

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2545

By: Wright (John), Tibbs,
Reynolds, Cooksey and Kern
of the House

6 and

7 Stanislawski of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 (revenue and taxation - tax record confidentiality -
12 providing specific disclosure requirements -
13 emergency)

14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last
17 amended by Section 2, Chapter 426, O.S.L. 2009 (68 O.S. Supp. 2009,
18 Section 205), is amended to read as follows:

19 Section 205. A. The records and files of the Oklahoma Tax
20 Commission concerning the administration of the Uniform Tax
21 Procedure Code or of any state tax law shall be considered
22 confidential and privileged, except as otherwise provided for by
23 law, and neither the Tax Commission nor any employee engaged in the
24 administration of the Tax Commission or charged with the custody of

1 any such records or files nor any person who may have secured
2 information from the Tax Commission shall disclose any information
3 obtained from the records or files or from any examination or
4 inspection of the premises or property of any person.

5 B. Except as provided in paragraph 26 of subsection C of this
6 section, neither the Tax Commission nor any employee engaged in the
7 administration of the Tax Commission or charged with the custody of
8 any such records or files shall be required by any court of this
9 state to produce any of the records or files for the inspection of
10 any person or for use in any action or proceeding, except when the
11 records or files or the facts shown thereby are directly involved in
12 an action or proceeding pursuant to the provisions of the Uniform
13 Tax Procedure Code or of the state tax law, or when the
14 determination of the action or proceeding will affect the validity
15 or the amount of the claim of the state pursuant to any state tax
16 law, or when the information contained in the records or files
17 constitutes evidence of violation of the provisions of the Uniform
18 Tax Procedure Code or of any state tax law.

19 C. The provisions of this section shall not prevent the Tax
20 Commission from disclosing the following information and no
21 liability whatsoever, civil or criminal, shall attach to any member
22 of the Tax Commission or any employee thereof for any error or
23 omission in the disclosure of such information:

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1 1. The delivery to a taxpayer or a duly authorized
2 representative of the taxpayer of a copy of any report or any other
3 paper filed by the taxpayer pursuant to the provisions of the
4 Uniform Tax Procedure Code or of any state tax law;

5 2. The exchange of information that is not protected by the
6 federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.,
7 pursuant to reciprocal agreements entered into by the Tax Commission
8 and other state agencies or agencies of the federal government;

9 3. The publication of statistics so classified as to prevent
10 the identification of a particular report and the items thereof;

11 4. The examination of records and files by the State Auditor
12 and Inspector or the duly authorized agents of the State Auditor and
13 Inspector;

14 5. The disclosing of information or evidence to the Oklahoma
15 State Bureau of Investigation, Attorney General, Oklahoma State
16 Bureau of Narcotics and Dangerous Drugs Control, any district
17 attorney, or agent of any federal law enforcement agency when the
18 information or evidence is to be used by such officials to
19 investigate or prosecute violations of the criminal provisions of
20 the Uniform Tax Procedure Code or of any state tax law or of any
21 federal crime committed against this state. Any information
22 disclosed to the Oklahoma State Bureau of Investigation, Attorney
23 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs
24 Control, any district attorney, or agent of any federal law

1 enforcement agency shall be kept confidential by such person and not
2 be disclosed except when presented to a court in a prosecution for
3 violation of the tax laws of this state or except as specifically
4 authorized by law, and a violation by the Oklahoma State Bureau of
5 Investigation, Attorney General, Oklahoma State Bureau of Narcotics
6 and Dangerous Drugs Control, district attorney, or agent of any
7 federal law enforcement agency by otherwise releasing the
8 information shall be a felony;

9 6. The use by any division of the Tax Commission of any
10 information or evidence in the possession of or contained in any
11 report or return filed with any other division of the Tax
12 Commission;

13 7. The furnishing, at the discretion of the Tax Commission, of
14 any information disclosed by its records or files to any official
15 person or body of this state, any other state, the United States, or
16 foreign country who is concerned with the administration or
17 assessment of any similar tax in this state, any other state or the
18 United States. The provisions of this paragraph shall include the
19 furnishing of information by the Tax Commission to a county assessor
20 to determine the amount of gross household income pursuant to the
21 provisions of Section 8C of Article X of the Oklahoma Constitution
22 or Section 2890 of this title. The Tax Commission shall promulgate
23 rules to give guidance to the county assessors regarding the type of
24 information which may be used by the county assessors in determining

