

1 ENGROSSED SENATE  
2 BILL NO. 2129

By: Mazzei of the Senate

3 and

4 Peterson (Ron) and Brown  
5 of the House

6  
7 [ revenue and taxation - income tax credits -

8 clarifying limitation -

9 effective date ]

10

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

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

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

1 B. For purposes of this section:

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

10 a. capitalization of not less than Five Million Dollars  
11 (\$5,000,000.00),

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

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

22 2. "Oklahoma business venture" means a business, incorporated  
23 or unincorporated, which:  
24

- 1 a. has or will have, within one hundred eighty (180) days  
2 after an investment is made by a qualified venture  
3 capital company, at least fifty percent (50%) of its  
4 employees or assets located in Oklahoma,
- 5 b. needs financial assistance in order to commence or  
6 expand such business which provides or intends to  
7 provide goods or services,
- 8 c. is not engaged in oil and gas exploration, real estate  
9 development, real estate sales, retail sales of food  
10 or clothing, farming, ranching, banking, or lending or  
11 investing funds in other businesses. Provided,  
12 however, businesses which provide or intend to provide  
13 goods or services, including, but not limited to,  
14 goods or services involving new technology, equipment,  
15 or techniques to such businesses listed in this  
16 subparagraph, and investments in the development of  
17 tourism facilities in the form of amusement parks,  
18 entertainment parks, theme parks, golf courses, or  
19 museums shall not be subject to said prohibition, and
- 20 d. expends within eighteen (18) months after the date of  
21 the investment at least fifty percent (50%) of the  
22 proceeds of the investment for the acquisition of  
23 tangible or intangible assets which are used in the  
24 active conduct of the trade or business of the

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

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

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

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

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

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

23 E. No investor whose capital is guaranteed by the Oklahoma  
24 Capital Investment Board may claim or transfer the credit provided

1 for in subsection A of this section for investments in such  
2 guaranteed portfolio.

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

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

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1 that for the applicable tax year is not taxed as a corporation for  
2 federal income tax purposes.

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

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

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

23 2. The investment in the Oklahoma 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~~ Section 2351 et seq. of this  
4 title, a "market-based liquidity event" means that an Oklahoma  
5 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 a person or entity  
10 controlled by a person that made an investment in the  
11 qualified venture capital company that provided funds  
12 for use by the Oklahoma business venture,

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

18 c. makes an amortization payment under the terms of a  
19 debt instrument; or

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

23 B. If a recapture event occurs with respect to an investment  
24 for which a credit authorized by Section 2357.7 of ~~Title 68 of the~~

1 ~~Oklahoma Statutes~~ this title was claimed, the tax imposed pursuant  
2 to the applicable provisions of Title 36 or ~~Title 68 of the Oklahoma~~  
3 ~~Statutes~~ this title shall be increased to the extent of the  
4 recaptured credit amount.

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

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

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

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

21 E. For any transaction that is audited by the Tax Commission  
22 after such credits have been allowed, but which is subsequently  
23 determined to constitute a recapture event, the Tax Commission shall  
24 be required to disallow any and all credits claimed in violation of

1 the requirements of this section or any other provision of Section  
2 2357.7 or 2357.8 of ~~Title 68 of the Oklahoma Statutes~~ this title for  
3 a period of ten (10) years after the date as of which any applicable  
4 tax report or return utilizing such credits is filed.

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

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

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

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

1 2. "Capitalization" means the amount of:

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

4 b. any contractual commitment to provide funds to the  
5 qualified small business capital company to the extent  
6 that such commitment is payable on demand without

7 condition and has substantial economic penalties for  
8 breach of the commitment to provide such funds, and

9 c. any allocation of tax credit authority awarded to the  
10 qualified small business capital company by the

11 Community Development Financial Institutions Fund

12 pursuant to Section 45D of the Internal Revenue Code

13 of 1986, as amended, to the extent such allocation has

14 not been previously designated by the qualified small

15 business capital company as contemplated by Section

16 45D(b) (1) (C) of the Internal Revenue Code of 1986, as

17 amended;

18 3. "Equity and near-equity security" means common stock,

19 preferred stock, warrants or other rights to subscribe to stock or

20 its equivalent, or an interest in a limited liability company,

21 partnership, or subordinated debt that is convertible into, or

22 entitles the holder to receive upon its exercise, common stock,

23 preferred stock, a royalty or net profits interest, or an interest

24 in a limited liability company or partnership;

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

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

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

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

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

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

19 (2) Major Group 2 of Division A,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 2. "Capitalization" means the amount of:

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

6 b. any contractual commitment to provide funds to the  
7 qualified rural small business capital company to the  
8 extent that such commitment is payable on demand  
9 without condition and has substantial economic  
10 penalties for breach of the commitment to provide such  
11 funds,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23

24

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

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

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

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

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

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

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

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

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

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

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

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

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

18 4. Limited to the lesser of:

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

24

1 Passed the Senate the 10th day of March, 2008.

2  
3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2008.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives