makes an investment in an Oklahoma  
17 business venture. The credit shall be allowed for the amount of the  
18 investment in an Oklahoma business venture if the funds are used in  
19 pursuit of a legitimate business purpose of the Oklahoma business  
20 venture consistent with its organizational instrument, bylaws or  
21 other agreement responsible for the governance of the business  
22 venture. The qualified venture capital company shall issue such  
23 reports as the Oklahoma Tax Commission may require attributing the  
24 source of funds of each investment it makes in an Oklahoma business

1 venture. The Oklahoma Capital Investment Board shall have the  
2 authority to certify an entity as a qualified venture capital  
3 company and to certify an investment to be a qualifying Oklahoma  
4 business venture for purposes of complying with subsection B of this  
5 section. Such certification shall be binding on the Oklahoma Tax  
6 Commission. Such certification shall not be mandatory but may be  
7 requested by any entity that desires to be certified. A reasonable  
8 certification fee may be charged by the Oklahoma Capital Investment  
9 Board for this service. If the tax credit allowed pursuant to  
10 subsection A of this section exceeds the amount of taxes due or if  
11 there are no state taxes due of the taxpayer, the amount of the  
12 claim not used as an offset against the taxes of a taxable year may  
13 be carried forward as a credit against subsequent tax liability for  
14 a period not to exceed three (3) years. No investor in a venture  
15 capital company organized after July 1, 1992, may claim tax credits  
16 under the provisions of this section.

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

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

24



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

5 G. If a pass-through entity is entitled to a credit under this  
6 section, the pass-through entity shall allocate such credit to one  
7 or more of the shareholders, partners or members of the pass-through  
8 entity; provided, the total of all credits allocated shall not  
9 exceed the amount of the credit to which the pass-through entity is  
10 entitled. The credit may also be claimed for funds borrowed by the  
11 pass-through entity to make a qualified investment if a shareholder,  
12 partner or member to whom the credit is allocated has a an unlimited  
13 and continuing legal obligation to repay the borrowed funds but the  
14 allocation may not exceed such shareholder's, partner's or member's  
15 pro-rata equity share of the pass-through entity even if the  
16 taxpayer's legal obligation to repay the borrowed funds is in excess  
17 of such pro-rata share of such borrowed funds. For purposes of this  
18 act, "pass-through entity" means a corporation that for the  
19 applicable tax years is treated as an S corporation under the  
20 Internal Revenue Code, general partnership, limited partnership,  
21 limited liability partnership, trust or limited liability company  
22 that for the applicable tax year is not taxed as a corporation for  
23 federal income tax purposes.

24

1 SECTION 2. AMENDATORY Section 5, Chapter 281, O.S.L.  
2 2006 (68 O.S. Supp. 2007, Section 2357.8A), is amended to read as  
3 follows:

4 Section 2357.8A A. The provisions of this section shall only  
5 be applicable to investments in qualified venture capital companies  
6 made on or after ~~the effective date of this act~~ June 7, 2006,  
7 pursuant to Section 2357.7 of ~~Title 68 of the Oklahoma Statutes~~ this  
8 title. As used in this section, "recapture event" means that with  
9 respect to an investment in an Oklahoma business venture by a  
10 qualified venture capital company:

11 1. The Oklahoma business venture fails to expend at least fifty  
12 percent (50%) of the proceeds of qualified investments for  
13 acquisition of tangible or intangible assets to be used in the  
14 active conduct of the trade or business of the Oklahoma business  
15 venture or for working capital for the active conduct of such trade  
16 or business within eighteen (18) months after the investment is made  
17 or within an extension of such period as provided in Section 2357.7  
18 of ~~Title 68 of the Oklahoma Statutes~~ this title. For purposes of  
19 this paragraph, "working capital" shall not include consulting,  
20 brokerage or transaction fees;

21 2. The investment in the Oklahoma business venture is  
22 transferred, withdrawn or otherwise returned within five (5) years;  
23 provided, a "recapture event" shall not include the transfer,  
24 withdrawal or return of an investment as a result of a "market-based

1 liquidity event". As used in ~~this act~~ Section 2351 et seq. of this  
2 title, a "market-based liquidity event" means that an Oklahoma  
3 business venture:

4 a. sells all or substantially all of its assets to, or is  
5 acquired by share acquisition, share exchange, merger,  
6 consolidation or other similar transaction by another  
7 person or entity other than a person or entity  
8 controlled by a person that made an investment in the  
9 qualified venture capital company that provided funds  
10 for use by the Oklahoma business venture,

11 b. conducts an initial public offering of a class of its  
12 equity securities pursuant to the requirements of the  
13 United States Securities and Exchange Commission or  
14 other applicable federal law governing the sale of  
15 securities in interstate commerce, or

16 c. makes an amortization payment under the terms of a  
17 debt instrument; or

18 3. The Oklahoma Tax Commission finds that the investment does  
19 not meet the requirements of Section 2357.7 of ~~Title 68 of the~~  
20 ~~Oklahoma Statutes~~ this title.

21 B. If a recapture event occurs with respect to an investment  
22 for which a credit authorized by Section 2357.7 of ~~Title 68 of the~~  
23 ~~Oklahoma Statutes~~ this title was claimed, the tax imposed pursuant  
24 to the applicable provisions of Title 36 ~~or Title 68~~ of the Oklahoma

1 Statutes or this title shall be increased to the extent of the  
2 recaptured credit amount.

3 C. For purposes of this section, the recapture amount shall be  
4 equal to the sum of:

5 1. The aggregate decrease in the credits previously allowed to  
6 the taxpayer pursuant to Section 2357.7 of ~~Title 68 of the Oklahoma~~  
7 ~~Statutes~~ this title for all prior taxable periods which would have  
8 resulted if no credit had been authorized with respect to the  
9 qualified investment; plus

10 2. Interest at the rate prescribed by Section 217 of ~~Title 68~~  
11 ~~of the Oklahoma Statutes~~ this title on the amount determined  
12 pursuant to paragraph 1 of this subsection for each prior taxable  
13 period for the period beginning on the due date for filing the  
14 applicable report or return for the prior taxable period.

15 D. The tax for the taxable period shall be increased pursuant  
16 to this section only with respect to credits which were used to  
17 reduce tax liability. In the case of credits not used to reduce tax  
18 liability, the carryforwards allowed shall be adjusted accordingly.

19 E. For any transaction that is audited by the Tax Commission  
20 after such credits have been allowed, but which is subsequently  
21 determined to constitute a recapture event, the Tax Commission shall  
22 be required to disallow any and all credits claimed in violation of  
23 the requirements of this section or any other provision of Section  
24 2357.7 or 2357.8 of ~~Title 68 of the Oklahoma Statutes~~ this title for

1 a period of ten (10) years after the date as of which any applicable  
2 tax report or return utilizing such credits is filed.

3 F. The provisions of subsection E of this section shall  
4 supersede any other provision of the Uniform Tax Procedure Code or  
5 any other state tax law that would prohibit the disallowance of such  
6 credits based upon an otherwise applicable statute of limitations.

