

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 772

By: Sparks

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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 and 2357.63, as last amended by Section 9,
10 Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,
11 Sections 2357.62 and 2357.63), which relate to the
12 Small Business Capital Formation Incentive Act;
13 authorizing credits to be claimed against gross
14 production and petroleum excise tax liability;
15 authorizing Oklahoma Tax Commission to promulgate
16 specified rules; amending 68 O.S. 2001, Section
17 2357.73, as last amended by Section 19 and 2357.74,
18 as last amended by Section 20, Chapter 281, O.S.L.
19 2006 (68 O.S. Supp. 2006, Sections 2357.73 and
20 2357.74), which relate to the Rural Venture Capital
21 Formation Incentive Act; authorizing credits to be
22 claimed against gross production and petroleum excise
23 tax liability; authorizing Oklahoma Tax Commission to
24 promulgate specified rules; providing for
codification; and providing an effective date.

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

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.
2006, 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

1 credit against the tax imposed by Section 2355 or, effective January
2 1, 2001, Section 2370 of this title or, effective July 1, 2001,
3 against the tax imposed by Section 624 or 628 of Title 36 of the
4 Oklahoma Statutes, or effective January 1, 2008, against the taxes
5 imposed by Section 1001, 1101 or 1102 of this title, for qualified
6 investment in qualified small business capital companies.

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

1 taxes of a taxable year may be carried forward for a period not to
2 exceed three (3) taxable 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 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.63, as
12 last amended by Section 9, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
13 2006, Section 2357.63), is amended to read as follows:

14 Section 2357.63. A. For taxable years beginning after December
15 31, 1997, and before January 1, 2012, there shall be allowed a
16 credit against the tax imposed by Section 2355 or, effective January
17 1, 2001, Section 2370 of this title or, effective July 1, 2001,
18 against the tax imposed by Section 624 or 628 of Title 36 of the
19 Oklahoma Statutes, or effective January 1, 2008, against the taxes
20 imposed by Section 1001, 1101 or 1102 of this title, for qualified
21 investment made in Oklahoma small business ventures in conjunction
22 with investment in such ventures made by a qualified small business
23 capital company.

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

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

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

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

20 4. Limited to the lesser of:

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

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

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

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

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

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

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2357.63.1 of Title 68, unless
5 there is created a duplication in numbering, reads as follows:

6 The Tax Commission shall be authorized to promulgate rules which
7 establish procedures for allowing credits claimed against the taxes
8 imposed by Section 1001, 1101 or 1102 of Title 68 of the Oklahoma
9 Statutes pursuant to the Small Business Capital Formation Incentive
10 Act. Such rules shall ensure that any credits allowed by the Tax
11 Commission are allowed within twelve (12) months of the date
12 claimed.

13 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.73, as
14 last amended by Section 19, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
15 2006, Section 2357.73), is amended to read as follows:

16 Section 2357.73 A. For taxable years beginning after December
17 31, 2000, and before January 1, 2012, there shall be allowed a
18 credit against the tax imposed by Section 2355 or, effective January
19 1, 2001, Section 2370 of this title or, effective July 1, 2001,
20 against the tax imposed by Section 624 or 628 of Title 36 of the
21 Oklahoma Statutes, or effective January 1, 2008, against the taxes
22 imposed by Section 1001, 1101 or 1102 of this title, for qualified
23 investment in qualified rural small business capital companies.
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1 B. The credit provided for in subsection A of this section
2 shall be thirty percent (30%) of the amount of a qualified
3 investment in qualified rural small business capital companies which
4 is subsequently invested in an Oklahoma rural small business venture
5 by the qualified rural small business capital company and may only
6 be claimed for a taxable year during which the qualified rural small
7 business capital company makes the qualified investment in an
8 Oklahoma rural small business venture if the funds are used in
9 pursuit of a legitimate business purpose of the Oklahoma rural small
10 business venture consistent with its organizational instrument,
11 bylaws or other agreement responsible for the governance of the
12 rural small business venture. The qualified rural small business
13 capital company shall issue such reports as the Oklahoma Tax
14 Commission may require attributing the source of funds of each
15 qualified investment it makes in an Oklahoma rural small business
16 venture. If the tax credit exceeds the amount of taxes due or if
17 there are no state taxes due of the taxpayer, the amount of the
18 claim not used as an offset against the taxes of a taxable year may
19 be carried forward for a period not to exceed three (3) taxable
20 years.

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

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

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

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

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

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

6 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.74, as
7 last amended by Section 20, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
8 2006, Section 2357.74), is amended to read as follows:

9 Section 2357.74 A. For taxable years beginning after December
10 31, 2000, and before January 1, 2012, there shall be allowed a
11 credit against the tax imposed by Section 2355 or, effective January
12 1, 2001, Section 2370 of this title or, effective July 1, 2001,
13 against the tax imposed by Section 624 or 628 of Title 36 of the
14 Oklahoma Statutes, or effective January 1, 2008, against the taxes
15 imposed by Section 1001, 1101 or 1102 of this title for qualified
16 investment made in Oklahoma rural small business ventures in
17 conjunction with investment in such ventures made by a qualified
18 rural small business capital company.

19 B. The credit provided for in this section shall be thirty
20 percent (30%) of the qualified investment made in Oklahoma rural
21 small business ventures in conjunction with qualified investment in
22 such ventures made by a qualified rural small business capital
23 company and shall be allowed for the taxable year during which the
24 qualified investment is made in an Oklahoma rural small business

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

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

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

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

16 4. Limited to the lesser of:

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

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

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

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

4 E. 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 legal
12 obligation to repay the borrowed funds but the allocation may not
13 exceed such shareholder's, partner's or member's pro-rata equity
14 share of the pass-through entity even if the taxpayer's legal
15 obligation to repay the borrowed funds is in excess of such amount.
16 For purposes of this act, "pass-through entity" means a corporation
17 that for the applicable tax years is treated as an S corporation
18 under the Internal Revenue Code, general partnership, limited
19 partnership, limited liability partnership, trust, or limited
20 liability company that for the applicable tax year is not taxed as a
21 corporation for federal income tax purposes.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2357.74.1 of Title 68, unless
24 there is created a duplication in numbering, reads as follows:

1 The Tax Commission shall be authorized to promulgate rules which
2 establish procedures for allowing credits claimed against the taxes
3 imposed by Section 1001, 1101 or 1102 of Title 68 of the Oklahoma
4 Statutes pursuant to the Rural Venture Capital Formation Incentive
5 Act. Such rules shall ensure that any credits allowed by the Tax
6 Commission are allowed within twelve (12) months of the date
7 claimed.

8 SECTION 7. This act shall become effective November 1, 2007.

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