

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL 2129

By: Mazzei of the Senate

and

Peterson (Ron) and Brown of
the House

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10 CONFERENCE COMMITTEE 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; clarifying limitation on credit;
18 modifying requirements relating to borrowed funds for
19 which credits may be claimed; modifying circumstances
20 which qualify for tax credit recapture event;
21 amending 68 O.S. 2001, Sections 2357.61, 2357.62,
22 2357.63 and 2357.63B, as last amended by Sections 7,
23 8, 9 and 10, Chapter 281, O.S.L. 2006 (68 O.S. Supp
24 2007, Sections 2357.61, 2357.62, 2357.63 and
2357.63B), 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;
modifying circumstances which qualify for tax credit
recapture event; 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 Rural Venture Capital
Formation Incentive Act; modifying definition;
clarifying limitation on credit; modifying

1 requirements relating to borrowed funds for which
2 credits may be claimed; modifying circumstances which
3 qualify for tax credit recapture event; amending
4 Section 1, Chapter 458, O.S.L. 2005 (68 O.S. Supp.
5 2007, Section 2357.201), which relates to income tax
6 credits; updating references; extending expiration
7 date for credit; amending 68 O.S. 2001, Section 2902,
8 as last amended by Section 1, Chapter 352, O.S.L.
9 2007 (68 O.S. Supp. 2007, Section 2902), which
10 relates to ad valorem tax exemption; updating
11 reference; modifying start date for exemption under
12 certain circumstances; and declaring an emergency.

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

10 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.7, as
11 last amended by Section 2, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
12 2007, Section 2357.7), is amended to read as follows:

13 Section 2357.7 A. For taxable years beginning after December
14 31, 1986, and before January 1, 2009, there shall be allowed a
15 credit against the tax imposed by Section 2355 of this title or
16 Section 624 of Title 36 of the Oklahoma Statutes for investments in
17 qualified venture capital companies whose purpose is to establish or
18 expand the development of business and industry within Oklahoma.
19 Provided, tax credits against liabilities imposed pursuant to
20 Section 624 of Title 36 of the Oklahoma Statutes shall be limited to
21 the amount that would otherwise be collected and allocated to the
22 General Revenue Fund of the State Treasury.

23 B. For purposes of this section:
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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.

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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.

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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 Act
14 of 1933 or other applicable federal law governing the
15 sale of securities in interstate commerce, ~~or~~

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

18 d. repays indebtedness from net income as determined in
19 accordance with generally accepted accounting
20 principles or proceeds of the sale of assets in the
21 ordinary course of business; or

22 3. The Oklahoma Tax Commission finds that the investment does
23 not meet the requirements of Section 2357.7 of ~~Title 68 of the~~
24 ~~Oklahoma Statutes~~ this title.

1 B. If a recapture event occurs with respect to an investment
2 for which a credit authorized by Section 2357.7 of ~~Title 68 of the~~
3 ~~Oklahoma Statutes~~ this title was claimed, the tax imposed pursuant
4 to the applicable provisions of Title 36 ~~or Title 68~~ of the Oklahoma
5 Statutes or this title shall be increased to the extent of the
6 recaptured credit amount.

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

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

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

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

23 E. For any transaction that is audited by the Tax Commission
24 after such credits have been allowed, but which is subsequently

1 determined to constitute a recapture event, the Tax Commission shall
2 be required to disallow any and all credits claimed in violation of
3 the requirements of this section or any other provision of Section
4 2357.7 or 2357.8 of ~~Title 68 of the Oklahoma Statutes~~ this title for
5 a period of ten (10) years after the date as of which any applicable
6 tax report or return utilizing such credits is filed.

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

11 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.61, as
12 last amended by Section 7, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
13 2007, Section 2357.61), is amended to read as follows:

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

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

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

3 2. "Capitalization" means the amount of:

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

6 b. any contractual commitment to provide funds to the
7 qualified small business capital company to the extent
8 that such commitment is payable on demand and has
9 substantial economic penalties for breach of the
10 commitment to provide such funds, and

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

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

1 preferred stock, a royalty or net profits interest, or an interest
2 in a limited liability company or partnership;

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

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

8 a. has or will have, within one hundred eighty (180) days
9 after a qualified investment is made by a qualified
10 small business capital company, at least fifty percent
11 (50%) of its employees or assets located in Oklahoma,

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

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

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

21 (2) Major Group 2 of Division A,

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

24

1 e. expends within eighteen (18) months after the date of
2 the qualified investment at least fifty percent (50%)
3 of the proceeds of the qualified investment for the
4 acquisition of tangible or intangible assets which are
5 used in the active conduct of the trade or business or
6 to provide working capital for the active conduct of
7 the trade or business for which the determination of
8 the small business qualification pursuant to
9 subparagraph d of this paragraph was made. For
10 purposes of this subparagraph, "working capital" shall
11 not include consulting, brokerage or transaction fees.
12 Provided, that the Oklahoma Tax Commission, upon
13 request and demonstration of need by a qualified small
14 business capital company or an Oklahoma small business
15 venture, or an investor or an authorized agent of any
16 such entities, may extend the 18-month period
17 otherwise required by this subparagraph for a period
18 not to exceed six (6) months. Provided, the
19 expenditure of the invested funds by the Oklahoma
20 small business venture shall otherwise comply with the
21 requirements applicable to the usage of tax credits
22 for qualified investment in the Oklahoma small
23 business venture. As used in this subparagraph,
24 "tangible assets" shall include the acquisition of

