

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3397  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the printed Bill  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Skye McNeil

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3397

By: McNiel

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2001, Section 2357.61, as last amended by  
10 Section 3, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
11 2009, Section 2357.61), which relates to the Small  
12 Business Capital Formation Incentive Act; defining  
13 terms; modifying definition; amending 68 O.S. 2001,  
14 Section 2357.62, as last amended by Section 4,  
15 Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section  
16 2357.62), which relates to credits for investment in  
17 qualified small business capital companies; extending  
18 duration of credits; limiting aggregate investment  
19 per small business venture; amending 68 O.S. 2001,  
20 Section 2357.63, as last amended by Section 5,  
21 Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section  
22 2357.63), which relates to credits for investment in  
23 qualified small business capital companies made in  
24 conjunction with certain other investments; extending  
duration of credits; limiting aggregate investment  
per small business venture; amending Section 11,  
Chapter 281, O.S.L. 2006, as amended by Section 6,  
Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section  
2357.63B), which relates to recapture events;  
modifying definition; amending 68 O.S. 2001, Section  
2357.72, as last amended by Section 7, Chapter 440,  
O.S.L. 2008 (68 O.S. Supp. 2009, Section 2357.72),  
which relates to the Rural Venture Capital Formation  
Incentive Act; defining terms; modifying definition;  
amending 68 O.S. 2001, Section 2357.73, as last  
amended by Section 8, Chapter 440, O.S.L. 2008 (68  
O.S. Supp. 2009, Section 2357.73), which relates to  
credits for investment in qualified rural small  
business capital companies; extending duration of

1 credits; limiting aggregate investment per rural  
2 small business venture; amending 68 O.S. 2001,  
3 Section 2357.74, as last amended by Section 9,  
4 Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section  
5 2357.74), which relates to credits for investment in  
6 qualified rural small business capital companies made  
7 in conjunction with certain other investments;  
8 extending duration of credits; limiting aggregate  
9 investment per rural small business venture; amending  
10 Section 22, Chapter 281, O.S.L. 2006, as amended by  
11 Section 10, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
12 2009, Section 2357.74B), which relates to recapture  
13 events; modifying definition; and declaring an  
14 emergency.

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

16 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.61, as  
17 last amended by Section 3, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
18 2009, Section 2357.61), is amended to read as follows:

19 Section 2357.61 As used in the Small Business Capital Formation  
20 Incentive Act:

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

1 royalty interest or otherwise, and does not mean the right to  
2 intellectual property, whether the rights arise from copyright,  
3 trademark or patent law;

4 2. "Aggregate" means the total amount invested pursuant to  
5 Sections 2357.62 and 2357.63 of this title combined;

6 3. "Capitalization" means the amount of:

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

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

14 c. any allocation of tax credit authority awarded to the  
15 qualified small business capital company by the  
16 Community Development Financial Institutions Fund  
17 pursuant to Section 45D of the Internal Revenue Code  
18 of 1986, as amended, to the extent such allocation has  
19 not been previously designated by the qualified small  
20 business capital company as contemplated by Section  
21 45D(b)(1)(C) of the Internal Revenue Code of 1986, as  
22 amended;

23 ~~3.~~ 4. "Equity and near-equity security" means common stock,  
24 preferred stock, warrants or other rights to subscribe to stock or

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

6 ~~4.~~ 5. "Financial lending institution" means a bank, credit  
7 union, savings and loan, commercial finance company or other entity  
8 principally engaged in the extension of credit;

9 ~~5.~~ 6. "Oklahoma small business venture" means a business,  
10 incorporated or unincorporated, which:

- 11 a. has or will have, within one hundred eighty (180) days  
12 after a qualified investment is made by a qualified  
13 small business capital company, at least fifty percent  
14 (50%) of its employees or assets located in 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. is engaged in a lawful business activity under any  
19 Industry Number appearing under any Major Group Number  
20 of Divisions A, C, D, E, F or I of the Standard  
21 Industrial Classification Manual, 1987 revision with  
22 the following exceptions:
  - 23 (1) Major Group 1 of Division A, and
  - 24 (2) Major Group 2 of Division A,