1 the amount of gross household income pursuant to Section 8C of
2 Article X of the Oklahoma Constitution or Section 2890 of this
3 title. The provisions of this paragraph shall also include the
4 furnishing of information to the State Treasurer for the purpose of
5 administration of the Uniform Unclaimed Property Act;

6 8. The furnishing of information to other state agencies for
7 the limited purpose of aiding in the collection of debts owed by
8 individuals to such requesting agencies;

9 9. The furnishing of information requested by any member of the
10 general public and stated in the sworn lists or schedules of taxable
11 property of public service corporations organized, existing, or
12 doing business in this state which are submitted to and certified by
13 the State Board of Equalization pursuant to the provisions of
14 Section 2858 of this title and Section 21 of Article X of the
15 Oklahoma Constitution, provided such information would be a public
16 record if filed pursuant to Sections 2838 and 2839 of this title on
17 behalf of a corporation other than a public service corporation;

18 10. The furnishing of information requested by any member of
19 the general public and stated in the findings of the Tax Commission
20 as to the adjustment and equalization of the valuation of real and
21 personal property of the counties of the state, which are submitted
22 to and certified by the State Board of Equalization pursuant to the
23 provisions of Section 2865 of this title and Section 21 of Article X
24 of the Oklahoma Constitution;

1 11. The furnishing of information to an Oklahoma wholesaler of
2 low-point beer, licensed under the provisions of Section 163.1 et
3 seq. of Title 37 of the Oklahoma Statutes, or an association or
4 organization whose membership is comprised of such wholesalers, of
5 the licensed retailers authorized by law to purchase low-point beer
6 in this state or the furnishing of information to a licensed
7 Oklahoma wholesaler of low-point beer of shipments by licensed
8 manufacturers into this state;

9 12. The furnishing of information as to the issuance or
10 revocation of any tax permit, license or exemption by the Tax
11 Commission as provided for by law. Such information shall be
12 limited to the name of the person issued the permit, license or
13 exemption, the name of the business entity authorized to engage in
14 business pursuant to the permit, license or exemption, the address
15 of the business entity, and the grounds for revocation;

16 13. The posting of notice of revocation of any tax permit or
17 license upon the premises of the place of business of any business
18 entity which has had any tax permit or license revoked by the Tax
19 Commission as provided for by law. Such notice shall be limited to
20 the name of the person issued the permit or license, the name of the
21 business entity authorized to engage in business pursuant to the
22 permit or license, the address of the business entity, and the
23 grounds for revocation;

24

1 14. The furnishing of information upon written request by any
2 member of the general public as to the outstanding and unpaid amount
3 due and owing by any taxpayer of this state for any delinquent tax,
4 together with penalty and interest, for which a tax warrant or a
5 certificate of indebtedness has been filed pursuant to law;

6 15. After the filing of a tax warrant pursuant to law, the
7 furnishing of information upon written request by any member of the
8 general public as to any agreement entered into by the Tax
9 Commission concerning a compromise of tax liability for an amount
10 less than the amount of tax liability stated on such warrant;

11 16. The disclosure of information necessary to complete the
12 performance of any contract authorized by this title to any person
13 with whom the Tax Commission has contracted;

14 17. The disclosure of information to any person for a purpose
15 as authorized by the taxpayer pursuant to a waiver of
16 confidentiality. The waiver shall be in writing and shall be made
17 upon such form as the Tax Commission may prescribe;

18 18. The disclosure of information required in order to comply
19 with the provisions of Section 2369 of this title;

20 19. The disclosure to an employer, as defined in Sections
21 2385.1 and 2385.3 of this title, of information required in order to
22 collect the tax imposed by Section 2385.2 of this title;

23 20. The disclosure to a plaintiff of a corporation's last-known
24 address shown on the records of the Franchise Tax Division of the