1 real property and the construction of improvements
2 upon real property if such acquisition and
3 construction otherwise comply with the requirements
4 applicable to the usage of tax credits for qualified
5 investment in the Oklahoma small business venture, and
6 "intangible assets" shall be limited to computer
7 software, licenses, patents, copyrights and similar
8 items;

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

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

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

3 b. the principal place of business of the corporation,
4 limited liability company or partnership is located
5 within this state,

6 c. the capitalization of the corporation, limited
7 liability company or partnership is not less than One
8 Million Dollars (\$1,000,000.00), and

9 d. the corporation, limited liability company or
10 partnership has investment of not more than twenty
11 percent (20%) of its capitalization in any one company
12 at any time during the calendar year of the
13 corporation, limited liability company or partnership;
14 and

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

21 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.62, as
22 last amended by Section 8, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
23 2007, Section 2357.62), is amended to read as follows:

1 Section 2357.62 A. For taxable years beginning after December
2 31, 1997, and before January 1, 2012, there shall be allowed a
3 credit against the tax imposed by Section 2355 or, effective January
4 1, 2001, Section 2370 of this title or, effective July 1, 2001,
5 against the tax imposed by Section 624 or 628 of Title 36 of the
6 Oklahoma Statutes, for qualified investment in qualified small
7 business capital companies.

8 B. The credit provided for in subsection A of this section
9 shall be twenty percent (20%) of the qualified investment in
10 qualified small business capital companies which is subsequently
11 invested in an Oklahoma small business venture by the qualified
12 venture capital company and may only be claimed for a taxable year
13 during which the qualified small business capital company makes the
14 qualified investment in an Oklahoma small business venture. The
15 credit shall be allowed for the amount of the qualified investment
16 in an Oklahoma small business venture if the funds are used in
17 pursuit of a legitimate business purpose of the Oklahoma small
18 business venture consistent with its organizational instrument,
19 bylaws or other agreement responsible for the governance of the
20 small business venture. The qualified small business capital
21 company shall issue such reports as the Oklahoma Tax Commission may
22 require attributing the source of funds of each investment it makes
23 in an Oklahoma business venture. If the tax credit exceeds the
24 amount of taxes due or if there are no state taxes due of the

1 taxpayer, the amount of the claim not used as an offset against the
2 taxes of a taxable year may be carried forward for a period not to
3 exceed three (3) taxable years.

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

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

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

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

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

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

13 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.63, as
14 last amended by Section 9, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
15 2007, Section 2357.63), is amended to read as follows:

16 Section 2357.63 A. For taxable years beginning after December
17 31, 1997, and before January 1, 2012, there shall be allowed a
18 credit against the tax imposed by Section 2355 or, effective January
19 1, 2001, Section 2370 of this title or, effective July 1, 2001,
20 against the tax imposed by Section 624 or 628 of Title 36 of the
21 Oklahoma Statutes, for qualified investment made in Oklahoma small
22 business ventures in conjunction with investment in such ventures
23 made by a qualified small business capital company.

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1 B. The credit provided for in this section shall be twenty
2 percent (20%) of the qualified investment made in Oklahoma small
3 business ventures in conjunction with qualified investment in such
4 ventures made by a qualified small business capital company and
5 shall be allowed for the taxable year during which the qualified
6 investment is made in an Oklahoma small business venture. If the
7 tax credit allowed pursuant to subsection A of this section exceeds
8 the amount of taxes due or if there are no state taxes due of the
9 taxpayer, the amount of the claim not used as an offset against the
10 taxes of a taxable year may be carried forward for a period not to
11 exceed three (3) taxable years. To qualify for the credit
12 authorized by this section, a qualified investment shall be:

13 1. Made by a shareholder, member or partner of a qualified
14 small business capital company that has made a qualified investment
15 in an Oklahoma small business venture;

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

18 3. Made under the same terms and conditions as the qualified
19 investment made by the qualified small business capital company; and

20 4. Limited to the lesser of:

21 a. two hundred percent (200%) of any qualified investment
22 by the taxpayer in the qualified small business
23 capital company, or
24

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

4 C. No taxpayer may claim the credit provided for in this
5 section for a qualified investment made prior to January 1, 1998.

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

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

1 partnership, limited partnership, limited liability partnership,
2 trust, or limited liability company that for the applicable tax year
3 is not taxed as a corporation for federal income tax purposes.

4 SECTION 6. AMENDATORY Section 11, Chapter 281, O.S.L.
5 2006 (68 O.S. Supp. 2007, Section 2357.63B), is amended to read as
6 follows:

7 Section 2357.63B A. As used in this section, "recapture event"
8 means that with respect to a qualified investment in an Oklahoma
9 small business venture:

10 1. The Oklahoma small business venture fails to expend at least
11 fifty percent (50%) of the proceeds of qualified investments for
12 acquisition of tangible or intangible assets to be used in the
13 active conduct of the trade or business or for working capital for
14 the active conduct of the trade or business of the small business
15 venture within eighteen (18) months after the qualified investment
16 is made or within an extension of such period as provided in Section
17 2357.61 of ~~Title 68 of the Oklahoma Statutes~~ this title. For
18 purposes of this paragraph, "working capital" shall not include
19 consulting, brokerage or transaction fees;

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

1 Formation Incentive Act, a "market-based liquidity event" means that
2 an Oklahoma small business venture:

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

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

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

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

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

24

1 d. repays indebtedness from net income as determined in
2 accordance with generally accepted accounting
3 principles or proceeds of the sale of assets in the
4 ordinary course of business; or

5 3. The Oklahoma Tax Commission finds that the qualified
6 investment does not meet the requirements of the Small Business
7 Capital Formation Incentive Act.

