

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2129

By: Mazzei

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 2357.7, as last amended by Section
9 2, Chapter 281, O.S.L. 2006 and Section 5, Chapter
10 281, O.S.L. 2006 (68 O.S. Supp. 2007, Sections 2357.7
11 and 2357.8A), which relate to income tax credits for
12 certain venture capital investments; modifying
13 definition; clarifying limitation on credit;
14 modifying requirements relating to borrowed funds for
15 which credits may be claimed; modifying circumstances
16 which qualify for tax credit recapture event;
17 amending 68 O.S. 2001, Sections 2357.61 and 2357.62,
18 as last amended by Sections 7 and 8, Chapter 281,
19 O.S.L. 2006 (68 O.S. Supp 2007, Sections 2357.61 and
20 2357.62), which relate to the Small Business Capital
21 Formation Incentive Act; modifying definitions;
22 defining term; modifying requirements relating to
23 borrowed funds for which credits may be claimed;
24 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; and
providing an effective date.

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.7, as
2 last amended by Section 2, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
3 2007, Section 2357.7), is amended to read as follows:

4 Section 2357.7 A. For taxable years beginning after December
5 31, 1986, and before January 1, 2009, there shall be allowed a
6 credit against the tax imposed by Section 2355 of this title or
7 Section 624 of Title 36 of the Oklahoma Statutes for investments in
8 qualified venture capital companies whose purpose is to establish or
9 expand the development of business and industry within Oklahoma.
10 Provided, tax credits against liabilities imposed pursuant to
11 Section 624 of Title 36 of the Oklahoma Statutes shall be limited to
12 the amount that would otherwise be collected and allocated to the
13 General Revenue Fund of the State Treasury.

14 B. For purposes of this section:

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

23 a. capitalization of not less than Five Million Dollars
24 (\$5,000,000.00),

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

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

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

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

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

20 c. is not engaged in oil and gas exploration, real estate
21 development, real estate sales, retail sales of food
22 or clothing, farming, ranching, banking, or lending or
23 investing funds in other businesses. Provided,
24 however, businesses which provide or intend to provide

1 goods or services, including, but not limited to,
2 goods or services involving new technology, equipment,
3 or techniques to such businesses listed in this
4 subparagraph, and investments in the development of
5 tourism facilities in the form of amusement parks,
6 entertainment parks, theme parks, golf courses, or
7 museums shall not be subject to said prohibition, and
8 d. expends within eighteen (18) months after the date of
9 the investment at least fifty percent (50%) of the
10 proceeds of the investment for the acquisition of
11 tangible or intangible assets which are used in the
12 active conduct of the trade or business of the
13 Oklahoma business venture or to provide working
14 capital for the active conduct of such trade or
15 business. For purposes of this subparagraph, "working
16 capital" means routine operating expenses which shall
17 include, but not be limited to, payroll, rent and
18 utilities. Provided, that the Oklahoma Tax
19 Commission, upon request and demonstration of need by
20 a qualified venture capital company or an Oklahoma
21 business venture, may extend the eighteen-month period
22 otherwise required by this subparagraph for a period
23 not to exceed six (6) months. Provided, the
24 expenditure of the invested funds by the Oklahoma

1 business venture shall otherwise comply with the
2 requirements applicable to the usage of tax credits
3 for investment in the Oklahoma business venture. As
4 used in this subparagraph, "tangible assets" shall
5 include the acquisition of real property and the
6 construction of improvements upon real property if
7 such acquisition and construction otherwise complies
8 with the requirements applicable to the usage of tax
9 credits for investment in the Oklahoma business
10 venture and "intangible assets" shall be limited to
11 computer software, licenses, patents, copyrights, and
12 similar items;

13 3. "Direct investment" means the purchase of securities of a
14 private company, or securities of a public company if the securities
15 constitute a new issue of a public company and such public company
16 had previous year sales of less than Ten Million Dollars
17 (\$10,000,000.00); and

18 4. "Debt and equity funds" means investments in debt
19 securities; including unsecured, undersecured, subordinated or
20 convertible loans or debt securities; and/or equity securities,
21 including common and preferred stock, royalty rights, limited
22 partnership interest, and any other securities or rights that
23 evidence ownership in businesses; provided such investment of debt
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1 and equity funds shall not have a repayment schedule that is faster
2 than a level principal amortization over five (5) years.