7 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.61, as  
8 last amended by Section 7, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
9 2007, Section 2357.61), is amended to read as follows:

10 Section 2357.61 As used in ~~this act~~ the Small Business Capital  
11 Formation Incentive Act:

12 1. "Acquisition" means the use of capital by an Oklahoma small  
13 business venture within six (6) months after obtaining the capital  
14 to purchase fifty-one percent (51%) or more of the voting interest  
15 entitled to elect the governing board, or its equivalent, of any  
16 other legal entity, regardless of the legal form of the entity. As  
17 used in ~~this act~~ the Small Business Capital Formation Incentive Act,  
18 "acquisition" does not mean the right to participate in the proceeds  
19 from sale of goods or services, whether denominated a royalty,  
20 royalty interest or otherwise, and does not mean the right to  
21 intellectual property, whether the rights arise from copyright,  
22 trademark or patent law;

23 2. "Capitalization" means the amount of:  
24

- 1 a. any funds that have actually been contributed to the  
2 qualified small business capital company,  
3 b. any contractual commitment to provide funds to the  
4 qualified small business capital company to the extent  
5 that such commitment is payable on demand without  
6 condition and has substantial economic penalties for  
7 breach of the commitment to provide such funds, and  
8 c. any allocation of tax credit authority awarded to the  
9 qualified small business capital company by the  
10 Community Development Financial Institutions Fund  
11 pursuant to Section 45D of the Internal Revenue Code  
12 of 1986, as amended, to the extent such allocation has  
13 not been previously designated by the qualified small  
14 business capital company as contemplated by Section  
15 45D(b)(1)(C) of the Internal Revenue Code of 1986, as  
16 amended;

17 3. "Equity and near-equity security" means common stock,  
18 preferred stock, warrants or other rights to subscribe to stock or  
19 its equivalent, or an interest in a limited liability company,  
20 partnership, or subordinated debt that is convertible into, or  
21 entitles the holder to receive upon its exercise, common stock,  
22 preferred stock, a royalty or net profits interest, or an interest  
23 in a limited liability company or partnership;  
24

1 4. "Financial lending institution" means a bank, credit union,  
2 savings and loan, commercial finance company or other entity  
3 principally engaged in the extension of credit;

4 5. "Oklahoma small business venture" means a business,  
5 incorporated or unincorporated, which:

6 a. has or will have, within one hundred eighty (180) days  
7 after a qualified investment is made by a qualified  
8 small business capital company, at least fifty percent  
9 (50%) of its employees or assets located in Oklahoma,

10 b. needs financial assistance in order to commence or  
11 expand such business which provides or intends to  
12 provide goods or services,

13 c. is engaged in a lawful business activity under any  
14 Industry Number appearing under any Major Group Number  
15 of Divisions A, C, D, E, F or I of the Standard  
16 Industrial Classification Manual, 1987 revision with  
17 the following exceptions:

18 (1) Major Group 1 of Division A, and

19 (2) Major Group 2 of Division A,

20 d. qualifies as a small business as defined by the  
21 federal Small Business Administration, and

22 e. expends within eighteen (18) months after the date of  
23 the qualified investment at least fifty percent (50%)  
24 of the proceeds of the qualified investment for the

1 acquisition of tangible or intangible assets which are  
2 used in the active conduct of the trade or business or  
3 to provide working capital for the active conduct of  
4 the trade or business for which the determination of  
5 the small business qualification pursuant to  
6 subparagraph d of this paragraph was made. For  
7 purposes of this subparagraph, "working capital" shall  
8 not include consulting, brokerage or transaction fees.  
9 Provided, that the Oklahoma Tax Commission, upon  
10 request and demonstration of need by a qualified small  
11 business capital company or an Oklahoma small business  
12 venture, or an investor or an authorized agent of any  
13 such entities, may extend the 18-month period  
14 otherwise required by this subparagraph for a period  
15 not to exceed six (6) months. Provided, the  
16 expenditure of the invested funds by the Oklahoma  
17 small business venture shall otherwise comply with the  
18 requirements applicable to the usage of tax credits  
19 for qualified investment in the Oklahoma small  
20 business venture. As used in this subparagraph,  
21 "tangible assets" shall include the acquisition of  
22 real property and the construction of improvements  
23 upon real property if such acquisition and  
24 construction otherwise comply with the requirements



1 applicable to the usage of tax credits for qualified  
2 investment in the Oklahoma small business venture, and  
3 "intangible assets" shall be limited to computer  
4 software, licenses, patents, copyrights and similar  
5 items;

6 6. "Qualified investment" means an investment of funds in the  
7 form of "equity" and "near-equity" as defined in paragraph 3 of this  
8 section or "subordinated debt" as defined in paragraph 8 of this  
9 section; provided, an investment which is contingent upon the  
10 occurrence of an event or which is subject to being refunded or  
11 returned in the absence of such event shall only be deemed to have  
12 been made upon the occurrence of the event;

13 7. "Qualified small business capital company" means a C  
14 corporation or a subchapter S corporation, as defined by the  
15 Internal Revenue Code of 1986, as amended, incorporated pursuant to  
16 the laws of Oklahoma, limited liability company or a registered  
17 business partnership with a certificate of partnership filed as  
18 required by law, which meets the following criteria:

- 19 a. the corporation, limited liability company or  
20 partnership is organized to provide the direct  
21 investment of equity and near-equity funds to  
22 companies within this state,

- 1           b.    the principal place of business of the corporation,  
2                    limited liability company or partnership is located  
3                    within this state,
- 4           c.    the capitalization of the corporation, limited  
5                    liability company or partnership is not less than One  
6                    Million Dollars (\$1,000,000.00), and
- 7           d.    the corporation, limited liability company or  
8                    partnership has investment of not more than twenty  
9                    percent (20%) of its capitalization in any one company  
10                   at any time during the calendar year of the  
11                   corporation, limited liability company or partnership;  
12                   and

13           8.    "Subordinated debt" means indebtedness with a maturity date  
14 of not less than five (5) years that is subordinated to all other  
15 indebtedness of the issuer that has been issued or is to be issued  
16 to a financial lending institution. The indebtedness shall not have  
17 a repayment schedule that is faster than a level principal  
18 amortization over five (5) years.

19           SECTION 4.        AMENDATORY        68 O.S. 2001, Section 2357.62, as  
20 last amended by Section 8, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
21 2007, Section 2357.62), is amended to read as follows:

22           Section 2357.62 A. For taxable years beginning after December  
23 31, 1997, and before January 1, 2012, there shall be allowed a  
24 credit against the tax imposed by Section 2355 or, effective January

1 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
2 against the tax imposed by Section 624 or 628 of Title 36 of the  
3 Oklahoma Statutes, for qualified investment in qualified small  
4 business capital companies.

