

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2079

By: Sparks

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Sections 2357.62, as last amended by
9 Section 8, Chapter 281, O.S.L. 2006, 2357.63, as last
10 amended by Section 9, Chapter 281, O.S.L. 2006,
11 2357.73, as last amended by Section 19, Chapter 281,
12 O.S.L. 2006 and 2357.74, as last amended by Section
13 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2007,
14 Sections 2357.62, 2357.63, 2357.73 and 2357.74),
15 which relate to income tax; authorizing taxpayer to
16 claim credits under the Small Business Capital
17 Formation Incentive Act and the Rural Venture Capital
18 Formation Incentive Act against gross production and
19 petroleum excise taxes after certain date; providing
20 limitation on how certain credit may be claimed;
21 authorizing carry forward of unused credits; and
22 declaring an emergency.

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

24 SECTION 1. 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,

1 against the tax imposed by Section 624 or 628 of Title 36 of the
2 Oklahoma Statutes, or effective July 1, 2008, against the taxes
3 imposed by Sections 1001, 1101 or 1102 of this title, for qualified
4 investment in qualified small business capital companies.

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

24

1 may be carried forward for a period not to exceed three (3) taxable
2 years.

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

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

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

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

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

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

18 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.63, as
19 last amended by Section 9, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
20 2007, Section 2357.63), is amended to read as follows:

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

1 against the tax imposed by Section 624 or 628 of Title 36 of the
2 Oklahoma Statutes, or effective July 1, 2008, against the taxes
3 imposed by Section 1001, 1101 or 1102 of this title, for qualified
4 investment made in Oklahoma small business ventures in conjunction
5 with investment in such ventures made by a qualified small business
6 capital company.

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

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

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

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

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

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

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

23

24

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

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

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

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

15 G. If a pass-through entity is entitled to a credit under this
16 section, the pass-through entity shall allocate such credit to one
17 or more of the shareholders, partners or members of the pass-through
18 entity; provided, the total of all credits allocated shall not
19 exceed the amount of the credit to which the pass-through entity is
20 entitled. The credit may only be claimed for funds borrowed by the
21 pass-through entity to make a qualified investment if a shareholder,
22 partner or member to whom the credit is allocated has a 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 tax
11 imposed by Section 1101, 1101 or 1102 of this title each year,
12 unless the allowable tax credit exceeds the amount of taxes due. If
13 no taxes are due under Section 1101, 1101 or 1102 of this title, the
14 amount of the claim not used as an offset against such taxes may be
15 carried forward to the next taxable year.

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

19 Section 2357.74 A. For taxable years beginning after December
20 31, 2000, and before January 1, 2012, there shall be allowed a
21 credit against the tax imposed by Section 2355 or, effective January
22 1, 2001, Section 2370 of this title or, effective July 1, 2001,
23 against the tax imposed by Section 624 or 628 of Title 36 of the
24 Oklahoma Statutes, or effective July 1, 2008, against the taxes

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

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

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

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

23

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 tax
12 imposed by Section 1101, 1101 or 1102 of this title each year,
13 unless the allowable tax credit exceeds the amount of taxes due. If
14 no taxes are due under Section 1101, 1101 or 1102 of this title, the
15 amount of the claim not used as an offset against such taxes may be
16 carried forward to the next taxable year.

17 SECTION 5. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

21

22 51-2-3249 JCR 1/22/2008 5:55:03 PM

23

24