1 d. qualifies as a small business as defined by the  
2 federal Small Business Administration, and  
3 e. expends within eighteen (18) months after the date of  
4 the qualified investment ~~at least fifty percent (50%)~~  
5 one hundred percent (100%) of the proceeds of the  
6 qualified investment for the acquisition of tangible  
7 or intangible assets which are used in the active  
8 conduct of the trade or business or to provide working  
9 capital for the active conduct of the trade or  
10 business for which the determination of the small  
11 business qualification pursuant to subparagraph d of  
12 this paragraph was made. For purposes of this  
13 subparagraph, "working capital" shall not include  
14 consulting, brokerage or transaction fees. Provided,  
15 that the Oklahoma Tax Commission, upon request and  
16 demonstration of need by a qualified small business  
17 capital company or an Oklahoma small business venture,  
18 or an investor or an authorized agent of any such  
19 entities, may extend the 18-month period otherwise  
20 required by this subparagraph for a period not to  
21 exceed six (6) months. Provided, the expenditure of  
22 the invested funds by the Oklahoma small business  
23 venture shall otherwise comply with the requirements  
24 applicable to the usage of tax credits for qualified

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

11 ~~6.~~ 7. "Qualified investment" means an investment of funds in  
12 the form of "equity" and "near-equity" as defined in paragraph 3 of  
13 this section or "subordinated debt" as defined in paragraph 8 of  
14 this section; provided, an investment which is contingent upon the  
15 occurrence of an event or which is subject to being refunded or  
16 returned in the absence of such event shall only be deemed to have  
17 been made upon the occurrence of the event;

18 ~~7.~~ 8. "Qualified small business capital company" means a C  
19 corporation or a subchapter S corporation, as defined by the  
20 Internal Revenue Code of 1986, as amended, incorporated pursuant to  
21 the laws of Oklahoma, limited liability company or a registered  
22 business partnership with a certificate of partnership filed as  
23 required by law, which meets the following criteria:  
24

- 1 a. the corporation, limited liability company or  
2 partnership is organized to provide the direct  
3 investment of equity and near-equity funds to  
4 companies within this state,
- 5 b. the principal place of business of the corporation,  
6 limited liability company or partnership is located  
7 within this state,
- 8 c. the capitalization of the corporation, limited  
9 liability company or partnership is not less than One  
10 Million Dollars (\$1,000,000.00), and
- 11 d. the corporation, limited liability company or  
12 partnership has investment of not more than twenty  
13 percent (20%) of its capitalization in any one company  
14 at any time during the calendar year of the  
15 corporation, limited liability company or partnership;  
16 and

17 ~~8.~~ 9. "Subordinated debt" means indebtedness with a maturity  
18 date of not less than five (5) years that is subordinated to all  
19 other indebtedness of the issuer that has been issued or is to be  
20 issued to a financial lending institution. The indebtedness shall  
21 not have a repayment schedule that is faster than a level principal  
22 amortization over five (5) years.

1 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.62, as  
2 last amended by Section 4, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
3 2009, Section 2357.62), is amended to read as follows:

4 Section 2357.62 A. For taxable years beginning after December  
5 31, 1997, and before January 1, ~~2012~~ 2017, there shall be allowed a  
6 credit against the tax imposed by Section 2355 or, effective January  
7 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
8 against the tax imposed by Section 624 or 628 of Title 36 of the  
9 Oklahoma Statutes, for qualified investment in qualified small  
10 business capital companies.

11 B. 1. The credit provided for in subsection A of this section  
12 shall be twenty percent (20%) of the qualified investment in  
13 qualified small business capital companies which is subsequently  
14 invested in an Oklahoma small business venture by the qualified  
15 venture capital company and may only be claimed for a taxable year  
16 during which the qualified small business capital company makes the  
17 qualified investment in an Oklahoma small business venture. The  
18 credit shall be allowed for the amount of the qualified investment  
19 in an Oklahoma small business venture if the funds are used in  
20 pursuit of a legitimate business purpose of the Oklahoma small  
21 business venture consistent with its organizational instrument,  
22 bylaws or other agreement responsible for the governance of the  
23 small business venture. The qualified small business capital  
24 company shall issue such reports as the Oklahoma Tax Commission may

1 require attributing the source of funds of each investment it makes  
2 in an Oklahoma business venture. If the tax credit exceeds the  
3 amount of taxes due or if there are no state taxes due of the  
4 taxpayer, the amount of the claim not used as an offset against the  
5 taxes of a taxable year may be carried forward for a period not to  
6 exceed three (3) taxable years.

7 2. To qualify for the credit authorized by this section, a  
8 qualified investment shall be limited to a total investment of  
9 Thirty Million Dollars (\$30,000,000.00) aggregate per Oklahoma small  
10 business venture.

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

14 D. No taxpayer may claim the credit provided for in this  
15 section if the capital provided by a qualified small business  
16 capital company is used by an Oklahoma small business venture for  
17 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 small business capital company.