3 C. The credit provided for in subsection A of this section
4 shall be twenty percent (20%) of the cash amount invested in
5 qualified venture capital companies which is subsequently invested
6 in an Oklahoma business venture by the qualified venture capital
7 company and may only be claimed for a taxable year during which the
8 qualified venture capital company makes an investment in an Oklahoma
9 business venture. The credit shall be allowed for the amount of the
10 investment in an Oklahoma business venture if the funds are used in
11 pursuit of a legitimate business purpose of the Oklahoma business
12 venture consistent with its organizational instrument, bylaws or
13 other agreement responsible for the governance of the business
14 venture. The qualified venture capital company shall issue such
15 reports as the Oklahoma Tax Commission may require attributing the
16 source of funds of each investment it makes in an Oklahoma business
17 venture. The Oklahoma Capital Investment Board shall have the
18 authority to certify an entity as a qualified venture capital
19 company and to certify an investment to be a qualifying Oklahoma
20 business venture for purposes of complying with subsection B of this
21 section. Such certification shall be binding on the Oklahoma Tax
22 Commission. Such certification shall not be mandatory but may be
23 requested by any entity that desires to be certified. A reasonable
24 certification fee may be charged by the Oklahoma Capital Investment

1 Board for this service. If the tax credit allowed pursuant to
2 subsection A of this section exceeds the amount of taxes due or if
3 there are no state taxes due of the taxpayer, the amount of the
4 claim not used as an offset against the taxes of a taxable year may
5 be carried forward as a credit against subsequent tax liability for
6 a period not to exceed three (3) years. No investor in a venture
7 capital company organized after July 1, 1992, may claim tax credits
8 under the provisions of this section.

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

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

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

20 G. If a pass-through entity is entitled to a credit under this
21 section, the pass-through entity shall allocate such credit to one
22 or more of the shareholders, partners or members of the pass-through
23 entity; provided, the total of all credits allocated shall not
24 exceed the amount of the credit to which the pass-through entity is

1 entitled. The credit may also be claimed for funds borrowed by the
2 pass-through entity to make a qualified investment if a shareholder,
3 partner or member to whom the credit is allocated has a an unlimited
4 and continuing legal obligation to repay the borrowed funds but the
5 allocation may not exceed such shareholder's, partner's or member's
6 pro-rata equity share of the pass-through entity even if the
7 taxpayer's legal obligation to repay the borrowed funds is in excess
8 of such pro-rata share of such borrowed funds. For purposes of this
9 act, "pass-through entity" means a corporation that for the
10 applicable tax years is treated as an S corporation under the
11 Internal Revenue Code, general partnership, limited partnership,
12 limited liability partnership, trust or limited liability company
13 that for the applicable tax year is not taxed as a corporation for
14 federal income tax purposes.

15 SECTION 2. AMENDATORY Section 5, Chapter 281, O.S.L.
16 2006 (68 O.S. Supp. 2007, Section 2357.8A), is amended to read as
17 follows:

18 Section 2357.8A A. The provisions of this section shall only
19 be applicable to investments in qualified venture capital companies
20 made on or after the effective date of this act pursuant to Section
21 2357.7 of ~~Title 68 of the Oklahoma Statutes~~ this title. As used in
22 this section, "recapture event" means that with respect to an
23 investment in an Oklahoma business venture by a qualified venture
24 capital company:

1 1. The Oklahoma business venture fails to expend at least fifty
2 percent (50%) of the proceeds of qualified investments for
3 acquisition of tangible or intangible assets to be used in the
4 active conduct of the trade or business of the Oklahoma business
5 venture or for working capital for the active conduct of such trade
6 or business within eighteen (18) months after the investment is made
7 or within an extension of such period as provided in Section 2357.7
8 of ~~Title 68 of the Oklahoma Statutes~~ this title. For purposes of
9 this paragraph, "working capital" means routine operating expenses
10 which shall include, but not be limited to, payroll, rent and
11 utilities;

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

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

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

6 c. makes an amortization payment under the terms of a
7 debt instrument; or

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

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

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

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

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

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

10 E. For any transaction that is audited by the Tax Commission
11 after such credits have been allowed, but which is subsequently
12 determined to constitute a recapture event, the Tax Commission shall
13 be required to disallow any and all credits claimed in violation of
14 the requirements of this section or any other provision of Section
15 2357.7 or 2357.8 of ~~Title 68 of the Oklahoma Statutes~~ this title for
16 a period of ten (10) years after the date as of which any applicable
17 tax report or return utilizing such credits is filed.