1 Tax Commission in order for such plaintiff to comply with the
2 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

3 21. The disclosure of information directly involved in the
4 resolution of the protest by a taxpayer to an assessment of tax or
5 additional tax or the resolution of a claim for refund filed by a
6 taxpayer, including the disclosure of the pendency of an
7 administrative proceeding involving such protest or claim, to a
8 person called by the Tax Commission as an expert witness or as a
9 witness whose area of knowledge or expertise specifically addresses
10 the issue addressed in the protest or claim for refund. Such
11 disclosure to a witness shall be limited to information pertaining
12 to the specific knowledge of that witness as to the transaction or
13 relationship between taxpayer and witness;

14 22. The disclosure of information necessary to implement an
15 agreement authorized by Section 2702 of this title when such
16 information is directly involved in the resolution of issues arising
17 out of the enforcement of a municipal sales tax ordinance. Such
18 disclosure shall be to the governing body or to the municipal
19 attorney, if so designated by the governing body;

20 23. The furnishing of information regarding incentive payments
21 made pursuant to the provisions of Sections 3601 through 3609 of
22 this title or incentive payments made pursuant to the provisions of
23 Sections 3501 through 3508 of this title;

24

1 24. The furnishing to a prospective purchaser of any business,
2 or his or her authorized representative, of information relating to
3 any liabilities, delinquencies, assessments or warrants of the
4 prospective seller of the business which have not been filed of
5 record, established, or become final and which relate solely to the
6 seller's business. Any disclosure under this paragraph shall only
7 be allowed upon the presentment by the prospective buyer, or the
8 buyer's authorized representative, of the purchase contract and a
9 written authorization between the parties;

10 25. The furnishing of information as to the amount of state
11 revenue affected by the issuance or granting of any tax permit,
12 license, exemption, deduction, credit or other tax preference by the
13 Tax Commission as provided for by law. Such information shall be
14 limited to the type of permit, license, exemption, deduction, credit
15 or other tax preference issued or granted, the date and duration of
16 such permit, license, exemption, deduction, credit or other tax
17 preference and the amount of such revenue. The provisions of this
18 paragraph shall not authorize the disclosure of the name of the
19 person issued such permit, license, exemption, deduction, credit or
20 other tax preference, or the name of the business entity authorized
21 to engage in business pursuant to the permit, license, exemption,
22 deduction, credit or other tax preference;

23 26. The examination of records and files of a person or entity
24 by the Oklahoma State Bureau of Narcotics and Dangerous Drugs

1 Control pursuant to a court order by a magistrate in whose
2 territorial jurisdiction the person or entity resides, or where the
3 Tax Commission records and files are physically located. Such an
4 order may only be issued upon a sworn application by an agent of the
5 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control,
6 certifying that the person or entity whose records and files are to
7 be examined is the target of an ongoing investigation of a felony
8 violation of the Uniform Controlled Dangerous Substances Act and
9 that information resulting from such an examination would likely be
10 relevant to that investigation. Any records or information obtained
11 pursuant to such an order may only be used by the Oklahoma State
12 Bureau of Narcotics and Dangerous Drugs Control in the investigation
13 and prosecution of a felony violation of the Uniform Controlled
14 Dangerous Substances Act. Any such order issued pursuant to this
15 paragraph, along with the underlying application, shall be sealed
16 and not disclosed to the person or entity whose records were
17 examined, for a period of ninety (90) days. The issuing magistrate
18 may grant extensions of such period upon a showing of good cause in
19 furtherance of the investigation. Upon the expiration of ninety
20 (90) days and any extensions granted by the magistrate, a copy of
21 the application and order shall be served upon the person or entity
22 whose records were examined, along with a copy of the records or
23 information actually provided by the Tax Commission;

24

1 27. The disclosure of information, as prescribed by this
2 paragraph, which is related to the proposed or actual usage of tax
3 credits pursuant to Section 2357.7 of this title, the Small Business
4 Capital Formation Incentive Act or the Rural Venture Capital
5 Formation Incentive Act. Unless the context clearly requires
6 otherwise, the terms used in this paragraph shall have the same
7 meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this
8 title. The disclosure of information authorized by this paragraph
9 shall include:

- 10 a. the legal name of any qualified venture capital
11 company, qualified small business capital company, or
12 qualified rural small business capital company,
- 13 b. the identity or legal name of any person or entity
14 that is a shareholder or partner of a qualified
15 venture capital company, qualified small business
16 capital company, or qualified rural small business
17 capital company,
- 18 c. the identity or legal name of any Oklahoma business
19 venture, Oklahoma small business venture, or Oklahoma
20 rural small business venture in which a qualified
21 investment has been made by a capital company, or
- 22 d. the amount of funds invested in a qualified venture
23 capital company, the amount of qualified investments
24 in a qualified small business capital company or

1 qualified rural small business capital company and the
2 amount of investments made by a qualified venture
3 capital company, qualified small business capital
4 company, or qualified rural small business capital
5 company;

6 28. The disclosure of specific information as required by
7 Section 46 of Title 62 of the Oklahoma Statutes; ~~or~~

8 29. The disclosure of specific information as required by
9 Section ~~3~~ 205.5 of this ~~act~~ title;

10 30. The disclosure of specific information as required by
11 Section 2 of this act; or

12 31. The disclosure of specific information as required by
13 Section 3 of this act.

14 D. The Tax Commission shall cause to be prepared and made
15 available for public inspection in the office of the Tax Commission
16 in such manner as it may determine an annual list containing the
17 name and post office address of each person, whether individual,
18 corporate, or otherwise, making and filing an income tax return with
19 the Tax Commission.

20 It is specifically provided that no liability whatsoever, civil
21 or criminal, shall attach to any member of the Tax Commission or any
22 employee thereof for any error or omission of any name or address in
23 the preparation and publication of the list.

1 E. The Tax Commission shall prepare or cause to be prepared a
2 report on all provisions of state tax law that reduce state revenue
3 through exclusions, deductions, credits, exemptions, deferrals or
4 other preferential tax treatments. The report shall be prepared not
5 later than October 1 of each even-numbered year and shall be
6 submitted to the Governor, the President Pro Tempore of the Senate
7 and the Speaker of the House of Representatives. The Tax Commission
8 may prepare and submit supplements to the report at other times of
9 the year if additional or updated information relevant to the report
10 becomes available. The report shall include, for the previous
11 fiscal year, the Tax Commission's best estimate of the amount of
12 state revenue that would have been collected but for the existence
13 of each such exclusion, deduction, credit, exemption, deferral or
14 other preferential tax treatment allowed by law. The Tax Commission
15 may request the assistance of other state agencies as may be needed
16 to prepare the report. The Tax Commission is authorized to require
17 any recipient of a tax incentive or tax expenditure to report to the
18 Tax Commission such information as requested so that the Tax
19 Commission may provide the information to the Incentive Review
20 Committee or fulfill its obligations as required by this subsection.
21 The Tax Commission may require this information to be submitted in
22 an electronic format. The Tax Commission may disallow any claim of
23 a person for a tax incentive due to its failure to file a report as
24 required under the authority of this subsection. The Tax Commission

1 may consult with the Incentive Review Committee to develop a
2 reporting system to obtain the information requested in a manner
3 that is the least burdensome on the taxpayer.

4 F. It is further provided that the provisions of this section
5 shall be strictly interpreted and shall not be construed as
6 permitting the disclosure of any other information contained in the
7 records and files of the Tax Commission relating to income tax or to
8 any other taxes.

9 G. Unless otherwise provided for in this section, any violation
10 of the provisions of this section shall constitute a misdemeanor and
11 shall be punishable by the imposition of a fine not exceeding One
12 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail
13 for a term not exceeding one (1) year, or by both such fine and
14 imprisonment, and the offender shall be removed or dismissed from
15 office.

16 H. Offenses described in Section 2376 of this title shall be
17 reported to the appropriate district attorney of this state by the
18 Tax Commission as soon as the offenses are discovered by the Tax
19 Commission or its agents or employees. The Tax Commission shall
20 make available to the appropriate district attorney or to the
21 authorized agent of the district attorney its records and files
22 pertinent to prosecutions, and such records and files shall be fully
23 admissible as evidence for the purpose of such prosecutions.

24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 205.6 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma Tax Commission shall compile the information
5 listed in paragraph 27 of Section 205 of this title and make the
6 information available on its website. The information shall be
7 provided for each tax year in which a qualified small business
8 capital company or qualified rural small business capital company
9 makes qualified investments.