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

24

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 also 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 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 pro-rata share of such borrowed funds. For purposes of the  
14 Small Business Capital Formation Incentive Act, "pass-through  
15 entity" means a corporation that for the applicable tax years is  
16 treated as an S corporation under the Internal Revenue Code, general  
17 partnership, limited partnership, limited liability partnership,  
18 trust, or limited liability company that for the applicable tax year  
19 is not taxed as a corporation for federal income tax purposes.

20 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.63, as  
21 last amended by Section 5, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
22 2009, Section 2357.63), is amended to read as follows:

23 Section 2357.63 A. For taxable years beginning after December  
24 31, 1997, and before January 1, ~~2012~~ 2017, 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, for qualified investment made in Oklahoma small  
5 business ventures in conjunction with investment in such ventures  
6 made by a qualified small business 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 shall be allowed for the taxable year during which the qualified  
12 investment is made in an Oklahoma small business venture. If the  
13 tax credit allowed pursuant to subsection A of this section exceeds  
14 the amount of taxes due or if there are no state taxes due of the  
15 taxpayer, the amount of the claim not used as an offset against the  
16 taxes of a taxable year may be carried forward for a period not to  
17 exceed three (3) taxable years. To qualify for the credit  
18 authorized by this section, a 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 a total~~  
10 ~~investment of Thirty Million Dollars (\$30,000,000.00)~~  
11 ~~aggregate per Oklahoma small business venture.~~

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

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

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

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

12 SECTION 4. AMENDATORY Section 11, Chapter 281, O.S.L.  
13 2006, as amended by Section 6, Chapter 440, O.S.L. 2008 (68 O.S.  
14 Supp. 2009, Section 2357.63B), is amended to read as follows:

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

18 1. The Oklahoma small business venture fails to expend ~~at least~~  
19 ~~fifty percent (50%)~~ one hundred percent (100%) of the proceeds of  
20 qualified investments for acquisition of tangible or intangible  
21 assets to be used in the active conduct of the trade or business or  
22 for working capital for the active conduct of the trade or business  
23 of the small business venture within eighteen (18) months after the  
24 qualified investment is made or within an extension of such period

1 as provided in Section 2357.61 of this title. For purposes of this  
2 paragraph, "working capital" shall not include consulting, brokerage  
3 or transaction fees;

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

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

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

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

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

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

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

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

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

23           1.    The aggregate decrease in the credits previously allowed to  
24 the taxpayer pursuant to Section 2357.62 or Section 2357.63 of this

1 title for all prior taxable periods which would have resulted if no  
2 credit had been authorized with respect to the qualified investment;  
3 plus

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

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

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

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

1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.72, as  
2 last amended by Section 7, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
3 2009, Section 2357.72), is amended to read as follows:

4 Section 2357.72 As used in the Rural Venture Capital Formation  
5 Incentive Act:

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

17 2. "Aggregate" means the total amount invested pursuant to  
18 Sections 2357.73 and 2357.74 of this title combined;

19 3. "Capitalization" means the amount of:

- 20 a. any funds that have actually been contributed to the  
21 qualified rural small business capital company,  
22 b. any contractual commitment to provide funds to the  
23 qualified rural small business capital company to the  
24 extent that such commitment is payable on demand and

1 has substantial economic penalties for breach of the  
2 commitment to provide such funds,

3 c. any allocation of tax credit authority awarded to the  
4 qualified rural small business capital company by the  
5 Community Development Financial Institutions Fund  
6 pursuant to Section 45D of the Internal Revenue Code  
7 of 1986, as amended, to the extent such allocation has  
8 not been previously designated by the qualified rural  
9 small business capital company as contemplated by  
10 Section 45D(b) (1) (C) of the Internal Revenue Code of  
11 1986, as amended, and

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

18 ~~3.~~ 4. "Equity and near-equity security" means common stock,  
19 preferred stock, warrants or other rights to subscribe to stock or  
20 its equivalent, or an interest in a limited liability company,  
21 partnership, or subordinated debt that is convertible into, or  
22 entitles the holder to receive upon its exercise, common stock,  
23 preferred stock, a royalty or net profits interest, or an interest  
24 in a limited liability company or partnership;

1       ~~4.~~ 5. "Financial lending institution" means a bank, credit  
2 union, savings and loan, commercial finance company or other entity  
3 principally engaged in the extension of credit;

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

8       ~~6.~~ 7. "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~~ Division A, C, D, E, F or I of the  
3 Standard Industrial Classification Manual, 1987  
4 revision with 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 one hundred percent (100%) of the proceeds of the  
12 qualified investment for the acquisition of tangible

