

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 2129

By: Mazzei of the Senate

and

(Brown and Peterson (Ron))
of the House

8
9
10 COMMITTEE SUBSTITUTE

[revenue and taxation - income tax credits -
11 clarifying limitation - effective date]

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

15 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.7, as
16 last amended by Section 2, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
17 2007, Section 2357.7), is amended to read as follows:

18 Section 2357.7 A. For taxable years beginning after December
19 31, 1986, and before January 1, 2009, there shall be allowed a
20 credit against the tax imposed by Section 2355 of this title or
21 Section 624 of Title 36 of the Oklahoma Statutes for investments in
22 qualified venture capital companies whose purpose is to establish or
23 expand the development of business and industry within Oklahoma.
24 Provided, tax credits against liabilities imposed pursuant to

1 Section 624 of Title 36 of the Oklahoma Statutes shall be limited to
2 the amount that would otherwise be collected and allocated to the
3 General Revenue Fund of the State Treasury.

4 B. For purposes of this section:

5 1. "Qualified venture capital company" means a C corporation,
6 as defined by the Internal Revenue Code of 1986, as amended,
7 incorporated pursuant to the laws of Oklahoma or a registered
8 business partnership with a certificate of partnership filed as
9 required by law if such corporation or partnership is organized to
10 provide the direct investment of debt and equity funds to companies
11 within this state, with its principal place of business located
12 within this state and which meets the following criteria:

13 a. capitalization of not less than Five Million Dollars
14 (\$5,000,000.00),

15 b. having a purpose and objective of investing at least
16 seventy-five percent (75%) of its capitalization in
17 Oklahoma business ventures. The temporary investment
18 of funds by a qualified venture capital company in
19 obligations of the United States, state and municipal
20 bonds, bank certificates of deposit, or money market
21 securities pending investment in Oklahoma business
22 ventures is hereby authorized, and

23 c. investment of not more than ten percent (10%) of its
24 funds in any one company;

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

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

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

10 c. is not engaged in oil and gas exploration, real estate
11 development, real estate sales, retail sales of food
12 or clothing, farming, ranching, banking, or lending or
13 investing funds in other businesses. Provided,
14 however, businesses which provide or intend to provide
15 goods or services, including, but not limited to,
16 goods or services involving new technology, equipment,
17 or techniques to such businesses listed in this
18 subparagraph, and investments in the development of
19 tourism facilities in the form of amusement parks,
20 entertainment parks, theme parks, golf courses, or
21 museums shall not be subject to said prohibition, and
22 d. expends within eighteen (18) months after the date of
23 the investment at least fifty percent (50%) of the
24 proceeds of the investment for the acquisition of

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

3 3. "Direct investment" means the purchase of securities of a
4 private company, or securities of a public company if the securities
5 constitute a new issue of a public company and such public company
6 had previous year sales of less than Ten Million Dollars
7 (\$10,000,000.00); and

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

16 C. The credit provided for in subsection A of this section
17 shall be twenty percent (20%) of the cash amount invested in
18 qualified venture capital companies which is subsequently invested
19 in an Oklahoma business venture by the qualified venture capital
20 company and may only be claimed for a taxable year during which the
21 qualified venture capital company makes an investment in an Oklahoma
22 business venture. The credit shall be allowed for the amount of the
23 investment in an Oklahoma business venture if the funds are used in
24 pursuit of a legitimate business purpose of the Oklahoma business

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

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

1 E. No investor whose capital is guaranteed by the Oklahoma
2 Capital Investment Board may claim or transfer the credit provided
3 for in subsection A of this section for investments in such
4 guaranteed portfolio.

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

9 G. 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 also 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 pro-rata share of such borrowed funds. For purposes of this
22 act, "pass-through entity" means a corporation that for the
23 applicable tax years is treated as an S corporation under the
24 Internal Revenue Code, general partnership, limited partnership,

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

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

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

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

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1 2. The investment in the Oklahoma business venture is
2 transferred, withdrawn or otherwise returned within five (5) years;
3 provided, a "recapture event" shall not include the transfer,
4 withdrawal or return of an investment as a result of a "market-based
5 liquidity event". As used in ~~this act~~ Section 2351 et seq. of this
6 title, a "market-based liquidity event" means that an Oklahoma
7 business venture:

- 8 a. sells all or substantially all of its assets to, or is
9 acquired by share acquisition, share exchange, merger,
10 consolidation or other similar transaction by another
11 person or entity other than a person or entity
12 controlled by a person that made an investment in the
13 qualified venture capital company that provided funds
14 for use by the Oklahoma business venture,
- 15 b. conducts an initial public offering of a class of its
16 equity securities pursuant to the requirements of the
17 United States Securities and Exchange Commission or
18 other applicable federal law governing the sale of
19 securities in interstate commerce, or
- 20 c. makes an amortization payment under the terms of a
21 debt instrument; 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~~ 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 without
9 condition and has substantial economic penalties for
10 breach of the 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

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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 2357.72, as
14 last amended by Section 18, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
15 2007, Section 2357.72), is amended to read as follows:

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

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

1 in the proceeds from sale of goods or services, whether denominated
2 a royalty, royalty interest or otherwise, and does not mean the
3 right to intellectual property, whether the rights arise from
4 copyright, trademark or patent law;

5 2. "Capitalization" means the amount of:

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

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

11 without condition and has substantial economic

12 penalties for breach of the commitment to provide such
13 funds,

14 c. any allocation of tax credit authority awarded to the
15 qualified rural small business capital company by the
16 Community Development Financial Institutions Fund

17 pursuant to Section 45D of the Internal Revenue Code

18 of 1986, as amended, to the extent such allocation has
19 not been previously designated by the qualified rural

20 small business capital company as contemplated by

21 Section 45D(b)(1)(C) of the Internal Revenue Code of
22 1986, as amended, and

23 d. any funds loaned to the qualified rural small business
24 capital company, which is licensed as a rural business

1 investment company under 7 U.S.C., Section 2009cc et
2 seq., or any successor statute, by the U.S. Small
3 Business Administration or U.S. Department of
4 Agriculture;

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

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

15 5. "Nonmetropolitan area" means all areas of the state except a
16 county having a population in excess of one hundred thousand
17 (100,000) persons according to the most recent Federal Decennial
18 Census;

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

- 21 a. has or will have, within one hundred eighty (180) days
22 after a qualified investment is made by a qualified
23 rural small business capital company, at least fifty
24

1 percent (50%) of its employees or assets located in
2 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. has its principal place of business within a
7 nonmetropolitan area of the state and conducts the
8 activity resulting in at least seventy-five percent
9 (75%) of its gross annual revenue from a
10 nonmetropolitan area of the state,

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

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

18 (2) Major Group 2 of Division A,

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

21 f. expends within eighteen (18) months after the date of
22 the qualified investment at least fifty percent (50%)
23 of the proceeds of the qualified investment for the
24 acquisition of tangible or intangible assets which are

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

1 investment in the Oklahoma rural small business
2 venture, and "intangible assets" shall be limited to
3 computer software, licenses, patents, copyrights and
4 similar items;

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

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

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

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

- 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~~ 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 SECTION 9. This act shall become effective January 1, 2009.

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