10 B. Any disclosure made by the Tax Commission or its employees,
11 in a good-faith effort to comply with the provisions of this
12 section, shall not be considered a violation of Section 205 of this
13 title or any other statute prohibiting disclosure of taxpayer
14 information and no liability whatsoever, civil or criminal, shall
15 attach to any member of the Tax Commission or any employee thereof
16 for any error or omission in the disclosure of such information.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 205.7 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 A. For any tax credit that may be claimed by any person or any
21 lawfully recognized business entity pursuant to the provisions of
22 Sections 2357.62, 2357.63, 2357.73 and 2357.74 of Title 68 of the
23 Oklahoma Statutes, the Oklahoma Tax Commission shall maintain a list
24 of any person and any such entity pursuant to the provisions of

1 subsection G of Section 2357.62, subsection E of Section 2357.63,
2 subsection G of Section 2357.73 and subsection E of Section 2357.74
3 of Title 68 of the Oklahoma Statutes. For purposes of this
4 subsection, the Tax Commission shall determine the identity of such
5 persons and legal entities as of the end of their applicable tax
6 year during which the qualified investment was made.

7 B. In addition to the requirements of this section, the Tax
8 Commission shall disclose upon request and provide copies of any
9 Determination Letter, Letter ruling or equivalent document provided
10 to any person or entity in connection with or in any way related to
11 the Small Business Capital Formation Incentive Act and the Rural
12 Venture Capital Formation Incentive Act.

13 C. Any disclosure made by the Tax Commission or its employees,
14 in a good-faith effort to comply with the provisions of this
15 section, shall not be considered a violation of Section 205 of Title
16 68 of the Oklahoma Statutes or any other statute prohibiting
17 disclosure of taxpayer information and no liability whatsoever,
18 civil or criminal, shall attach to any member of the Tax Commission
19 or any employee thereof for any error or omission in the disclosure
20 of such information.

21 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.62, as
22 last amended by Section 4, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
23 2009, Section 2357.62), is amended to read as follows:

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1 Section 2357.62. A. For taxable years beginning after December
2 31, 1997, and before January 1, 2012, there shall be allowed a
3 credit against the tax imposed by Section 2355 or, effective January
4 1, 2001, Section 2370 of this title or, effective July 1, 2001,
5 against the tax imposed by Section 624 or 628 of Title 36 of the
6 Oklahoma Statutes, for qualified investment in qualified small
7 business capital companies.

8 B. The credit provided for in subsection A of this section
9 shall be twenty percent (20%) of the qualified investment in
10 qualified small business capital companies which is subsequently
11 invested in an Oklahoma small business venture by the qualified
12 venture capital company and may only be claimed for a taxable year
13 during which the qualified small business capital company makes the
14 qualified investment in an Oklahoma small business venture. The
15 credit shall be allowed for the amount of the qualified investment
16 in an Oklahoma small business venture if the funds are used in
17 pursuit of a legitimate business purpose of the Oklahoma small
18 business venture consistent with its organizational instrument,
19 bylaws or other agreement responsible for the governance of the
20 small business venture. The qualified small business capital
21 company shall issue such reports as the Oklahoma Tax Commission may
22 require attributing the source of funds of each investment it makes
23 in an Oklahoma business venture. If the tax credit exceeds the
24 amount of taxes due or if there are no state taxes due of the

1 taxpayer, the amount of the claim not used as an offset against the
2 taxes of a taxable year may be carried forward for a period not to
3 exceed three (3) taxable years.

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

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

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

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

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

12 H. A pass-through entity that allocates credits pursuant to
13 paragraph G of this section shall report all allocations of credits
14 to the qualified small business capital company in which the pass-
15 through entity made a qualified investment. No credit shall be
16 allowed to a shareholder, partner or member to whom the credit is
17 allocated for an investment in a small business capital company
18 unless the report required by this paragraph for the year in which
19 the investment is made is provided.

20 SECTION 5. 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:
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1 Section 2357.63. Credit for qualified investment made in
2 Oklahoma small business ventures in conjunction with investment made
3 by qualified small business capital company.

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

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

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

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

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

8 4. Limited to the lesser of:

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

12 b. two hundred percent (200%) of the qualified investment
13 made by the qualified small business capital company
14 in the Oklahoma small business venture.