8 B. If a recapture event occurs with respect to a qualified
9 investment for which a credit authorized by either Section 2357.62
10 or Section 2357.63 of ~~Title 68 of the Oklahoma Statutes~~ this title
11 was claimed, the tax imposed pursuant to the applicable provisions
12 of Title 36 or ~~Title 68~~ this title of the Oklahoma Statutes shall be
13 increased to the extent of the recaptured credit amount.

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

16 1. The aggregate decrease in the credits previously allowed to
17 the taxpayer pursuant to Section 2357.62 or Section 2357.63 of ~~Title~~
18 ~~68 of the Oklahoma Statutes~~ this title for all prior taxable periods
19 which would have resulted if no credit had been authorized with
20 respect to the qualified investment; plus

21 2. Interest at the rate prescribed by Section 217 of ~~Title 68~~
22 ~~of the Oklahoma Statutes~~ this title on the amount determined
23 pursuant to paragraph 1 of this subsection for each prior taxable
24

1 period for the period beginning on the due date for filing the
2 applicable report or return for the prior taxable period.

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

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

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

19 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.72, as
20 last amended by Section 18, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
21 2007, Section 2357.72), is amended to read as follows:

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

24

1 1. "Acquisition" means the use of capital by an Oklahoma rural
2 small business venture within six (6) months after obtaining the
3 capital to purchase fifty-one percent (51%) or more of the voting
4 interest entitled to elect the governing board, or its equivalent,
5 of any other legal entity, regardless of the legal form of the
6 entity. As used in ~~this act~~ the Rural Venture Capital Formation
7 Incentive Act, "acquisition" does not mean the right to participate
8 in the proceeds from sale of goods or services, whether denominated
9 a royalty, royalty interest or otherwise, and does not mean the
10 right to intellectual property, whether the rights arise from
11 copyright, trademark or patent law;

12 2. "Capitalization" means the amount of:

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

15 b. any contractual commitment to provide funds to the
16 qualified rural small business capital company to the
17 extent that such commitment is payable on demand and
18 has substantial economic penalties for breach of the
19 commitment to provide such funds,

20 c. any allocation of tax credit authority awarded to the
21 qualified rural small business capital company by the
22 Community Development Financial Institutions Fund
23 pursuant to Section 45D of the Internal Revenue Code
24 of 1986, as amended, to the extent such allocation has

1 not been previously designated by the qualified rural
2 small business capital company as contemplated by
3 Section 45D(b)(1)(C) of the Internal Revenue Code of
4 1986, as amended, and

5 d. any funds loaned to the qualified rural small business
6 capital company, which is licensed as a rural business
7 investment company under 7 U.S.C., Section 2009cc et
8 seq., or any successor statute, by the U.S. Small
9 Business Administration or U.S. Department of
10 Agriculture;

11 3. "Equity and near-equity security" means common stock,
12 preferred stock, warrants or other rights to subscribe to stock or
13 its equivalent, or an interest in a limited liability company,
14 partnership, or subordinated debt that is convertible into, or
15 entitles the holder to receive upon its exercise, common stock,
16 preferred stock, a royalty or net profits interest, or an interest
17 in a limited liability company or partnership;

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

21 5. "Nonmetropolitan area" means all areas of the state except a
22 county having a population in excess of one hundred thousand
23 (100,000) persons according to the most recent Federal Decennial
24 Census;

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

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

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

11 c. has its principal place of business within a
12 nonmetropolitan area of the state and conducts the
13 activity resulting in at least seventy-five percent
14 (75%) of its gross annual revenue from a
15 nonmetropolitan area of the state,

16 d. except as otherwise provided by this subparagraph, is
17 engaged in a lawful business activity under any
18 Industry Number appearing under any Major Group Number
19 of Divisions A, C, D, E, F or I of the Standard
20 Industrial Classification Manual, 1987 revision with
21 the following exceptions:

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

23 (2) Major Group 2 of Division A,
24

1 e. qualifies as a small business as defined by the
2 federal Small Business Administration, and
3 f. expends within eighteen (18) months after the date of
4 the qualified investment at least fifty percent (50%)
5 of the proceeds of the qualified investment for the
6 acquisition of tangible or intangible assets which are
7 used in the active conduct of the trade or business or
8 for working capital for the active conduct of such
9 trade or business for which the determination of the
10 small business qualification pursuant to subparagraph
11 e of this paragraph was made. For purposes of this
12 subparagraph, "working capital" shall not include
13 consulting, brokerage or transaction fees. Provided,
14 that the Oklahoma Tax Commission, upon request and
15 demonstration by a qualified rural small business
16 capital company or an Oklahoma rural small business
17 venture, or an investor or an authorized agent of any
18 such entities, may extend the 18-month period
19 otherwise required by this subparagraph for a period
20 not to exceed six (6) months. Provided, the
21 expenditure of the invested funds by the Oklahoma
22 rural small business shall otherwise comply with the
23 requirements applicable to the usage of tax credits
24 for qualified investment in the Oklahoma rural small