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

22 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.61, as
23 last amended by Section 7, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
24 2007, Section 2357.61), is amended to read as follows:

1 Section 2357.61 As used in this act:

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

12 2. "Capitalization" means the amount of:

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

15 b. any contractual commitment to provide funds to the
16 qualified small business capital company to the extent
17 that such commitment is payable on demand without
18 condition and has substantial economic penalties for
19 breach of the commitment to provide such funds, and

20 c. any allocation of tax credit authority awarded to the
21 qualified small business capital company by the
22 Community Development Financial Institutions Fund
23 pursuant to Section 45D of the Internal Revenue Code
24 of 1986, as amended, to the extent such allocation has

1 not been previously designated by the qualified small
2 business capital company as contemplated by Section
3 45D(b) (1) (C) of the Internal Revenue Code of 1986, as
4 amended;

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

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

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

- 17 a. has or will have, within one hundred eighty (180) days
18 after a qualified investment is made by a qualified
19 small business capital company, at least fifty percent
20 (50%) of its employees or assets located in Oklahoma,
21 b. needs financial assistance in order to commence or
22 expand such business which provides or intends to
23 provide goods or services,

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

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

7 (2) Major Group 2 of Division A,

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

10 e. expends within eighteen (18) months after the date of
11 the qualified investment at least fifty percent (50%)
12 of the proceeds of the qualified investment for the
13 acquisition of tangible or intangible assets which are
14 used in the active conduct of the trade or business or
15 to provide working capital for the active conduct of
16 the trade or business for which the determination of
17 the small business qualification pursuant to
18 subparagraph d of this paragraph was made. For
19 purposes of this subparagraph, "working capital" means
20 routine operating expenses which shall include, but
21 not be limited to, payroll, rent and utilities.

22 Provided, that the Oklahoma Tax Commission, upon
23 request and demonstration of need by a qualified small
24 business capital company or an Oklahoma small business

1 venture, or an investor or an authorized agent of any
2 such entities, may extend the 18-month period
3 otherwise required by this subparagraph for a period
4 not to exceed six (6) months. Provided, the
5 expenditure of the invested funds by the Oklahoma
6 small business venture shall otherwise comply with the
7 requirements applicable to the usage of tax credits
8 for qualified investment in the Oklahoma small
9 business venture. As used in this subparagraph,
10 "tangible assets" shall include the acquisition of
11 real property and the construction of improvements
12 upon real property if such acquisition and
13 construction otherwise comply with the requirements
14 applicable to the usage of tax credits for qualified
15 investment in the Oklahoma small business venture, and
16 "intangible assets" shall be limited to computer
17 software, licenses, patents, copyrights and similar
18 items;

19 6. "Qualified investment" means an investment of funds in the
20 form of "equity" and "near-equity" as defined in paragraph 3 of this
21 section or "subordinated debt" as defined in paragraph 8 of this
22 section; provided, an investment which is contingent upon the
23 occurrence of an event or which is subject to being refunded or
24

1 returned in the absence of such event shall only be deemed to have
2 been made upon the occurrence of the event;

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

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

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

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

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

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

7 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.62, as
8 last amended by Section 8, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
9 2007, Section 2357.62), is amended to read as follows:

10 Section 2357.62 A. For taxable years beginning after December
11 31, 1997, and before January 1, 2012, there shall be allowed a
12 credit against the tax imposed by Section 2355 or, effective January
13 1, 2001, Section 2370 of this title or, effective July 1, 2001,
14 against the tax imposed by Section 624 or 628 of Title 36 of the
15 Oklahoma Statutes, for qualified investment in qualified small
16 business capital companies.