5 B. The credit provided for in subsection A of this section  
6 shall be twenty percent (20%) of the qualified investment in  
7 qualified small business capital companies which is subsequently  
8 invested in an Oklahoma small business venture by the qualified  
9 venture capital company and may only be claimed for a taxable year  
10 during which the qualified small business capital company makes the  
11 qualified investment in an Oklahoma small business venture. The  
12 credit shall be allowed for the amount of the qualified investment  
13 in an Oklahoma small business venture if the funds are used in  
14 pursuit of a legitimate business purpose of the Oklahoma small  
15 business venture consistent with its organizational instrument,  
16 bylaws or other agreement responsible for the governance of the  
17 small business venture. The qualified small business capital  
18 company shall issue such reports as the Oklahoma Tax Commission may  
19 require attributing the source of funds of each investment it makes  
20 in an Oklahoma business venture. If the tax credit exceeds the  
21 amount of taxes due or if there are no state taxes due of the  
22 taxpayer, the amount of the claim not used as an offset against the  
23 taxes of a taxable year may be carried forward for a period not to  
24 exceed three (3) taxable years.

1 C. No taxpayer may claim the credit provided for in this  
2 section for qualified investments in qualified small business  
3 capital companies made prior to January 1, 1998.

4 D. No taxpayer may claim the credit provided for in this  
5 section if the capital provided by a qualified small business  
6 capital company is used by an Oklahoma small business venture for  
7 the acquisition of any other legal entity.

8 E. No financial lending institution shall be eligible to claim  
9 the credit provided for in this section except with respect to  
10 qualified investments in a qualified small business capital company.

11 F. No taxpayer may claim the credit authorized by this section  
12 for the same qualified investment for which any credit is claimed  
13 pursuant to either Section 2357.73 or 2357.74 of this title.

14 G. If a pass-through entity is entitled to a credit under this  
15 section, the pass-through entity shall allocate such credit to one  
16 or more of the shareholders, partners or members of the pass-through  
17 entity; provided, the total of all credits allocated shall not  
18 exceed the amount of the credit to which the pass-through entity is  
19 entitled. The credit may also be claimed for funds borrowed by the  
20 pass-through entity to make a qualified investment if a shareholder,  
21 partner or member to whom the credit is allocated has a an unlimited  
22 and continuing legal obligation to repay the borrowed funds but the  
23 allocation may not exceed such shareholder's, partner's or member's  
24 pro-rata equity share of the pass-through entity even if the

1 taxpayer's legal obligation to repay the borrowed funds is in excess  
2 of such pro-rata share of such borrowed funds. For purposes of ~~this~~  
3 ~~act~~ the Small Business Capital Formation Incentive Act, "pass-  
4 through entity" means a corporation that for the applicable tax  
5 years is treated as an S corporation under the Internal Revenue  
6 Code, general partnership, limited partnership, limited liability  
7 partnership, trust, or limited liability company that for the  
8 applicable tax year is not taxed as a corporation for federal income  
9 tax purposes.

10 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.72, as  
11 last amended by Section 18, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
12 2007, Section 2357.72), is amended to read as follows:

13 Section 2357.72 As used in ~~this act~~ the Rural Venture Capital  
14 Formation Incentive Act:

15 1. "Acquisition" means the use of capital by an Oklahoma rural  
16 small business venture within six (6) months after obtaining the  
17 capital to purchase fifty-one percent (51%) or more of the voting  
18 interest entitled to elect the governing board, or its equivalent,  
19 of any other legal entity, regardless of the legal form of the  
20 entity. As used in ~~this act~~ the Rural Venture Capital Formation  
21 Incentive Act, "acquisition" does not mean the right to participate  
22 in the proceeds from sale of goods or services, whether denominated  
23 a royalty, royalty interest or otherwise, and does not mean the

24

1 right to intellectual property, whether the rights arise from  
2 copyright, trademark or patent law;

3 2. "Capitalization" means the amount of:

4 a. any funds that have actually been contributed to the  
5 qualified rural small business capital company,

6 b. any contractual commitment to provide funds to the  
7 qualified rural small business capital company to the  
8 extent that such commitment is payable on demand

9 without condition and has substantial economic  
10 penalties for breach of the commitment to provide such  
11 funds,

12 c. any allocation of tax credit authority awarded to the  
13 qualified rural small business capital company by the  
14 Community Development Financial Institutions Fund  
15 pursuant to Section 45D of the Internal Revenue Code  
16 of 1986, as amended, to the extent such allocation has  
17 not been previously designated by the qualified rural  
18 small business capital company as contemplated by  
19 Section 45D(b) (1) (C) of the Internal Revenue Code of  
20 1986, as amended, and

21 d. any funds loaned to the qualified rural small business  
22 capital company, which is licensed as a rural business  
23 investment company under 7 U.S.C., Section 2009cc et  
24 seq., or any successor statute, by the U.S. Small

1 Business Administration or U.S. Department of  
2 Agriculture;

3 3. "Equity and near-equity security" means common stock,  
4 preferred stock, warrants or other rights to subscribe to stock or  
5 its equivalent, or an interest in a limited liability company,  
6 partnership, or subordinated debt that is convertible into, or  
7 entitles the holder to receive upon its exercise, common stock,  
8 preferred stock, a royalty or net profits interest, or an interest  
9 in a limited liability company or partnership;

10 4. "Financial lending institution" means a bank, credit union,  
11 savings and loan, commercial finance company or other entity  
12 principally engaged in the extension of credit;

13 5. "Nonmetropolitan area" means all areas of the state except a  
14 county having a population in excess of one hundred thousand  
15 (100,000) persons according to the most recent Federal Decennial  
16 Census;

17 6. "Oklahoma rural small business venture" means a business,  
18 incorporated or unincorporated, which:

- 19 a. has or will have, within one hundred eighty (180) days  
20 after a qualified investment is made by a qualified  
21 rural small business capital company, at least fifty  
22 percent (50%) of its employees or assets located in  
23 Oklahoma,

- 1           b.    needs financial assistance in order to commence or  
2                    expand such business which provides or intends to  
3                    provide goods or services,
- 4           c.    has its principal place of business within a  
5                    nonmetropolitan area of the state and conducts the  
6                    activity resulting in at least seventy-five percent  
7                    (75%) of its gross annual revenue from a  
8                    nonmetropolitan area of the state,
- 9           d.    except as otherwise provided by this subparagraph, is  
10                   engaged in a lawful business activity under any  
11                    Industry Number appearing under any Major Group Number  
12                    of Divisions A, C, D, E, F or I of the Standard  
13                    Industrial Classification Manual, 1987 revision with  
14                    the following exceptions:
- 15                    (1) Major Group 1 of Division A, and  
16                    (2) Major Group 2 of Division A,
- 17           e.    qualifies as a small business as defined by the  
18                    federal Small Business Administration, and
- 19           f.    expends within eighteen (18) months after the date of  
20                    the qualified investment at least fifty percent (50%)  
21                    of the proceeds of the qualified investment for the  
22                    acquisition of tangible or intangible assets which are  
23                    used in the active conduct of the trade or business or  
24                    for working capital for the active conduct of such