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

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

20 E. 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 only 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 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 amount. For purposes of the Oklahoma Small Business Capital
9 Formation Incentive Act, "pass-through entity" means a corporation
10 that for the applicable tax years is treated as an S corporation
11 under the Internal Revenue Code, general partnership, limited
12 partnership, limited liability partnership, trust, or limited
13 liability company that for the applicable tax year is not taxed as a
14 corporation for federal income tax purposes.

15 F. A pass-through entity that allocates credits pursuant to
16 paragraph E of this section shall report all allocations of credits
17 to the qualified small business capital company in which the pass-
18 through entity made a qualified investment. No credit shall be
19 allowed to a shareholder, partner or member to whom the credit is
20 allocated for an investment in a small business capital company
21 unless the report required by this paragraph for the year in which
22 the investment is made is provided.

23
24

1 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.64, as
2 amended by Section 15, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2009,
3 Section 2357.64), is amended to read as follows:

4 Section 2357.64. A. Each qualified small business capital
5 company shall file an annual report with the Oklahoma Tax Commission
6 no later than April 30 of each year which lists all qualified
7 investments in or in conjunction with such company which may qualify
8 for the tax credit allowed by Section 2357.62 or Section 2357.63 of
9 this title. The report shall state the amount of qualified
10 investments in or in conjunction with such company during the
11 taxable year by persons, partnerships or corporations and the social
12 security number of such person or the federal identification number
13 of such partnership or corporation making such qualified
14 investments. The report shall also include a schedule listing the
15 type and amount of qualified investment made by or in conjunction
16 with the small business capital company, a listing provided by any
17 pass-through entity that made a qualified investment that details
18 the allocation of credits by the pass-through entity and such other
19 information as the Tax Commission may prescribe.

20 B. Each qualified small business capital company shall furnish
21 to each person, partnership or corporation which made a qualified
22 investment in or in conjunction with such company during the
23 preceding year a written statement showing the name of the small
24 business capital company, the name of the investor, the total amount

1 of qualified investment in or in conjunction with the company made
2 by such person, partnership or corporation, the amount of the
3 qualified investment which was subsequently invested by the capital
4 company in a small business venture, the date of such investment and
5 the name of the business venture invested in and such other
6 information as the Tax Commission may require. The statement shall
7 be attached to the income tax return or other applicable tax report
8 or return of such person, partnership or corporation in order to
9 qualify for the tax credit allowed by Section 2357.62 or Section
10 2357.63 of this title.

11 C. On or before April 30 of each year, the qualified small
12 business capital company shall provide to the Tax Commission a copy
13 of its annual financial statements, including documentation which
14 shall address, to the satisfaction of the ~~Oklahoma~~ Tax Commission,
15 the methods of operation and conduct of the business of the capital
16 company to determine whether the capital company is complying with
17 the terms of the Small Business Capital Formation Incentive Act and
18 any rules promulgated by the Tax Commission, including whether
19 qualified investments in Oklahoma small business ventures have been
20 made in the manner required by law. No credit shall be allowed for
21 an investment in a small business capital company unless the report
22 required by this subsection for the year in which the investment is
23 made is provided.

24

1 D. Qualified small business capital companies or any entity
2 making an investment in conjunction with investment by a qualified
3 small business capital company pursuant to Section 2357.63 of this
4 title must notify the Tax Commission within twenty (20) business
5 days if:

6 1. The investment in an Oklahoma small business venture is
7 transferred, withdrawn or otherwise returned; or

8 2. An occurrence upon which an investment is contingent has
9 taken place.

10 If the qualified investment is held in the Oklahoma small
11 business venture for less than five (5) years, the Tax Commission
12 shall revoke the verification of tax credits and take action to
13 recapture the tax credits pursuant to Section 11 of this act to the
14 extent such credits were authorized based upon an amount of
15 qualified investment that was transferred, withdrawn or otherwise
16 returned.

17 E. Any qualified small business capital company who refuses or
18 fails to comply with the provisions of this section or is hereafter
19 found guilty in a court of competent jurisdiction of any violation
20 of any Oklahoma tax law shall not be eligible to be a qualified
21 small business capital company for purposes of this act.