1 business venture. As used in this subparagraph,
2 "tangible assets" shall include the acquisition of
3 real property and the construction of improvements
4 upon real property if such acquisition and
5 construction otherwise comply with the requirements
6 applicable to the usage of tax credits for qualified
7 investment in the Oklahoma rural small business
8 venture, and "intangible assets" shall be limited to
9 computer software, licenses, patents, copyrights and
10 similar items;

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

18 8. "Qualified rural small business capital company" means a C
19 corporation or a subchapter S corporation, as defined by the
20 Internal Revenue Code of 1986, as amended, incorporated pursuant to
21 the laws of Oklahoma, limited liability company or a registered
22 business partnership with a certificate of partnership filed as
23 required by law, which meets the following criteria:
24

- 1 a. the corporation, limited liability company or
2 partnership is organized to provide the direct
3 investment of equity and near-equity funds to
4 companies within this state,
- 5 b. the principal place of business of the corporation,
6 limited liability company or partnership is located
7 within this state,
- 8 c. the capitalization of the corporation, limited
9 liability company or partnership is not less than Five
10 Hundred Thousand Dollars (\$500,000.00), and
- 11 d. the corporation, limited liability company or
12 partnership has investment of not more than twenty-
13 five percent (25%) of its capitalization in any one
14 company at any time during the calendar year of the
15 corporation, limited liability company or partnership;
16 and

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

23
24

1 SECTION 8. AMENDATORY 68 O.S. 2001, Section 2357.73, as
2 last amended by Section 19, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
3 2007, Section 2357.73), is amended to read as follows:

4 Section 2357.73 A. For taxable years beginning after December
5 31, 2000, and before January 1, 2012, there shall be allowed a
6 credit against the tax imposed by Section 2355 or, effective January
7 1, 2001, Section 2370 of this title or, effective July 1, 2001,
8 against the tax imposed by Section 624 or 628 of Title 36 of the
9 Oklahoma Statutes, for qualified investment in qualified rural small
10 business capital companies.

11 B. The credit provided for in subsection A of this section
12 shall be thirty percent (30%) of the amount of a qualified
13 investment in qualified rural small business capital companies which
14 is subsequently invested in an Oklahoma rural small business venture
15 by the qualified rural small business capital company and may only
16 be claimed for a taxable year during which the qualified rural small
17 business capital company makes the qualified investment in an
18 Oklahoma rural small business venture if the funds are used in
19 pursuit of a legitimate business purpose of the Oklahoma rural small
20 business venture consistent with its organizational instrument,
21 bylaws or other agreement responsible for the governance of the
22 rural small business venture. The qualified rural small business
23 capital company shall issue such reports as the Oklahoma Tax
24 Commission may require attributing the source of funds of each

1 qualified investment it makes in an Oklahoma rural small business
2 venture. If the tax credit exceeds the amount of taxes due or if
3 there are no state taxes due of the taxpayer, the amount of the
4 claim not used as an offset against the taxes of a taxable year may
5 be carried forward for a period not to exceed three (3) taxable
6 years.

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

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

14 E. No financial lending institution shall be eligible to claim
15 the credit provided for in this section except with respect to
16 qualified investments in a qualified rural small business capital
17 company.

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

21 G. If a pass-through entity is entitled to a credit under this
22 section, the pass-through entity shall allocate such credit to one
23 or more of the shareholders, partners or members of the pass-through
24 entity; provided, the total of all credits allocated shall not

1 exceed the amount of the credit to which the pass-through entity is
2 entitled. The credit may only be claimed for funds borrowed by the
3 pass-through entity to make a qualified investment if a shareholder,
4 partner or member to whom the credit is allocated has a an unlimited
5 and continuing legal obligation to repay the borrowed funds but the
6 allocation may not exceed such shareholder's, partner's or member's
7 pro-rata equity share of the pass-through entity even if the
8 taxpayer's legal obligation to repay the borrowed funds is in excess
9 of such amount. For purposes of ~~this act~~ the Rural Venture Capital
10 Formation Incentive Act, "pass-through entity" means a corporation
11 that for the applicable tax years is treated as an S corporation
12 under the Internal Revenue Code, general partnership, limited
13 partnership, limited liability partnership, trust, or limited
14 liability company that for the applicable tax year is not taxed as a
15 corporation for federal income tax purposes.

16 SECTION 9. AMENDATORY 68 O.S. 2001, Section 2357.74, as
17 last amended by Section 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
18 2007, Section 2357.74), is amended to read as follows:

19 Section 2357.74 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 Oklahoma Statutes, for qualified investment made in Oklahoma rural

1 small business ventures in conjunction with investment in such
2 ventures made by a qualified rural small business capital company.

3 B. The credit provided for in this section shall be thirty
4 percent (30%) of the qualified investment made in Oklahoma rural
5 small business ventures in conjunction with qualified investment in
6 such ventures made by a qualified rural small business capital
7 company and shall be allowed for the taxable year during which the
8 qualified investment is made in an Oklahoma rural small business
9 venture. If the tax credit allowed pursuant to subsection A of this
10 section exceeds the amount of taxes due or if there are no state
11 taxes due of the taxpayer, the amount of the claim not used as an
12 offset against the taxes of a taxable year may be carried forward
13 for a period not to exceed three (3) taxable years. To qualify for
14 the credit authorized by this section, a qualified investment shall
15 be:

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

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

21 3. Made under the same terms and conditions as the qualified
22 investment made by the qualified rural small business capital
23 company; and

24 4. Limited to the lesser of:

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

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

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

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

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

1 Formation Incentive Act, "pass-through entity" means a corporation
2 that for the applicable tax years is treated as an S corporation
3 under the Internal Revenue Code, general partnership, limited
4 partnership, limited liability partnership, trust, or limited
5 liability company that for the applicable tax year is not taxed as a
6 corporation for federal income tax purposes.