1           trade or business for which the determination of the  
2           small business qualification pursuant to subparagraph  
3           e of this paragraph was made. For purposes of this  
4           subparagraph, "working capital" shall not include  
5           consulting, brokerage or transaction fees. Provided,  
6           that the Oklahoma Tax Commission, upon request and  
7           demonstration by a qualified rural small business  
8           capital company or an Oklahoma rural small business  
9           venture, or an investor or an authorized agent of any  
10          such entities, may extend the 18-month period  
11          otherwise required by this subparagraph for a period  
12          not to exceed six (6) months. Provided, the  
13          expenditure of the invested funds by the Oklahoma  
14          rural small business shall otherwise comply with the  
15          requirements applicable to the usage of tax credits  
16          for qualified investment in the Oklahoma rural small  
17          business venture. As used in this subparagraph,  
18          "tangible assets" shall include the acquisition of  
19          real property and the construction of improvements  
20          upon real property if such acquisition and  
21          construction otherwise comply with the requirements  
22          applicable to the usage of tax credits for qualified  
23          investment in the Oklahoma rural small business  
24          venture, and "intangible assets" shall be limited to

1 computer software, licenses, patents, copyrights and  
2 similar items;

3 7. "Qualified investment" means an investment of funds in the  
4 form of "equity" and "near-equity" as defined in paragraph 3 of this  
5 section or "subordinated debt" as defined in paragraph 9 of this  
6 section; provided, an investment which is contingent upon the  
7 occurrence of an event or which is subject to being refunded or  
8 returned in the absence of such event shall only be deemed to have  
9 been made upon the occurrence of the event;

10 8. "Qualified rural small business capital company" means a C  
11 corporation or a subchapter S corporation, as defined by the  
12 Internal Revenue Code of 1986, as amended, incorporated pursuant to  
13 the laws of Oklahoma, limited liability company or a registered  
14 business partnership with a certificate of partnership filed as  
15 required by law, which meets the following criteria:

16 a. the corporation, limited liability company or  
17 partnership is organized to provide the direct  
18 investment of equity and near-equity funds to  
19 companies within this state,

20 b. the principal place of business of the corporation,  
21 limited liability company or partnership is located  
22 within this state,  
23  
24

- 1           c.    the capitalization of the corporation, limited  
2                    liability company or partnership is not less than Five  
3                    Hundred Thousand Dollars (\$500,000.00), and  
4           d.    the corporation, limited liability company or  
5                    partnership has investment of not more than twenty-  
6                    five percent (25%) of its capitalization in any one  
7                    company at any time during the calendar year of the  
8                    corporation, limited liability company or partnership;  
9                    and

10           9.    "Subordinated debt" means indebtedness with a maturity date  
11 of not less than five (5) years that is subordinated to all other  
12 indebtedness of the issuer that has been issued or is to be issued  
13 to a financial lending institution. The indebtedness shall not have  
14 a repayment schedule that is faster than a level principal  
15 amortization over five (5) years.

16           SECTION 6.        AMENDATORY        68 O.S. 2001, Section 2357.73, as  
17 last amended by Section 19, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
18 2007, Section 2357.73), is amended to read as follows:

19           Section 2357.73 A. For taxable years beginning after December  
20 31, 2000, and before January 1, 2012, there shall be allowed a  
21 credit against the tax imposed by Section 2355 or, effective January  
22 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
23 against the tax imposed by Section 624 or 628 of Title 36 of the  
24

1 Oklahoma Statutes, for qualified investment in qualified rural small  
2 business capital companies.

3       B. The credit provided for in subsection A of this section  
4 shall be thirty percent (30%) of the amount of a qualified  
5 investment in qualified rural small business capital companies which  
6 is subsequently invested in an Oklahoma rural small business venture  
7 by the qualified rural small business capital company and may only  
8 be claimed for a taxable year during which the qualified rural small  
9 business capital company makes the qualified investment in an  
10 Oklahoma rural small business venture if the funds are used in  
11 pursuit of a legitimate business purpose of the Oklahoma rural small  
12 business venture consistent with its organizational instrument,  
13 bylaws or other agreement responsible for the governance of the  
14 rural small business venture. The qualified rural small business  
15 capital company shall issue such reports as the Oklahoma Tax  
16 Commission may require attributing the source of funds of each  
17 qualified investment it makes in an Oklahoma rural small business  
18 venture. If the tax credit exceeds the amount of taxes due or if  
19 there are no state taxes due of the taxpayer, the amount of the  
20 claim not used as an offset against the taxes of a taxable year may  
21 be carried forward for a period not to exceed three (3) taxable  
22 years.

23

24

1 C. No taxpayer may claim the credit provided for in this  
2 section for qualified investments in qualified rural small business  
3 capital companies made prior to January 1, 2001.

4 D. No taxpayer may claim the credit provided for in this  
5 section if the capital provided by a qualified rural small business  
6 capital company is used by an Oklahoma rural small business venture  
7 for the acquisition of any other legal entity.

8 E. No financial lending institution shall be eligible to claim  
9 the credit provided for in this section except with respect to  
10 qualified investments in a qualified rural small business capital  
11 company.

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

15 G. If a pass-through entity is entitled to a credit under this  
16 section, the pass-through entity shall allocate such credit to one  
17 or more of the shareholders, partners or members of the pass-through  
18 entity; provided, the total of all credits allocated shall not  
19 exceed the amount of the credit to which the pass-through entity is  
20 entitled. The credit may only be claimed for funds borrowed by the  
21 pass-through entity to make a qualified investment if a shareholder,  
22 partner or member to whom the credit is allocated has a an unlimited  
23 and continuing legal obligation to repay the borrowed funds but the  
24 allocation may not exceed such shareholder's, partner's or member's

1 pro-rata equity share of the pass-through entity even if the  
2 taxpayer's legal obligation to repay the borrowed funds is in excess  
3 of such amount. For purposes of ~~this act~~ the Rural Venture Capital  
4 Formation Incentive Act, "pass-through entity" means a corporation  
5 that for the applicable tax years is treated as an S corporation  
6 under the Internal Revenue Code, general partnership, limited  
7 partnership, limited liability partnership, trust, or limited  
8 liability company that for the applicable tax year is not taxed as a  
9 corporation for federal income tax purposes.

10 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.74, as  
11 last amended by Section 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
12 2007, Section 2357.74), is amended to read as follows:

13 Section 2357.74 A. For taxable years beginning after December  
14 31, 2000, and before January 1, 2012, there shall be allowed a  
15 credit against the tax imposed by Section 2355 or, effective January  
16 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
17 against the tax imposed by Section 624 or 628 of Title 36 of the  
18 Oklahoma Statutes, for qualified investment made in Oklahoma rural  
19 small business ventures in conjunction with investment in such  
20 ventures made by a qualified rural small business capital company.