13 or intangible assets which are used in the active

14 conduct of the trade or business or for working

15 capital for the active conduct of such trade or

16 business for which the determination of the small

17 business qualification pursuant to subparagraph e of

18 this paragraph was made. For purposes of this

19 subparagraph, "working capital" shall not include

20 consulting, brokerage or transaction fees. Provided,

21 that the 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.~~ 8. "Qualified investment" means an investment of funds in  
19 the form of "equity" and "near-equity" as defined in paragraph 3 of  
20 this section or "subordinated debt" as defined in paragraph 9 of  
21 this 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.~~ 9. "Qualified rural small business capital company" means a  
2 C 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.~~ 10. "Subordinated debt" means indebtedness with a maturity  
24 date of not less than five (5) years that is subordinated to all

1 other indebtedness of the issuer that has been issued or is to be  
2 issued to a financial lending institution. The indebtedness shall  
3 not have 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 8, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
7 2009, 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~~ 2017, 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. 1. 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 2. To qualify for the credit authorized by this section, a  
12 qualified investment shall be limited to a total investment of  
13 Thirty Million Dollars (\$30,000,000.00) aggregate per Oklahoma rural  
14 small business venture.

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

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

22 E. No financial lending institution shall be eligible to claim  
23 the credit provided for in this section except with respect to  
24

1 qualified investments in a qualified rural small business capital  
2 company.

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

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

1 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.74, as  
2 last amended by Section 9, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
3 2009, Section 2357.74), is amended to read as follows:

4 Section 2357.74 A. For taxable years beginning after December  
5 31, 2000, and before January 1, ~~2012~~ 2017, there shall be allowed a  
6 credit against the tax imposed by Section 2355 or, effective January  
7 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
8 against the tax imposed by Section 624 or 628 of Title 36 of the  
9 Oklahoma Statutes, for qualified investment made in Oklahoma rural  
10 small business ventures in conjunction with investment in such  
11 ventures made by a qualified rural small business capital company.

12 B. The credit provided for in this section shall be thirty  
13 percent (30%) of the qualified investment made in Oklahoma rural  
14 small business ventures in conjunction with qualified investment in  
15 such ventures made by a qualified rural small business capital  
16 company and shall be allowed for the taxable year during which the  
17 qualified investment is made in an Oklahoma rural small business  
18 venture. If the tax credit allowed pursuant to subsection A of this  
19 section 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. To qualify for  
23 the credit authorized by this section, a qualified investment shall  
24 be:

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

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

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

9 4. Limited to ~~the lesser of:~~

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

13 b. ~~two hundred percent (200%) of the qualified investment~~  
14 ~~made by the qualified rural small business capital~~  
15 ~~company in the Oklahoma rural small business venture a~~  
16 total investment of Thirty Million Dollars  
17 (\$30,000,000.00) aggregate per Oklahoma rural small  
18 business venture.

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

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

1 E. 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 also 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 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 the Rural Venture Capital Formation  
14 Incentive Act, "pass-through entity" means a corporation that for  
15 the applicable tax years is treated as an S corporation under the  
16 Internal Revenue Code, general partnership, limited partnership,  
17 limited liability partnership, trust, or limited liability company  
18 that for the applicable tax year is not taxed as a corporation for  
19 federal income tax purposes.

20 SECTION 8. AMENDATORY Section 22, Chapter 281, O.S.L.  
21 2006, as amended by Section 10, Chapter 440, O.S.L. 2008 (68 O.S.  
22 Supp. 2009, Section 2357.74B), is amended to read as follows:  
23  
24

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

4 1. The Oklahoma rural small business venture fails to expend ~~at~~  
5 ~~least fifty percent (50%)~~ one hundred percent (100%) of the proceeds  
6 of qualified investments for acquisition of tangible or intangible  
7 assets to be used in the active conduct of the trade or business or  
8 for working capital for the active conduct of the trade or business  
9 of the rural small business venture within eighteen (18) months  
10 after the qualified investment is made or within an extension of  
11 such period as provided in Section 2357.72 of this title. For  
12 purposes of this paragraph, "working capital" shall not include  
13 consulting, brokerage or transaction fees;

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

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

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

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

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

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

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

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

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

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

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

17           2. Interest at the rate prescribed by Section 217 of this title  
18 on the amount determined pursuant to paragraph 1 of this subsection  
19 for each prior taxable period for the period beginning on the due  
20 date for filing the applicable report or return for the prior  
21 taxable period.

22          D. The tax for the taxable period shall be increased pursuant  
23 to this section only with respect to credits which were used to  
24

1 reduce tax liability. In the case of credits not used to reduce tax  
2 liability, the carryforwards allowed shall be adjusted accordingly.

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

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

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

23 SECTION 9. It being immediately necessary for the preservation  
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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