7 SECTION 10. AMENDATORY Section 22, Chapter 281, O.S.L.
8 2006 (68 O.S. Supp. 2007, Section 2357.74B), is amended to read as
9 follows:

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

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

23 2. The investment in the rural small business venture is
24 transferred, withdrawn or otherwise returned within five (5) years;

1 provided, a "recapture event" shall not include the transfer,
2 withdrawal or return of an investment as a result of a "market-based
3 liquidity event". As used in ~~this act~~ the Rural Venture Capital
4 Formation Incentive Act, a "market-based liquidity event" means that
5 an Oklahoma rural small business venture:

6 a. sells all or substantially all of its assets to, or is
7 acquired by share acquisition, share exchange, merger,
8 consolidation or other similar transaction by another
9 person or entity other than:

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

15 (2) a person or entity controlled by a person that
16 made an investment in conjunction with a
17 qualified investment made by the qualified rural
18 small business capital company that provided
19 funds for use by the Oklahoma rural small
20 business venture,

21 b. conducts an initial public offering of a class of its
22 equity securities pursuant to the requirements of the
23 United States Securities and Exchange Commission or
24

1 other applicable federal law governing the sale of
2 securities in interstate commerce, ~~or~~

3 c. makes an amortization payment under the terms of a
4 subordinated debt instrument, or

5 d. repays indebtedness from net income as determined in
6 accordance with generally accepted accounting
7 principles or proceeds of the sale of assets in the
8 ordinary course of business; or

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

12 B. If a recapture event occurs with respect to a qualified
13 investment for which a credit authorized by either Section 2357.73
14 or Section 2357.74 of ~~Title 68 of the Oklahoma Statutes~~ this title
15 has been claimed, the tax imposed pursuant to the applicable
16 provisions of Title 36 or ~~Title 68~~ this title of the Oklahoma
17 Statutes against which the credit has been claimed shall be
18 increased to the extent of the recaptured credit amount.

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

21 1. The aggregate decrease in the credits previously allowed to
22 the taxpayer pursuant to Section 2357.73 or Section 2357.74 of ~~Title~~
23 ~~68 of the Oklahoma Statutes~~ this title for all prior taxable periods
24

1 which would have resulted if no credit had been authorized with
2 respect to the qualified investment; plus

3 2. Interest at the rate prescribed by Section 217 of ~~Title 68~~
4 ~~of the Oklahoma Statutes~~ this title on the amount determined
5 pursuant to paragraph 1 of this subsection for each prior taxable
6 period for the period beginning on the due date for filing the
7 applicable report or return for the prior taxable period.

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

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

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

24

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

9 SECTION 11. AMENDATORY Section 1, Chapter 458, O.S.L.
10 2005 (68 O.S. Supp. 2007, Section 2357.201), is amended to read as
11 follows:

12 Section 2357.201 A. As used in this act:

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

16 a. organized as a corporation, partnership, limited
17 liability company or other entity having limited
18 liability pursuant to the laws of the State of Oklahoma
19 or the laws of another state, if such entity is
20 registered to do business within the state, a general
21 partnership, limited liability partnership, limited
22 liability limited partnership or other legal entity
23 having the right to conduct lawful business within the
24 state,

- 1 b. whose principal business activities are described by
2 the North American Industry Classification System by
3 Industry No. 514210, or Industry No. 541512 or Industry
4 No. 541519 as reflected in the 1997 edition of such
5 publication,
- 6 c. that makes at least seventy-five percent (75%) of its
7 sales to out-of-state customers or buyers which shall
8 be determined in the same manner as provided for
9 purposes of the Oklahoma Quality Jobs Program Act,
- 10 d. that is a high-speed processing facility in Oklahoma
11 utilizing systems such as TPF, zTPF or other advanced
12 technical systems,
- 13 e. that, as of ~~the effective date of this act~~ July 1,
14 2005, maintains an Oklahoma annual payroll of at least
15 Eighty-five Million Dollars (\$85,000,000.00), and
- 16 f. that, as of ~~the effective date of this act~~ July 1,
17 2005, maintains an Oklahoma labor force of one thousand
18 (1,000) or more persons;

19 2. "Qualified capital expenditures" means those costs incurred
20 by the qualified business enterprise for acquisition of personal
21 property to be used in business operations within the state that
22 qualifies for depreciation and/or amortization pursuant to the
23 Internal Revenue Code of 1986, as amended, during the taxable year
24 for which the credit authorized by this section is claimed, or costs

1 incurred to refurbish, repair or maintain any existing personal
2 property located within the state;

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

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

13 B. For taxable years beginning after December 31, 2005, and
14 ending not later than December 31, ~~2008~~ 2013, there shall be allowed
15 as a credit against the tax imposed by Section 2355 of ~~Title 68 of~~
16 ~~the Oklahoma Statutes~~ this title, subject to the limitations imposed
17 by subsection C of this section, an amount equal to fifteen percent
18 (15%) of:

- 19 1. Qualified capital expenditures; or
- 20 2. Qualified wages; or
- 21 3. Qualified training expenses; or
- 22 4. The sum of any of the expenses identified in paragraphs 1
23 through 3 of this subsection, in any combination.