21 B. The credit provided for in this section shall be thirty  
22 percent (30%) of the qualified investment made in Oklahoma rural  
23 small business ventures in conjunction with qualified investment in  
24 such ventures made by a qualified rural small business capital

1 company and shall be allowed for the taxable year during which the  
2 qualified investment is made in an Oklahoma rural small business  
3 venture. If the tax credit allowed pursuant to subsection A of this  
4 section exceeds the amount of taxes due or if there are no state  
5 taxes due of the taxpayer, the amount of the claim not used as an  
6 offset against the taxes of a taxable year may be carried forward  
7 for a period not to exceed three (3) taxable years. To qualify for  
8 the credit authorized by this section, a qualified investment shall  
9 be:

10 1. Made by a shareholder or partner of a qualified rural small  
11 business capital company that has made a qualified investment in an  
12 Oklahoma rural small business venture;

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

15 3. Made under the same terms and conditions as the qualified  
16 investment made by the qualified rural small business capital  
17 company; and

18 4. Limited to the lesser of:

19 a. two hundred percent (200%) of any qualified investment  
20 by the taxpayer in the qualified rural small business  
21 capital company, or

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

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

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

6 E. If a pass-through entity is entitled to a credit under this  
7 section, the pass-through entity shall allocate such credit to one  
8 or more of the shareholders, partners or members of the pass-through  
9 entity; provided, the total of all credits allocated shall not  
10 exceed the amount of the credit to which the pass-through entity is  
11 entitled. The credit may also be claimed for funds borrowed by the  
12 pass-through entity to make a qualified investment if a shareholder,  
13 partner or member to whom the credit is allocated has a an unlimited  
14 and continuing legal obligation to repay the borrowed funds but the  
15 allocation may not exceed such shareholder's, partner's or member's  
16 pro-rata equity share of the pass-through entity even if the  
17 taxpayer's legal obligation to repay the borrowed funds is in excess  
18 of such amount. For purposes of ~~this act~~ the Rural Venture Capital  
19 Formation Incentive Act, "pass-through entity" means a corporation  
20 that for the applicable tax years is treated as an S corporation  
21 under the Internal Revenue Code, general partnership, limited  
22 partnership, limited liability partnership, trust, or limited  
23 liability company that for the applicable tax year is not taxed as a  
24 corporation for federal income tax purposes.



1 SECTION 8. AMENDATORY Section 22, Chapter 281, O.S.L.  
2 2006 (68 O.S. Supp. 2007, Section 2357.74B), is amended to read as  
3 follows:

4 Section 2357.74B A. As used in this section, "recapture event"  
5 means that with respect to a qualified investment in an Oklahoma  
6 rural small business venture:

7 1. The Oklahoma rural small business venture fails to expend at  
8 least fifty percent (50%) of the proceeds of qualified investments  
9 for acquisition of tangible or intangible assets to be used in the  
10 active conduct of the trade or business or for working capital for  
11 the active conduct of the trade or business of the rural small  
12 business venture within eighteen (18) months after the qualified  
13 investment is made or within an extension of such period as provided  
14 in Section 2357.72 of ~~Title 68 of the Oklahoma Statutes~~ this title.  
15 For purposes of this paragraph, "working capital" shall not include  
16 consulting, brokerage or transaction fees;

17 2. The investment in the rural small business venture is  
18 transferred, withdrawn or otherwise returned within five (5) years;  
19 provided, a "recapture event" shall not include the transfer,  
20 withdrawal or return of an investment as a result of a "market-based  
21 liquidity event". As used in ~~this act~~ the Rural Venture Capital  
22 Formation Incentive Act, a "market-based liquidity event" means that  
23 an Oklahoma rural small business venture:  
24

1 a. sells all or substantially all of its assets to, or is  
2 acquired by share acquisition, share exchange, merger,  
3 consolidation or other similar transaction by another  
4 person or entity other than:

5 (1) a person or entity controlled by a person that  
6 made a qualified investment in the qualified  
7 rural small business capital company that  
8 provided funds for use by the Oklahoma rural  
9 small business venture, or

10 (2) a person or entity controlled by a person that  
11 made an investment in conjunction with a  
12 qualified investment made by the qualified rural  
13 small business capital company that provided  
14 funds for use by the Oklahoma rural small  
15 business venture,

16 b. conducts an initial public offering of a class of its  
17 equity securities pursuant to the requirements of the  
18 United States Securities and Exchange Commission or  
19 other applicable federal law governing the sale of  
20 securities in interstate commerce, or

21 c. makes an amortization payment under the terms of a  
22 subordinated debt instrument; or  
23  
24

1           3. The Oklahoma Tax Commission finds that the qualified  
2 investment does not meet the requirements of the Rural Venture  
3 Capital Formation Incentive Act.

4           B. If a recapture event occurs with respect to a qualified  
5 investment for which a credit authorized by either Section 2357.73  
6 or Section 2357.74 of ~~Title 68 of the Oklahoma Statutes~~ this title  
7 has been claimed, the tax imposed pursuant to the applicable  
8 provisions of Title 36 ~~or Title 68~~ of the Oklahoma Statutes or this  
9 title against which the credit has been claimed shall be increased  
10 to the extent of the recaptured credit amount.

11           C. For purposes of this section, the recapture amount shall be  
12 equal to the sum of:

13           1. The aggregate decrease in the credits previously allowed to  
14 the taxpayer pursuant to Section 2357.73 or Section 2357.74 of ~~Title~~  
15 ~~68 of the Oklahoma Statutes~~ this title for all prior taxable periods  
16 which would have resulted if no credit had been authorized with  
17 respect to the qualified investment; plus

18           2. Interest at the rate prescribed by Section 217 of ~~Title 68~~  
19 ~~of the Oklahoma Statutes~~ this title on the amount determined  
20 pursuant to paragraph 1 of this subsection for each prior taxable  
21 period for the period beginning on the due date for filing the  
22 applicable report or return for the prior taxable period.

23           D. The tax for the taxable period shall be increased pursuant  
24 to this section only with respect to credits which were used to

1 reduce tax liability. In the case of credits not used to reduce tax  
2 liability, the carryforwards allowed shall be adjusted accordingly.

3 E. For any transaction that is audited by the Tax Commission  
4 after such credits have been allowed, but which is subsequently  
5 determined to constitute a recapture event, the Tax Commission shall  
6 be required to disallow any and all credits claimed in violation of  
7 the requirements of this section or any other provision of the Rural  
8 Venture Capital Formation Incentive Act for a period of ten (10)  
9 years after the date as of which any applicable tax report or return  
10 utilizing such credits is filed.

11 F. The provisions of subsection E of this section shall  
12 supersede any other provision of the Uniform Tax Procedure Code or  
13 any other state tax law that would prohibit the disallowance of such  
14 credits based upon an otherwise applicable statute of limitations.

15 G. Notwithstanding any other provision of this section, a  
16 recapture event shall not occur with respect to qualified  
17 investments made by a qualified rural small business capital company  
18 that is also licensed as a rural business investment company under 7  
19 U.S.C., Section 2009cc et seq., or any successor statute, at the  
20 time of the qualified investment. The qualified rural small  
21 business capital company shall include in its annual report proof of  
22 a valid license under the federal statute.

