ENROLLED SENATE
BILL NO. 2129

By: Mazzei and Crain of the Senate

and

Peterson (Ron) and Brown of the House

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.7, as last amended by Section 2, Chapter 281, O.S.L. 2006 and Section 5, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2007, Sections 2357.7 and 2357.8A), which relate to income tax credits for certain venture capital investments; modifying definition; clarifying limitation on credit; modifying requirements relating to borrowed funds for which credits may be claimed; modifying circumstances which qualify for tax credit recapture event; amending 68 O.S. 2001, Sections 2357.61, 2357.62, 2357.63 and 2357.63B, as last amended by Sections 7, 8, 9 and 11, Chapter 281, O.S.L. 2006 (68 O.S. Supp 2007, Sections 2357.61, 2357.62, 2357.63 and 2357.63B), which relate to the Small Business Capital Formation Incentive Act; modifying definitions; defining term; modifying requirements relating to borrowed funds for which credits may be claimed; modifying circumstances which qualify for tax credit recapture event; amending 68 O.S. 2001, Sections 2357.72, 2357.73 and 2357.74, as last amended by Sections 18, 19 and 20, Chapter 281, O.S.L. 2006 and Section 22, Chapter 281 O.S.L. 2006 (68 O.S. Supp. 2007, Sections 2357.72, 2357.73, 2357.74 and 2357.74B), which relate to Rural Venture Capital Formation Incentive Act; modifying definition; clarifying limitation on credit; modifying requirements relating to borrowed funds for which

credits may be claimed; modifying circumstances which qualify for tax credit recapture event; amending Section 1, Chapter 458, O.S.L. 2005 (68 O.S. Supp. 2007, Section 2357.201), which relates to income tax credits; updating references; extending expiration date for credit; amending 68 O.S. 2001, Section 2902, as last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2902), which relates to ad valorem tax exemption; updating reference; and modifying start date for exemption under certain circumstances.

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

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

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

B. For purposes of this section:

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

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

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

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

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

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

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

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

d. expends within eighteen (18) months after the date of the investment at least fifty percent (50%) of the proceeds of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business of the Oklahoma business venture or to provide working capital for the active conduct of such trade or business. For purposes of this subparagraph, "working capital" shall not include consulting, brokerage or transaction fees. Provided, that the Oklahoma Tax Commission, upon request and demonstration of need by a qualified venture capital company or an Oklahoma business venture, may extend the eighteen-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma business venture shall otherwise comply with the requirements applicable to the usage of tax credits for investment in the Oklahoma business venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise complies with the requirements applicable to the usage of tax credits for investment in the Oklahoma business venture and "intangible assets" shall be limited to computer software, licenses, patents, copyrights, and similar items;

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

4. "Debt and equity funds" means investments in debt securities; including unsecured, undersecured, subordinated or convertible loans or debt securities; and/or equity securities, including common and preferred stock, royalty rights, limited partnership interest, and any other securities or rights that evidence ownership in businesses; provided such investment of debt

and equity funds shall not have a repayment schedule that is faster than a level principal amortization over five (5) years.

C. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified venture capital companies which is subsequently invested in an Oklahoma business venture by the qualified venture capital company and may only be claimed for a taxable year during which the qualified venture capital company makes an investment in an Oklahoma business venture. The credit shall be allowed for the amount of the investment in an Oklahoma business venture if the funds are used in pursuit of a legitimate business purpose of the Oklahoma business venture consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the business venture. The qualified venture capital company shall issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each investment it makes in an Oklahoma business venture. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a qualified venture capital company and to certify an investment to be a qualifying Oklahoma business venture for purposes of complying with subsection B of this section. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward as a credit against subsequent tax liability for a period not to exceed three (3) years. No investor in a venture capital company organized after July 1, 1992, may claim tax credits under the provisions of this section.

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

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

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

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

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

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

1. The Oklahoma business venture fails to expend at least fifty percent (50%) of the proceeds of qualified investments for acquisition of tangible or intangible assets to be used in the active conduct of the trade or business of the Oklahoma business

venture or for working capital for the active conduct of such trade or business within eighteen (18) months after the investment is made or within an extension of such period as provided in Section 2357.7 of ~~Title 68 of the Oklahoma Statutes~~ this title. For purposes of this paragraph, "working capital" shall not include consulting, brokerage or transaction fees;

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

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

b. conducts an initial public offering of a class of its equity securities pursuant to the requirements of the United States Securities ~~and Exchange Commission~~ Act of 1933 or other applicable federal law governing the sale of securities in interstate commerce, ~~or~~

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

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

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

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

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

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

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

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

E. For any transaction that is audited by the Tax Commission after such credits have been allowed, but which is subsequently determined to constitute a recapture event, the Tax Commission shall be required to disallow any and all credits claimed in violation of the requirements of this section or any other provision of Section 2357.7 or 2357.8 of ~~Title 68 of the Oklahoma Statutes~~ this title for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed.