24

1 C. For purposes of computing the credit amount prescribed by
2 subsection B of this section, the expenses described by paragraphs
3 1, 2 and 3 of subsection B of this section may be added together or
4 considered independently, but the total credit amount shall not
5 exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) each year
6 for the fiscal year ending June 30, 2007, the fiscal year ending
7 June 30, 2008, ~~and~~ the fiscal year ending June 30, 2009, and for all
8 subsequent fiscal years.

9 D. For purposes of the expenditures described by subsection B
10 of this section a qualified business enterprise may incur
11 expenditures beginning January 1, 2005, through December 31, ~~2008~~
12 2013, for purposes of computing the credit amount. The claim for
13 such credits earned for the fiscal year ending June 30, 2007, shall
14 not be filed earlier than July 1, 2006, and the claims for each
15 subsequent taxable year may be filed no earlier than July 1 of each
16 of the ~~two (2)~~ applicable succeeding years.

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

21 F. If the amount of the credit allowable is in excess of the
22 tax liability, the amount of the credit not used shall be refunded
23 to the taxpayer subject to the total limit of Three Hundred Fifty
24 Thousand Dollars (\$350,000.00) each year for the fiscal year ending

1 June 30, 2007, the fiscal year ending June 30, 2008, ~~and~~ the fiscal
2 year ending June 30, 2009, and each of the applicable subsequent
3 fiscal years.

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

7 H. The credit authorized by the provisions of this section
8 shall not be transferable.

9 I. The Tax Commission may prescribe forms for purposes of
10 claiming the credit authorized by this section and for verifying
11 eligibility for the credit.

12 SECTION 12. AMENDATORY 68 O.S. 2001, Section 2902, as
13 last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp.
14 2007, Section 2902), is amended to read as follows:

15 Section 2902. A. Except as otherwise provided by subsection H
16 of Section 3658 of this title pursuant to which the exemption
17 authorized by this section may not be claimed, a qualifying
18 manufacturing concern, as defined by Section 6B of Article X of the
19 Oklahoma Constitution, and as further defined herein, shall be
20 exempt from the levy of any ad valorem taxes upon new, expanded or
21 acquired manufacturing facilities, including facilities engaged in
22 research and development, for a period of five (5) years. The
23 provisions of Section 6B of Article X of the Oklahoma Constitution
24 requiring an existing facility to have been unoccupied for a period

1 of twelve (12) months prior to acquisition shall be construed as a
2 qualification for a facility to initially receive an exemption, and
3 shall not be deemed to be a qualification for that facility to
4 continue to receive an exemption in each of the four (4) years
5 following the initial year for which the exemption was granted.
6 Such facilities are hereby classified for the purposes of taxation
7 as provided in Section 22 of Article X of the Oklahoma Constitution.

8 B. For purposes of this section, the following definitions
9 shall apply:

10 1. "Manufacturing facilities" means facilities engaged in the
11 mechanical or chemical transformation of materials or substances
12 into new products and shall include:

- 13 a. establishments which have received a manufacturer
14 exemption permit pursuant to the provisions of Section
15 1359.2 of this title,
- 16 b. facilities, including repair and replacement parts,
17 primarily engaged in aircraft repair, building and
18 rebuilding whether or not on a factory basis,
- 19 c. establishments primarily engaged in computer services
20 and data processing as defined under Industrial Group
21 Numbers 5112 and 5415, and U.S. Industry Number 334611
22 and 518112 of the NAICS Manual, latest revision, and
23 which derive at least fifty percent (50%) of their
24 annual gross revenues from the sale of a product or

1 service to an out-of-state buyer or consumer, and as
2 defined under Industrial Group Number 5142 of the
3 NAICS Manual, latest revision, which derive at least
4 eighty percent (80%) of their annual gross revenues
5 from the sale of a product or service to an out-of-
6 state buyer or consumer. Eligibility as a
7 manufacturing facility pursuant to this subparagraph
8 shall be established, subject to review by the
9 Oklahoma Tax Commission, by annually filing an
10 affidavit with the Tax Commission stating that the
11 facility so qualifies and such other information as
12 required by the Tax Commission. For purposes of
13 determining whether annual gross revenues are derived
14 from sales to out-of-state buyers, all sales to the
15 federal government shall be considered to be an out-
16 of-state buyer,

- 17 d. for which the investment cost of the construction,
18 acquisition or expansion of the manufacturing facility
19 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
20 more. Provided, "investment cost" shall not include
21 the cost of direct replacement, refurbish, repair or
22 maintenance of existing machinery or equipment, and
23 e. establishments primarily engaged in distribution as
24 defined under Industry Numbers 49311, 49312, 49313 and

1 49319 and Industry Sector Number 42 of the NAICS
2 Manual, latest revision, and which meet the following
3 qualifications;

- 4 (1) construction with an initial capital investment
5 of at least Five Million Dollars (\$5,000,000.00),
- 6 (2) employment of at least one hundred (100) full-
7 time-equivalent employees, as certified by the
8 Oklahoma Employment Security Commission,
- 9 (3) payment of wages or salaries to its employees at
10 a wage which equals or exceeds one hundred
11 seventy-five percent (175%) of the federally
12 mandated minimum wage, as certified by the
13 Oklahoma Employment Security Commission, and
- 14 (4) commencement of construction on or after ~~the~~
15 ~~effective date of this act~~ November 1, 2007, with
16 construction to be completed within three (3)
17 years from the date of the commencement of
18 construction.