23

24

1 SECTION 9. AMENDATORY Section 1, Chapter 458, O.S.L.  
2 2005 (68 O.S. Supp. 2007, Section 2357.201), is amended to read as  
3 follows:

4 Section 2357.201 A. As used in this act:

5 1. "Qualified business enterprise" means an entity or  
6 affiliated group of entities electing to file a consolidated  
7 Oklahoma income tax return:

8 a. organized as a corporation, partnership, limited  
9 liability company or other entity having limited  
10 liability pursuant to the laws of the State of Oklahoma  
11 or the laws of another state, if such entity is  
12 registered to do business within the state, a general  
13 partnership, limited liability partnership, limited  
14 liability limited partnership or other legal entity  
15 having the right to conduct lawful business within the  
16 state,

17 b. whose principal business activities are described by  
18 the North American Industry Classification System by  
19 Industry No. 514210, or Industry No. 541512 or Industry  
20 No. 541519 as reflected in the 1997 edition of such  
21 publication,

22 c. that makes at least seventy-five percent (75%) of its  
23 sales to out-of-state customers or buyers which shall  
24

1 be determined in the same manner as provided for  
2 purposes of the Oklahoma Quality Jobs Program Act,

3 d. that is a high-speed processing facility in Oklahoma  
4 utilizing systems such as TPF, zTPF or other advanced  
5 technical systems,

6 e. that, as of ~~the effective date of this act~~ July 1,  
7 2005, maintains an Oklahoma annual payroll of at least  
8 Eighty-five Million Dollars (\$85,000,000.00), and

9 f. that, as of ~~the effective date of this act~~ July 1,  
10 2005, maintains an Oklahoma labor force of one thousand  
11 (1,000) or more persons;

12 2. "Qualified capital expenditures" means those costs incurred  
13 by the qualified business enterprise for acquisition of personal  
14 property to be used in business operations within the state that  
15 qualifies for depreciation and/or amortization pursuant to the  
16 Internal Revenue Code of 1986, as amended, during the taxable year  
17 for which the credit authorized by this section is claimed, or costs  
18 incurred to refurbish, repair or maintain any existing personal  
19 property located within the state;

20 3. "Qualified wages" means compensation, including any  
21 employer-paid health care benefits, to full-time or part-time  
22 employees of the qualified business enterprise if such employees are  
23 full-time residents of the state; and  
24

1 4. "Qualified training expenses" means those costs, whether or  
2 not deductible as a business expense pursuant to the Internal  
3 Revenue Code of 1986, as amended, incurred to locate, interview,  
4 hire and educate an employee of the enterprise who has not  
5 previously been employed by the enterprise and who is a resident of  
6 the state.

7 B. For taxable years beginning after December 31, 2005, and  
8 ending not later than December 31, ~~2008~~ 2013, there shall be allowed  
9 as a credit against the tax imposed by Section 2355 of ~~Title 68 of~~  
10 ~~the Oklahoma Statutes~~ this title, subject to the limitations imposed  
11 by subsection C of this section, an amount equal to fifteen percent  
12 (15%) of:

- 13 1. Qualified capital expenditures; or
- 14 2. Qualified wages; or
- 15 3. Qualified training expenses; or
- 16 4. The sum of any of the expenses identified in paragraphs 1  
17 through 3 of this subsection, in any combination.

18 C. For purposes of computing the credit amount prescribed by  
19 subsection B of this section, the expenses described by paragraphs  
20 1, 2 and 3 of subsection B of this section may be added together or  
21 considered independently, but the total credit amount shall not  
22 exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) each year  
23 for the fiscal year ending June 30, 2007, the fiscal year ending  
24

1 June 30, 2008, ~~and~~ the fiscal year ending June 30, 2009, and for all  
2 subsequent fiscal years.

3 D. For purposes of the expenditures described by subsection B  
4 of this section a qualified business enterprise may incur  
5 expenditures beginning January 1, 2005, through December 31, ~~2008~~  
6 2013, for purposes of computing the credit amount. The claim for  
7 such credits earned for the fiscal year ending June 30, 2007, shall  
8 not be filed earlier than July 1, 2006, and the claims for each  
9 subsequent taxable year may be filed no earlier than July 1 of each  
10 of the ~~two (2)~~ applicable succeeding years.

11 E. For purposes of the limitation on the credit amount that may  
12 be claimed by a qualified business enterprise, an extension of time  
13 for filing of an income tax return shall not extend the time period  
14 for purposes of claiming the credit authorized by this section.

15 F. If the amount of the credit allowable is in excess of the  
16 tax liability, the amount of the credit not used shall be refunded  
17 to the taxpayer subject to the total limit of Three Hundred Fifty  
18 Thousand Dollars (\$350,000.00) each year for the fiscal year ending  
19 June 30, 2007, the fiscal year ending June 30, 2008, ~~and~~ the fiscal  
20 year ending June 30, 2009, and each of the applicable subsequent  
21 fiscal years.

22 G. No credit for any fiscal year as otherwise authorized by  
23 this section shall be based upon any qualified expenditure used to  
24 compute a credit amount for any preceding taxable year.



1 H. The credit authorized by the provisions of this section  
2 shall not be transferable.

3 I. The Tax Commission may prescribe forms for purposes of  
4 claiming the credit authorized by this section and for verifying  
5 eligibility for the credit.

6 SECTION 10. AMENDATORY 68 O.S. 2001, Section 2902, as  
7 last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp.  
8 2007, Section 2902), is amended to read as follows:

9 Section 2902. A. Except as otherwise provided by subsection H  
10 of Section 3658 of this title pursuant to which the exemption  
11 authorized by this section may not be claimed, a qualifying  
12 manufacturing concern, as defined by Section 6B of Article X of the  
13 Oklahoma Constitution, and as further defined herein, shall be  
14 exempt from the levy of any ad valorem taxes upon new, expanded or  
15 acquired manufacturing facilities, including facilities engaged in  
16 research and development, for a period of five (5) years. The  
17 provisions of Section 6B of Article X of the Oklahoma Constitution  
18 requiring an existing facility to have been unoccupied for a period  
19 of twelve (12) months prior to acquisition shall be construed as a  
20 qualification for a facility to initially receive an exemption, and  
21 shall not be deemed to be a qualification for that facility to  
22 continue to receive an exemption in each of the four (4) years  
23 following the initial year for which the exemption was granted.

24

1 Such facilities are hereby classified for the purposes of taxation  
2 as provided in Section 22 of Article X of the Oklahoma Constitution.

3 B. For purposes of this section, the following definitions  
4 shall apply:

5 1. "Manufacturing facilities" means facilities engaged in the  
6 mechanical or chemical transformation of materials or substances  
7 into new products and shall include:

8 a. establishments which have received a manufacturer  
9 exemption permit pursuant to the provisions of Section  
10 1359.2 of this title,

11 b. facilities, including repair and replacement parts,  
12 primarily engaged in aircraft repair, building and  
13 rebuilding whether or not on a factory basis,

14 c. establishments primarily engaged in computer services  
15 and data processing as defined under Industrial Group  
16 Numbers 5112 and 5415, and U.S. Industry Number 334611  
17 and 518112 of the NAICS Manual, latest revision, and  
18 which derive at least fifty percent (50%) of their  
19 annual gross revenues from the sale of a product or  
20 service to an out-of-state buyer or consumer, and as  
21 defined under Industrial Group Number 5142 of the  
22 NAICS Manual, latest revision, which derive at least  
23 eighty percent (80%) of their annual gross revenues  
24 from the sale of a product or service to an out-of-

1 state buyer or consumer. Eligibility as a  
2 manufacturing facility pursuant to this subparagraph  
3 shall be established, subject to review by the  
4 Oklahoma Tax Commission, by annually filing an  
5 affidavit with the Tax Commission stating that the  
6 facility so qualifies and such other information as  
7 required by the Tax Commission. For purposes of  
8 determining whether annual gross revenues are derived  
9 from sales to out-of-state buyers, all sales to the  
10 federal government shall be considered to be an out-  
11 of-state buyer,