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

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

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

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

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

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

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

1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.72, as
2 last amended by Section 18, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
3 2007, Section 2357.72), is amended to read as follows:

4 Section 2357.72 As used in this act:

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

15 2. "Capitalization" means the amount of:

- 16 a. any funds that have actually been contributed to the
17 qualified rural small business capital company,
18 b. any contractual commitment to provide funds to the
19 qualified rural small business capital company to the
20 extent that such commitment is payable on demand
21 without condition and has substantial economic
22 penalties for breach of the commitment to provide such
23 funds,
24

1 c. any allocation of tax credit authority awarded to the
2 qualified rural small business capital company by the
3 Community Development Financial Institutions Fund
4 pursuant to Section 45D of the Internal Revenue Code
5 of 1986, as amended, to the extent such allocation has
6 not been previously designated by the qualified rural
7 small business capital company as contemplated by
8 Section 45D(b) (1) (C) of the Internal Revenue Code of
9 1986, as amended, and

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

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

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

4 5. "Nonmetropolitan area" means all areas of the state except a
5 county having a population in excess of one hundred thousand
6 (100,000) persons according to the most recent Federal Decennial
7 Census;

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

- 10 a. has or will have, within one hundred eighty (180) days
11 after a qualified investment is made by a qualified
12 rural small business capital company, at least fifty
13 percent (50%) of its employees or assets located in
14 Oklahoma,
- 15 b. needs financial assistance in order to commence or
16 expand such business which provides or intends to
17 provide goods or services,
- 18 c. has its principal place of business within a
19 nonmetropolitan area of the state and conducts the
20 activity resulting in at least seventy-five percent
21 (75%) of its gross annual revenue from a
22 nonmetropolitan area of the state,
- 23 d. except as otherwise provided by this subparagraph, is
24 engaged in a lawful business activity under any

1 Industry Number appearing under any Major Group Number
2 of Divisions A, C, D, E, F or I of the Standard
3 Industrial Classification Manual, 1987 revision with
4 the following exceptions:

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

6 (2) Major Group 2 of Division A,

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

9 f. expends within eighteen (18) months after the date of
10 the qualified investment at least fifty percent (50%)
11 of the proceeds of the qualified investment for the
12 acquisition of tangible or intangible assets which are
13 used in the active conduct of the trade or business or
14 for working capital for the active conduct of such
15 trade or business for which the determination of the
16 small business qualification pursuant to subparagraph
17 e of this paragraph was made. For purposes of this
18 subparagraph "working capital" means routine operating
19 expenses which shall include, but not be limited to,
20 payroll, rent and utilities. Provided, that the
21 Oklahoma Tax Commission, upon request and
22 demonstration by a qualified rural small business
23 capital company or an Oklahoma rural small business
24 venture, or an investor or an authorized agent of any

1 such entities, may extend the 18-month period
2 otherwise required by this subparagraph for a period
3 not to exceed six (6) months. Provided, the
4 expenditure of the invested funds by the Oklahoma
5 rural small business shall otherwise comply with the
6 requirements applicable to the usage of tax credits
7 for qualified investment in the Oklahoma rural small
8 business venture. As used in this subparagraph,
9 "tangible assets" shall include the acquisition of
10 real property and the construction of improvements
11 upon real property if such acquisition and
12 construction otherwise comply with the requirements
13 applicable to the usage of tax credits for qualified
14 investment in the Oklahoma rural small business
15 venture, and "intangible assets" shall be limited to
16 computer software, licenses, patents, copyrights and
17 similar items;

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

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

- 7 a. the corporation, limited liability company or
8 partnership is organized to provide the direct
9 investment of equity and near-equity funds to
10 companies within this state,
- 11 b. the principal place of business of the corporation,
12 limited liability company or partnership is located
13 within this state,
- 14 c. the capitalization of the corporation, limited
15 liability company or partnership is not less than Five
16 Hundred Thousand Dollars (\$500,000.00), and
- 17 d. the corporation, limited liability company or
18 partnership has investment of not more than twenty-
19 five percent (25%) of its capitalization in any one
20 company at any time during the calendar year of the
21 corporation, limited liability company or partnership;
22 and

23 9. "Subordinated debt" means indebtedness with a maturity date
24 of not less than five (5) years that is subordinated to all other

1 indebtedness of the issuer that has been issued or is to be issued
2 to a financial lending institution. The indebtedness shall not have
3 a repayment schedule that is faster than a level principal
4 amortization over five (5) years.