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

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

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

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

2. "Capitalization" means the amount of:

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

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

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

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or

its equivalent, or an interest in a limited liability company, partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, a royalty or net profits interest, or an interest in a limited liability company or partnership;

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

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

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

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

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

(1) Major Group 1 of Division A, and

(2) Major Group 2 of Division A,

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

e. expends within eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business <u>or to provide working capital for the active conduct of the trade or business</u> for which the determination of

the small business qualification pursuant to subparagraph d of this paragraph was made. For purposes of this subparagraph, “working capital” shall not include consulting, brokerage or transaction fees. Provided, that the Oklahoma Tax Commission, upon request and demonstration of need by a qualified small business capital company or an Oklahoma small business venture, or an investor or an authorized agent of any such entities, may extend the 18-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma small business venture shall otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture. As used in this subparagraph, “tangible assets” shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture, and “intangible assets” shall be limited to computer software, licenses, patents, copyrights and similar items;

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

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

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

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

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

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

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

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

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

B. The credit provided for in subsection A of this section shall be twenty percent (20%) of the qualified investment in qualified small business capital companies which is subsequently

invested in an Oklahoma small business venture by the qualified venture capital company and may only be claimed for a taxable year during which the qualified small business capital company makes the qualified investment in an Oklahoma small business venture. The credit shall be allowed for the amount of the qualified investment in an Oklahoma small business venture if the funds are used in pursuit of a legitimate business purpose of the Oklahoma small business venture consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the small business venture. The qualified small business capital company shall issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each investment it makes in an Oklahoma business venture. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed three (3) taxable years.

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

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

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

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

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder,

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

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

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

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

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

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

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

4. Limited to the lesser of:

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

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

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

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

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

an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

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

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

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

2. The investment in the Oklahoma small business venture is transferred, withdrawn or otherwise returned within five (5) years; provided, a "recapture event" shall not include the transfer, withdrawal or return of an investment as a result of a "market-based liquidity event". As used in ~~this act~~ <u>the Small Business Capital Formation Incentive Act</u>, a "market-based liquidity event" means that an Oklahoma small business venture:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. "Capitalization" means the amount of:

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

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

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

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

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

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

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

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

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

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

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

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

(1) Major Group 1 of Division A, and

(2) Major Group 2 of Division A,

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

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

acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or for working capital for the active conduct of such trade or business for which the determination of the small business qualification pursuant to subparagraph e of this paragraph was made. For purposes of this subparagraph, "working capital" shall not include consulting, brokerage or transaction fees. Provided, that the Oklahoma Tax Commission, upon request and demonstration by a qualified rural small business capital company or an Oklahoma rural small business venture, or an investor or an authorized agent of any such entities, may extend the 18-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma rural small business shall otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma rural small business venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma rural small business venture, and "intangible assets" shall be limited to computer software, licenses, patents, copyrights and similar items;

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

8. "Qualified rural small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered

business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

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

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

c. the capitalization of the corporation, limited liability company or partnership is not less than Five Hundred Thousand Dollars ($500,000.00), and

d. the corporation, limited liability company or partnership has investment of not more than twenty-five percent (25%) of its capitalization in any one company at any time during the calendar year of the corporation, limited liability company or partnership; and

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

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

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

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

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

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

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

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

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through

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

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

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

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

the credit authorized by this section, a qualified investment shall be:

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

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

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

4. Limited to the lesser of:

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

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

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

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

E. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has ~~a~~ <u>an unlimited and continuing</u> legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2357.201 A. As used in this act:

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

a. organized as a corporation, partnership, limited liability company or other entity having limited liability pursuant to the laws of the State of Oklahoma or the laws of another state, if such entity is registered to do business within the state, a general partnership, limited liability partnership, limited liability limited partnership or other legal entity having the right to conduct lawful business within the state,

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

c. that makes at least seventy-five percent (75%) of its sales to out-of-state customers or buyers which shall be determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act,

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

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

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

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

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

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

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

1. Qualified capital expenditures; or

2. Qualified wages; or

3. Qualified training expenses; or

4. The sum of any of the expenses identified in paragraphs 1 through 3 of this subsection, in any combination.

C. For purposes of computing the credit amount prescribed by subsection B of this section, the expenses described by paragraphs 1, 2 and 3 of subsection B of this section may be added together or considered independently, but the total credit amount shall not

exceed Three Hundred Fifty Thousand Dollars ($350,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, ~~and~~ the fiscal year ending June 30, 2009, and for all subsequent fiscal years.

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

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

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

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

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

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

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

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

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

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

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

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

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

eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,

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

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

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

(2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission,

(3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission, and

(4) commencement of construction on or after ~~the effective date of this act~~ November 1, 2007, with

construction to be completed within three (3) years from the date of the commencement of construction.

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

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

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

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

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

C. The following provisions shall apply:

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

2. Except as otherwise provided in paragraph 5 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the

expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4 of this subsection and the employment level established for any previous exemption is maintained;

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

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

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

The Tax Commission shall verify payroll information through the Oklahoma Employment Security Commission by using reports from the Oklahoma Employment Security Commission for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year; provided, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such

election upon its application for an exemption under this section. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and

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

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of

any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars ($300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;

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

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

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

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

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

2. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility, as defined in subparagraph c of paragraph 1 of subsection B of this section which is located within a tax incentive district created pursuant to the Local Development Act by a county having a population of at least five

hundred thousand (500,000), according to the most recent federal decennial census, shall begin on January 1 following the expiration or termination of the ad valorem exemption, abatement, or other incentive provided through the tax incentive district.

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the Tax Commission, and shall be filed on or before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

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

overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

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

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

Passed the Senate the 21st day of May, 2008.

_____
Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2008.

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Presiding Officer of the House
of Representatives