19 Eligibility as a manufacturing facility pursuant to this
20 subparagraph shall be established, subject to review by the Tax
21 Commission, by annually filing an affidavit with the Tax Commission
22 stating that the facility so qualifies and containing such other
23 information as required by the Tax Commission.

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

4 Eligibility as a manufacturing facility pursuant to this
5 subparagraph shall be established, subject to review by the Tax
6 Commission, by annually filing an application with the Tax
7 Commission stating that the facility so qualifies and containing
8 such other information as required by the Tax Commission;

9 2. "Facility" and "facilities" means and includes the land,
10 buildings, structures, improvements, machinery, fixtures, equipment
11 and other personal property used directly and exclusively in the
12 manufacturing process; and

13 3. "Research and development" means activities directly related
14 to and conducted for the purpose of discovering, enhancing,
15 increasing or improving future or existing products or processes or
16 productivity.

17 C. The following provisions shall apply:

18 1. A manufacturing concern shall be entitled to the exemption
19 herein provided for each new manufacturing facility constructed,
20 each existing manufacturing facility acquired and the expansion of
21 existing manufacturing facilities on the same site, as such terms
22 are defined by Section 6B of Article X of the Oklahoma Constitution
23 and by this section;

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

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

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

- 14 a. there is a net increase in annualized payroll of at
15 least Two Hundred Fifty Thousand Dollars (\$250,000.00)
16 if the facility is located in a county with a
17 population of fewer than seventy-five thousand
18 (75,000), according to the most recent federal
19 decennial census, while maintaining or increasing
20 payroll in subsequent years, or at least One Million
21 Dollars (\$1,000,000.00) if the facility is located in
22 a county with a population of seventy-five thousand
23 (75,000) or more, according to the most recent federal

1 decennial census, while maintaining or increasing
2 payroll in subsequent years.

3 The Tax Commission shall verify payroll information
4 through the Oklahoma Employment Security Commission by
5 using reports from the Oklahoma Employment Security
6 Commission for the calendar year immediately preceding
7 the year for which initial application is made for
8 base-line payroll, which must be maintained or
9 increased for each subsequent year; provided, a
10 manufacturing facility shall have the option of
11 excluding from its payroll, for purposes of this
12 section, payments to sole proprietors, members of a
13 partnership, members of a limited liability company
14 who own at least ten percent (10%) of the capital of
15 the limited liability company or stockholder-employees
16 of a corporation who own at least ten percent (10%) of
17 the stock in the corporation. A manufacturing
18 facility electing this option shall indicate such
19 election upon its application for an exemption under
20 this section. Any manufacturing facility electing
21 this option shall submit such information as the Tax
22 Commission may require in order to verify payroll
23 information. Payroll information submitted pursuant
24 to the provisions of this paragraph shall be submitted

1 to the Tax Commission and shall be subject to the
2 provisions of Section 205 of this title, and

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

11 For purposes of this section, calculation of the amount of
12 increased payroll shall be measured from the start of initial
13 construction or expansion to the completion of such construction or
14 expansion or for three (3) years from the start of initial
15 construction or expansion, whichever occurs first. The amount of
16 increased payroll shall include payroll for full-time-equivalent
17 employees in this state who are employed by an entity other than the
18 facility which has previously or is currently qualified to receive
19 an exemption pursuant to the provisions of this section and who are
20 leased or otherwise provided to the facility, if such employment did
21 not exist in this state prior to the start of initial construction
22 or expansion of the facility. The manufacturing concern shall
23 submit an affidavit to the Tax Commission, signed by an officer,
24 stating that the construction, acquisition or expansion of the

1 facility will result in a net increase in the annualized payroll as
2 required by this paragraph and that full-time-equivalent employees
3 of the facility are or will be offered a basic health benefits plan
4 as required by this paragraph. If, after the completion of such
5 construction or expansion or after three (3) years from the start of
6 initial construction or expansion, whichever occurs first, the
7 construction, acquisition or expansion has not resulted in a net
8 increase in the amount of annualized payroll, if required, or any
9 other qualification specified in this paragraph has not been met,
10 the manufacturing concern shall pay an amount equal to the amount of
11 any exemption granted, including penalties and interest thereon, to
12 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

13 5. Any new, acquired or expanded automotive final assembly
14 manufacturing facility which does not meet the requirements of
15 paragraph 4 of this subsection shall be granted an exemption only if
16 all other requirements of this section are met and only if the
17 investment cost of the construction, acquisition or expansion of the
18 manufacturing facility is Three Hundred Million Dollars
19 (\$300,000,000.00) or more and the manufacturing facility retains an
20 average employment of one thousand seven hundred fifty (1,750) or
21 more full-time-equivalent employees in the year in which the
22 exemption is initially granted and in each of the four (4)
23 subsequent years only if an average employment of one thousand seven
24 hundred fifty (1,750) or more full-time-equivalent employees is