5 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.73, as
6 last amended by Section 19, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
7 2007, Section 2357.73), is amended to read as follows:

8 Section 2357.73 A. For taxable years beginning after December
9 31, 2000, and before January 1, 2012, there shall be allowed a
10 credit against the tax imposed by Section 2355 or, effective January
11 1, 2001, Section 2370 of this title or, effective July 1, 2001,
12 against the tax imposed by Section 624 or 628 of Title 36 of the
13 Oklahoma Statutes, for qualified investment in qualified rural small
14 business capital companies.

15 B. The credit provided for in subsection A of this section
16 shall be thirty percent (30%) of the amount of a qualified
17 investment in qualified rural small business capital companies which
18 is subsequently invested in an Oklahoma rural small business venture
19 by the qualified rural small business capital company and may only
20 be claimed for a taxable year during which the qualified rural small
21 business capital company makes the qualified investment in an
22 Oklahoma rural small business venture if the funds are used in
23 pursuit of a legitimate business purpose of the Oklahoma rural small
24 business venture consistent with its organizational instrument,

1 | bylaws or other agreement responsible for the governance of the
2 | rural small business venture. The qualified rural small business
3 | capital company shall issue such reports as the Oklahoma Tax
4 | Commission may require attributing the source of funds of each
5 | qualified investment it makes in an Oklahoma rural small business
6 | venture. If the tax credit exceeds the amount of taxes due or if
7 | there are no state taxes due of the taxpayer, the amount of the
8 | claim not used as an offset against the taxes of a taxable year may
9 | be carried forward for a period not to exceed three (3) taxable
10 | years.

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

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

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

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

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

19 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.74, as
20 last amended by Section 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
21 2007, Section 2357.74), is amended to read as follows:

22 Section 2357.74 A. For taxable years beginning after December
23 31, 2000, and before January 1, 2012, there shall be allowed a
24 credit against the tax imposed by Section 2355 or, effective January

1 1, 2001, Section 2370 of this title or, effective July 1, 2001,
2 against the tax imposed by Section 624 or 628 of Title 36 of the
3 Oklahoma Statutes, for qualified investment made in Oklahoma rural
4 small business ventures in conjunction with investment in such
5 ventures made by a qualified rural small business capital company.

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

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

10 SECTION 8. AMENDATORY Section 22, Chapter 281, O.S.L.
11 2006 (68 O.S. Supp. 2007, Section 2357.74B), is amended to read as
12 follows:

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

16 1. The Oklahoma rural small business venture fails to expend at
17 least fifty percent (50%) of the proceeds of qualified investments
18 for acquisition of tangible or intangible assets to be used in the
19 active conduct of the trade or business or for working capital for
20 the active conduct of the trade or business of the rural small
21 business venture within eighteen (18) months after the qualified
22 investment is made or within an extension of such period as provided
23 in Section 2357.72 of ~~Title 68 of the Oklahoma Statutes~~ this title.
24 For purposes of this paragraph, "working capital" means routine

1 operating expenses which shall include, but not be limited to,
2 payroll, rent and utilities;

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

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

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

18 (2) a person or entity controlled by a person that
19 made an investment in conjunction with a
20 qualified investment made by the qualified rural
21 small business capital company that provided
22 funds for use by the Oklahoma rural small
23 business venture,
24

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

6 c. makes an amortization payment under the terms of a
7 subordinated debt instrument; or

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

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

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

20 1. The aggregate decrease in the credits previously allowed to
21 the taxpayer pursuant to Section 2357.73 or Section 2357.74 of ~~Title~~
22 ~~68 of the Oklahoma Statutes~~ this title for all prior taxable periods
23 which would have resulted if no credit had been authorized with
24 respect to the qualified investment; plus

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

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

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

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

22 G. Notwithstanding any other provision of this section, a
23 recapture event shall not occur with respect to qualified
24 investments made by a qualified rural small business capital company

1 that is also licensed as a rural business investment company under 7
2 U.S.C., Section 2009cc et seq., or any successor statute, at the
3 time of the qualified investment. The qualified rural small
4 business capital company shall include in its annual report proof of
5 a valid license under the federal statute.

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

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