12 d. for which the investment cost of the construction,  
13 acquisition or expansion of the manufacturing facility  
14 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
15 more. Provided, "investment cost" shall not include  
16 the cost of direct replacement, refurbish, repair or  
17 maintenance of existing machinery or equipment, and

18 e. establishments primarily engaged in distribution as  
19 defined under Industry Numbers 49311, 49312, 49313 and  
20 49319 and Industry Sector Number 42 of the NAICS  
21 Manual, latest revision, and which meet the following  
22 qualifications;

23 (1) construction with an initial capital investment  
24 of at least Five Million Dollars (\$5,000,000.00),

- 1 (2) employment of at least one hundred (100) full-  
2 time-equivalent employees, as certified by the  
3 Oklahoma Employment Security Commission,  
4 (3) payment of wages or salaries to its employees at  
5 a wage which equals or exceeds one hundred  
6 seventy-five percent (175%) of the federally  
7 mandated minimum wage, as certified by the  
8 Oklahoma Employment Security Commission, and  
9 (4) commencement of construction on or after ~~the~~  
10 ~~effective date of this act~~ November 1, 2007, with  
11 construction to be completed within three (3)  
12 years from the date of the commencement of  
13 construction.

14 Eligibility as a manufacturing facility pursuant to this  
15 subparagraph shall be established, subject to review by the Tax  
16 Commission, by annually filing an affidavit with the Tax Commission  
17 stating that the facility so qualifies and containing such other  
18 information as required by the Tax Commission.

19 Provided, eating and drinking places, as well as other retail  
20 establishments, shall not qualify as manufacturing facilities for  
21 purposes of this section, nor shall centrally assessed properties.

22 Eligibility as a manufacturing facility pursuant to this  
23 subparagraph shall be established, subject to review by the Tax  
24 Commission, by annually filing an application with the Tax

1 Commission stating that the facility so qualifies and containing  
2 such other information as required by the Tax Commission;

3 2. "Facility" and "facilities" means and includes the land,  
4 buildings, structures, improvements, machinery, fixtures, equipment  
5 and other personal property used directly and exclusively in the  
6 manufacturing process; and

7 3. "Research and development" means activities directly related  
8 to and conducted for the purpose of discovering, enhancing,  
9 increasing or improving future or existing products or processes or  
10 productivity.

11 C. The following provisions shall apply:

12 1. A manufacturing concern shall be entitled to the exemption  
13 herein provided for each new manufacturing facility constructed,  
14 each existing manufacturing facility acquired and the expansion of  
15 existing manufacturing facilities on the same site, as such terms  
16 are defined by Section 6B of Article X of the Oklahoma Constitution  
17 and by this section;

18 2. Except as otherwise provided in paragraph 5 of this  
19 subsection, no manufacturing concern shall receive more than one  
20 five-year exemption for any one manufacturing facility unless the  
21 expansion which qualifies the manufacturing facility for an  
22 additional five-year exemption meets the requirements of paragraph 4  
23 of this subsection and the employment level established for any  
24 previous exemption is maintained;

1       3. Any exemption as to the expansion of an existing  
2 manufacturing facility shall be limited to the increase in ad  
3 valorem taxes directly attributable to the expansion;

4       4. Except as provided in paragraphs 5 and 6 of this subsection,  
5 all initial applications for any exemption for a new, acquired or  
6 expanded manufacturing facility shall be granted only if:

- 7           a. there is a net increase in annualized payroll of at  
8           least Two Hundred Fifty Thousand Dollars (\$250,000.00)  
9           if the facility is located in a county with a  
10           population of fewer than seventy-five thousand  
11           (75,000), according to the most recent federal  
12           decennial census, while maintaining or increasing  
13           payroll in subsequent years, or at least One Million  
14           Dollars (\$1,000,000.00) if the facility is located in  
15           a county with a population of seventy-five thousand  
16           (75,000) or more, according to the most recent federal  
17           decennial census, while maintaining or increasing  
18           payroll in subsequent years.

19           The Tax Commission shall verify payroll information  
20           through the Oklahoma Employment Security Commission by  
21           using reports from the Oklahoma Employment Security  
22           Commission for the calendar year immediately preceding  
23           the year for which initial application is made for  
24           base-line payroll, which must be maintained or

1 increased for each subsequent year; provided, a  
2 manufacturing facility shall have the option of  
3 excluding from its payroll, for purposes of this  
4 section, payments to sole proprietors, members of a  
5 partnership, members of a limited liability company  
6 who own at least ten percent (10%) of the capital of  
7 the limited liability company or stockholder-employees  
8 of a corporation who own at least ten percent (10%) of  
9 the stock in the corporation. A manufacturing  
10 facility electing this option shall indicate such  
11 election upon its application for an exemption under  
12 this section. Any manufacturing facility electing  
13 this option shall submit such information as the Tax  
14 Commission may require in order to verify payroll  
15 information. Payroll information submitted pursuant  
16 to the provisions of this paragraph shall be submitted  
17 to the Tax Commission and shall be subject to the  
18 provisions of Section 205 of this title, and

19 b. the facility offers, or will offer within one hundred  
20 eighty (180) days of the date of employment, a basic  
21 health benefits plan to the full-time-equivalent  
22 employees of the facility, which is determined by the  
23 Department of Commerce to consist of the elements  
24 specified in subparagraph b of paragraph 1 of

1 subsection A of Section 3603 of this title or elements  
2 substantially equivalent thereto.

3 For purposes of this section, calculation of the amount of  
4 increased payroll shall be measured from the start of initial  
5 construction or expansion to the completion of such construction or  
6 expansion or for three (3) years from the start of initial  
7 construction or expansion, whichever occurs first. The amount of  
8 increased payroll shall include payroll for full-time-equivalent  
9 employees in this state who are employed by an entity other than the  
10 facility which has previously or is currently qualified to receive  
11 an exemption pursuant to the provisions of this section and who are  
12 leased or otherwise provided to the facility, if such employment did  
13 not exist in this state prior to the start of initial construction  
14 or expansion of the facility. The manufacturing concern shall  
15 submit an affidavit to the Tax Commission, signed by an officer,  
16 stating that the construction, acquisition or expansion of the  
17 facility will result in a net increase in the annualized payroll as  
18 required by this paragraph and that full-time-equivalent employees  
19 of the facility are or will be offered a basic health benefits plan  
20 as required by this paragraph. If, after the completion of such  
21 construction or expansion or after three (3) years from the start of  
22 initial construction or expansion, whichever occurs first, the  
23 construction, acquisition or expansion has not resulted in a net  
24 increase in the amount of annualized payroll, if required, or any