1 maintained in the subsequent year. Any property installed to
2 replace property damaged by the tornado or natural disaster that
3 occurred May 8, 2003, may continue to receive the exemption provided
4 in this paragraph for the full five-year period based on the value
5 of the previously qualifying assets as of January 1, 2003. The
6 exemption shall continue in effect as long as all other
7 qualifications in this paragraph are met. If the average employment
8 of one thousand seven hundred fifty (1,750) or more full-time-
9 equivalent employees is reduced as a result of temporary layoffs
10 because of a tornado or natural disaster on May 8, 2003, then the
11 average employment requirement shall be waived for year 2003 of the
12 exemption period. Calculation of the number of employees shall be
13 made in the same manner as required under Section 2357.4 of this
14 title for an investment tax credit. As used in this paragraph,
15 "expand" and "expansion" shall mean and include any increase to the
16 size or scope of a facility as well as any renovation, restoration,
17 replacement or remodeling of a facility which permits the
18 manufacturing of a new or redesigned product;

19 6. Any new, acquired, or expanded computer data processing,
20 data preparation, or information processing services provider
21 classified in Industrial Group Number 7374 of the SIC Manual, latest
22 revision, and U.S. Industry Number 514210 of the North American
23 Industrial Classification System (NAICS) Manual, latest revision,
24 may apply for exemptions under this section for each year in which

1 new, acquired, or expanded capital improvements to the facility are
2 made if:

3 a. there is a net increase in annualized payroll of the
4 applicant at any facility or facilities of the
5 applicant in this state of at least Two Hundred Fifty
6 Thousand Dollars (\$250,000.00), which is attributable
7 to the capital improvements, or a net increase of
8 Seven Million Dollars (\$7,000,000.00) or more in
9 capital improvements, while maintaining or increasing
10 payroll at the facility or facilities in this state
11 which are included in the application, and

12 b. the facility offers, or will offer within one hundred
13 eighty (180) days of the date of employment of new
14 employees attributable to the capital improvements, a
15 basic health benefits plan to the full-time-equivalent
16 employees of the facility, which is determined by the
17 Department of Commerce to consist of the elements
18 specified in subparagraph b of paragraph 1 of
19 subsection A of Section 3603 of this title or elements
20 substantially equivalent thereto; and

21 7. An entity engaged in electric power generation by means of
22 wind, as described by the North American Industry Classification
23 System, No. 221119, which does not meet the requirements of
24 paragraph 4 of this subsection shall be granted an exemption only if

1 all other requirements of this section are met and only if there is
2 a net increase in annualized payroll at the facility of at least Two
3 Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of
4 Two Million Dollars (\$2,000,000.00) or more in capital improvements
5 while maintaining or increasing payroll.

6 D. The 1. Except as provided in paragraph 2 of this
7 subsection, the five-year period of exemption from ad valorem taxes
8 for any qualifying manufacturing facility property shall begin on
9 January 1 following the initial qualifying use of the property in
10 the manufacturing process.

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

20 E. Any person, firm or corporation claiming the exemption
21 herein provided for shall file each year for which exemption is
22 claimed, an application therefor with the county assessor of the
23 county in which the new, expanded or acquired facility is located.
24 The application shall be on a form or forms prescribed by the Tax

1 Commission, and shall be filed on or before March 15, except as
2 provided in Section 2902.1 of this title, of each year in which the
3 facility desires to take the exemption or within thirty (30) days
4 from and after receipt by such person, firm or corporation of notice
5 of valuation increase, whichever is later. In a case where
6 completion of the facility or facilities will occur after January 1
7 of a given year, a facility may apply to claim the ad valorem tax
8 exemption for that year. If such facility is found to be qualified
9 for exemption, the ad valorem tax exemption provided for herein
10 shall be granted for that entire year and shall apply to the ad
11 valorem valuation as of January 1 of that given year. For
12 applicants which qualify under the provisions of subparagraph b of
13 paragraph 1 of subsection B of this section, the application shall
14 include a copy of the affidavit and any other information required
15 to be filed with the Tax Commission.

16 F. The application shall be examined by the county assessor and
17 approved or rejected in the same manner as provided by law for
18 approval or rejection of claims for homestead exemptions. The
19 taxpayer shall have the same right of review by and appeal from the
20 county board of equalization, in the same manner and subject to the
21 same requirements as provided by law for review and appeals
22 concerning homestead exemption claims. Approved applications shall
23 be filed by the county assessor with the Tax Commission no later
24 than June 15, except as provided in Section 2902.1 of this title, of

1 the year in which the facility desires to take the exemption.
2 Incomplete applications and applications filed after June 15 will be
3 declared null and void by the Tax Commission. In the event that a
4 taxpayer qualified to receive an exemption pursuant to the
5 provisions of this section shall make payment of ad valorem taxes in
6 excess of the amount due, the county treasurer shall have the
7 authority to credit the taxpayer's real or personal property tax
8 overpayment against current taxes due. The county treasurer may
9 establish a schedule of up to five (5) years of credit to resolve
10 the overpayment.

11 G. Nothing herein shall in any manner affect, alter or impair
12 any law relating to the assessment of property, and all property,
13 real or personal, which may be entitled to exemption hereunder shall
14 be valued and assessed as is other like property and as provided by
15 law. The valuation and assessment of property for which an
16 exemption is granted hereunder shall be performed by the Tax
17 Commission.

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

21 SECTION 13. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
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24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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