

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3237

By: Mc Niel and DeWitt

4  
5 AS INTRODUCED

6 An Act relating to revenue and taxation; amending 68  
7 O.S. 2001 Sections 2357.62, as last amended by  
8 Section 8, Chapter 281, O.S.L. 2006, 2357.63, as last  
9 amended by Section 9, Chapter 281, O.S.L. 2006,  
10 2357.73, as last amended by Section 19, Chapter 281,  
11 O.S.L. 2006 and 2357.74, as last amended by Section  
12 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2007,  
13 Sections 2357.62, 2357.63, 2357.73 and 2357.74),  
14 which relate to capital formation tax credits;  
15 expanding applicability of certain credits; limiting  
16 amount of credit that can be applied; providing for  
17 carryover; providing an effective date; and declaring  
18 an emergency.

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

20 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.62, as  
21 last amended by Section 8, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
22 2007, Section 2357.62), is amended to read as follows:

23 Section 2357.62 A. For taxable years beginning after December  
24 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, or effective July 1, 2008, against the taxes

1 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
2 investment in qualified small business capital companies.

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

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

9 H. No taxpayer shall claim more than one-third (1/3) of the tax  
10 credits attributable to a qualified investment against the taxes  
11 imposed by Section 1001, 1101 or 1102 of this title per year, unless  
12 the allowable tax credit exceeds the amount of taxes due or if no  
13 taxes pursuant to Section 1001, 1101 or 1102 of this title are due  
14 of the taxpayer, in which case the amount of the claim not used as  
15 an offset against taxes imposed by Section 1001, 1101 or 1102 of  
16 this title may be carried forward to the next taxable year.

17 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.63, as  
18 last amended by Section 9, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
19 2007, Section 2357.63), is amended to read as follows:

20 Section 2357.63 A. For taxable years beginning after December  
21 31, 1997, and before January 1, 2012, there shall be allowed a  
22 credit against the tax imposed by Section 2355 or, effective January  
23 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
24 against the tax imposed by Section 624 or 628 of Title 36 of the

1 Oklahoma Statutes, or effective July 1, 2008, against the taxes  
2 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
3 investment made in Oklahoma small business ventures in conjunction  
4 with investment in such ventures made by a qualified small business  
5 capital company.

6 B. The Subject to subsection F of this section, the credit  
7 provided for in this section shall be twenty percent (20%) of the  
8 qualified investment made in Oklahoma small business ventures in  
9 conjunction with qualified investment in such ventures made by a  
10 qualified small business capital company and shall be allowed for  
11 the taxable year during which the qualified investment is made in an  
12 Oklahoma small business venture. If the tax credit allowed pursuant  
13 to subsection A of this section exceeds the amount of taxes due or  
14 if 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 for a period not to exceed three (3) taxable  
17 years. To qualify for the credit authorized by this section, a  
18 qualified investment shall be:

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

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

24

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

3           4. Limited to the lesser of:

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

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

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

12          D. 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 2357.73 or 2357.74 of this title.

15          E. 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 legal  
23 obligation to repay the borrowed funds but the allocation may not  
24 exceed such shareholder's, partner's or member's pro-rata equity

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

9 F. No taxpayer shall claim more than one-third (1/3) of the tax  
10 credits attributable to a qualified investment against the taxes  
11 imposed by Section 1001, 1101 or 1102 of this title per year, unless  
12 the allowable tax credit exceeds the amount of taxes due or if no  
13 taxes pursuant to Section 1001, 1101 or 1102 of this title are due  
14 of the taxpayer, in which case the amount of the claim not used as  
15 an offset against taxes imposed by Section 1001, 1101 or 1102 of  
16 this title may be carried forward to the next taxable year.

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

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

1 Oklahoma Statutes, or effective July 1, 2008, against the taxes  
2 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
3 investment in qualified rural small business capital companies.

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

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 legal  
23 obligation to repay the borrowed funds but the allocation may not  
24 exceed such shareholder's, partner's or member's pro-rata equity

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

9 H. No taxpayer may claim more than one-third (1/3) of the tax  
10 credits attributable to a qualified investment against the taxes  
11 imposed by Section 1001, 1101 or 1102 of this title per year, unless  
12 the allowable tax credit exceeds the amount of taxes due or if no  
13 taxes under Section 1001, 1101 or 1102 of this title are due of the  
14 taxpayer, in which case the amount of the claim not used as an  
15 offset against taxes imposed by Section 1001, 1101 or 1102 of this  
16 title may be carried forward to the next taxable year.

17 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.74, as  
18 last amended by Section 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
19 2007, Section 2357.74), is amended to read as follows:

20 Section 2357.74 A. For taxable years beginning after December  
21 31, 2000, and before January 1, 2012, there shall be allowed a  
22 credit against the tax imposed by Section 2355 or, effective January  
23 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
24 against the tax imposed by Section 624 or 628 of Title 36 of the

1 Oklahoma Statutes, or effective July 1, 2008, against the taxes  
2 imposed by Section 1001, 1101 or 1102 of this title, for qualified  
3 investment made in Oklahoma rural small business ventures in  
4 conjunction with investment in such ventures made by a qualified  
5 rural small business capital company.

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

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

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

24

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

4 4. Limited to the lesser of:

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

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

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

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

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

1 exceed such shareholder's, partner's or member's pro-rata equity  
2 share of the pass-through entity even if the taxpayer's legal  
3 obligation to repay the borrowed funds is in excess of such amount.  
4 For purposes of this 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 F. No taxpayer may claim more than one-third (1/3) of the tax  
11 credits attributable to a qualified investment against the taxes  
12 imposed by Section 1001, 1101 or 1102 of this title per year, unless  
13 the allowable tax credit exceeds the amount of taxes due or if no  
14 taxes under Section 1001, 1101 or 1102 of this title are due of the  
15 taxpayer, in which case the amount of the claim not used as an  
16 offset against taxes imposed by Section 1001, 1101 or 1102 of this  
17 title may be carried forward to the next taxable year.

18 SECTION 5. This act shall become effective July 1, 2008.

19 SECTION 6. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

23

24 51-2-9763 CJB 01/17/08