1 other qualification specified in this paragraph has not been met,  
2 the manufacturing concern shall pay an amount equal to the amount of  
3 any exemption granted, including penalties and interest thereon, to  
4 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5 5. Any new, acquired or expanded automotive final assembly  
6 manufacturing facility which does not meet the requirements of  
7 paragraph 4 of this subsection shall be granted an exemption only if  
8 all other requirements of this section are met and only if the  
9 investment cost of the construction, acquisition or expansion of the  
10 manufacturing facility is Three Hundred Million Dollars  
11 (\$300,000,000.00) or more and the manufacturing facility retains an  
12 average employment of one thousand seven hundred fifty (1,750) or  
13 more full-time-equivalent employees in the year in which the  
14 exemption is initially granted and in each of the four (4)  
15 subsequent years only if an average employment of one thousand seven  
16 hundred fifty (1,750) or more full-time-equivalent employees is  
17 maintained in the subsequent year. Any property installed to  
18 replace property damaged by the tornado or natural disaster that  
19 occurred May 8, 2003, may continue to receive the exemption provided  
20 in this paragraph for the full five-year period based on the value  
21 of the previously qualifying assets as of January 1, 2003. The  
22 exemption shall continue in effect as long as all other  
23 qualifications in this paragraph are met. If the average employment  
24 of one thousand seven hundred fifty (1,750) or more full-time-

1 equivalent employees is reduced as a result of temporary layoffs  
2 because of a tornado or natural disaster on May 8, 2003, then the  
3 average employment requirement shall be waived for year 2003 of the  
4 exemption period. Calculation of the number of employees shall be  
5 made in the same manner as required under Section 2357.4 of this  
6 title for an investment tax credit. As used in this paragraph,  
7 "expand" and "expansion" shall mean and include any increase to the  
8 size or scope of a facility as well as any renovation, restoration,  
9 replacement or remodeling of a facility which permits the  
10 manufacturing of a new or redesigned product;

11 6. Any new, acquired, or expanded computer data processing,  
12 data preparation, or information processing services provider  
13 classified in Industrial Group Number 7374 of the SIC Manual, latest  
14 revision, and U.S. Industry Number 514210 of the North American  
15 Industrial Classification System (NAICS) Manual, latest revision,  
16 may apply for exemptions under this section for each year in which  
17 new, acquired, or expanded capital improvements to the facility are  
18 made if:

19 a. there is a net increase in annualized payroll of the  
20 applicant at any facility or facilities of the  
21 applicant in this state of at least Two Hundred Fifty  
22 Thousand Dollars (\$250,000.00), which is attributable  
23 to the capital improvements, or a net increase of  
24 Seven Million Dollars (\$7,000,000.00) or more in

1 capital improvements, while maintaining or increasing  
2 payroll at the facility or facilities in this state  
3 which are included in the application, and

4 b. the facility offers, or will offer within one hundred  
5 eighty (180) days of the date of employment of new  
6 employees attributable to the capital improvements, a  
7 basic health benefits plan to the full-time-equivalent  
8 employees of the facility, which is determined by the  
9 Department of Commerce to consist of the elements  
10 specified in subparagraph b of paragraph 1 of  
11 subsection A of Section 3603 of this title or elements  
12 substantially equivalent thereto; and

13 7. An entity engaged in electric power generation by means of  
14 wind, as described by the North American Industry Classification  
15 System, No. 221119, which does not meet the requirements of  
16 paragraph 4 of this subsection shall be granted an exemption only if  
17 all other requirements of this section are met and only if there is  
18 a net increase in annualized payroll at the facility of at least Two  
19 Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of  
20 Two Million Dollars (\$2,000,000.00) or more in capital improvements  
21 while maintaining or increasing payroll.

22 D. ~~The~~ 1. Except as provided in paragraph 2 of this  
23 subsection, the five-year period of exemption from ad valorem taxes  
24 for any qualifying manufacturing facility property shall begin on

1 January 1 following the initial qualifying use of the property in  
2 the manufacturing process.

3 2. The five-year period of exemption from ad valorem taxes for  
4 any qualifying manufacturing facility, as defined in subparagraph c  
5 of paragraph 1 of subsection B of this section which is located  
6 within a tax incentive district created pursuant to the Local  
7 Development Act by a county having a population of at least five  
8 hundred thousand (500,000), according to the most recent federal  
9 decennial census, shall begin on January 1 following the expiration  
10 or termination of the ad valorem exemption, abatement, or other  
11 incentive provided through the tax incentive district.

12 E. Any person, firm or corporation claiming the exemption  
13 herein provided for shall file each year for which exemption is  
14 claimed, an application therefor with the county assessor of the  
15 county in which the new, expanded or acquired facility is located.  
16 The application shall be on a form or forms prescribed by the Tax  
17 Commission, and shall be filed on or before March 15, except as  
18 provided in Section 2902.1 of this title, of each year in which the  
19 facility desires to take the exemption or within thirty (30) days  
20 from and after receipt by such person, firm or corporation of notice  
21 of valuation increase, whichever is later. In a case where  
22 completion of the facility or facilities will occur after January 1  
23 of a given year, a facility may apply to claim the ad valorem tax  
24 exemption for that year. If such facility is found to be qualified

1 for exemption, the ad valorem tax exemption provided for herein  
2 shall be granted for that entire year and shall apply to the ad  
3 valorem valuation as of January 1 of that given year. For  
4 applicants which qualify under the provisions of subparagraph b of  
5 paragraph 1 of subsection B of this section, the application shall  
6 include a copy of the affidavit and any other information required  
7 to be filed with the Tax Commission.

8 F. The application shall be examined by the county assessor and  
9 approved or rejected in the same manner as provided by law for  
10 approval or rejection of claims for homestead exemptions. The  
11 taxpayer shall have the same right of review by and appeal from the  
12 county board of equalization, in the same manner and subject to the  
13 same requirements as provided by law for review and appeals  
14 concerning homestead exemption claims. Approved applications shall  
15 be filed by the county assessor with the Tax Commission no later  
16 than June 15, except as provided in Section 2902.1 of this title, of  
17 the year in which the facility desires to take the exemption.  
18 Incomplete applications and applications filed after June 15 will be  
19 declared null and void by the Tax Commission. In the event that a  
20 taxpayer qualified to receive an exemption pursuant to the  
21 provisions of this section shall make payment of ad valorem taxes in  
22 excess of the amount due, the county treasurer shall have the  
23 authority to credit the taxpayer's real or personal property tax  
24 overpayment against current taxes due. The county treasurer may

1 establish a schedule of up to five (5) years of credit to resolve  
2 the overpayment.

3 G. Nothing herein shall in any manner affect, alter or impair  
4 any law relating to the assessment of property, and all property,  
5 real or personal, which may be entitled to exemption hereunder shall  
6 be valued and assessed as is other like property and as provided by  
7 law. The valuation and assessment of property for which an  
8 exemption is granted hereunder shall be performed by the Tax  
9 Commission.

10 H. The Tax Commission shall have the authority and duty to  
11 prescribe forms and to promulgate rules as may be necessary to carry  
12 out and administer the terms and provisions of this section.

13 SECTION 11. Sections 1 through 9 of this act shall become  
14 effective January 1, 2009.

15 SECTION 12. It being immediately necessary for the preservation  
16 of the public peace, health and safety, an emergency is hereby  
17 declared to exist, by reason whereof this act shall take effect and  
18 be in full force from and after its passage and approval.

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20 51-2-10734 CJB 03/31/08

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