22 F. Any taxpayer who refuses or fails to comply with the
23 provisions of this section or is hereafter found guilty in a court
24 of competent jurisdiction of any violation of any Oklahoma tax law

1 shall not be eligible for the tax credits granted in Sections
2 2357.62 and 2357.63 of this title.

3 G. The Tax Commission is directed to immediately develop a
4 system for reporting of any income tax credits issued pursuant to
5 Sections 2357.62 and 2357.63 of this title and a system which
6 requires the filing of informational reports on how the qualified
7 investments were used, economic benchmarks achieved, implementation
8 of a business plan for the Oklahoma small business venture,
9 commercialization success, additional investments in the business by
10 other investors and job creation that has taken place.

11 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.73, as
12 last amended by Section 8, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
13 2009, Section 2357.73), is amended to read as follows:

14 Section 2357.73. A. For taxable years beginning after December
15 31, 2000, 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, for qualified investment in qualified rural small
20 business capital companies.

21 B. The credit provided for in subsection A of this section
22 shall be thirty percent (30%) of the amount of a qualified
23 investment in qualified rural small business capital companies which
24 is subsequently invested in an Oklahoma rural small business venture

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

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

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

24

1 E. No financial lending institution shall be eligible to claim
2 the credit provided for in this section except with respect to
3 qualified investments in a qualified rural small business capital
4 company.

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

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

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

3 H. A pass-through entity that allocates credits pursuant to
4 paragraph G of this section shall report all allocations of credits
5 to the qualified small business capital company in which the pass-
6 through entity made a qualified investment. No credit shall be
7 allowed to a shareholder, partner or member to whom the credit is
8 allocated for an investment in a small business capital company
9 unless the report required by this paragraph for the year in which
10 the investment is made is provided.

11 SECTION 8. AMENDATORY 68 O.S. 2001, Section 2357.74, as
12 last amended by Section 9, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
13 2009, Section 2357.74), is amended to read as follows:

14 Section 2357.74. A. For taxable years beginning after December
15 31, 2000, 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, for qualified investment made in Oklahoma rural
20 small business ventures in conjunction with investment in such
21 ventures made by a qualified rural small business capital company.

22 B. The credit provided for in this section shall be thirty
23 percent (30%) of the qualified investment made in Oklahoma rural
24 small business ventures in conjunction with qualified investment in

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

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

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

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

19 4. Limited to the lesser of:

20 a. two hundred percent (200%) of any qualified investment
21 by the taxpayer in the qualified rural small business
22 capital company, or
23
24

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

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

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 2357.62 or 2357.63 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 also 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 an unlimited
17 and continuing legal obligation to repay the borrowed funds but the
18 allocation may not exceed such shareholder's, partner's or member's
19 pro-rata equity share of the pass-through entity even if the
20 taxpayer's legal obligation to repay the borrowed funds is in excess
21 of such amount. For purposes of the Rural Venture Capital Formation
22 Incentive Act, "pass-through entity" means a corporation that for
23 the applicable tax years is treated as an S corporation under the
24 Internal Revenue Code, general partnership, limited partnership,

1 limited liability partnership, trust, or limited liability company
2 that for the applicable tax year is not taxed as a corporation for
3 federal income tax purposes.

4 F. A pass-through entity that allocates credits pursuant to
5 paragraph E of this section shall report all allocations of credits
6 to the qualified small business capital company in which the pass-
7 through entity made a qualified investment. No credit shall be
8 allowed to a shareholder, partner or member to whom the credit is
9 allocated for an investment in a small business capital company
10 unless the report required by this paragraph for the year in which
11 the investment is made is provided.

12 SECTION 9. AMENDATORY 68 O.S. 2001, Section 2357.75, as
13 amended by Section 26, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2009,
14 Section 2357.75), is amended to read as follows:

15 Section 2357.75. A. Each qualified rural small business
16 capital company shall file an annual report with the Oklahoma Tax
17 Commission no later than April 30 of each year which lists all
18 qualified investments in or in conjunction with such company which
19 may qualify for the tax credit allowed by Section 2357.73 or Section
20 2357.74 of this title. The report shall state the amount of
21 qualified investments in or in conjunction with such company during
22 the taxable year by persons, partnerships or corporations and the
23 social security number of such person or the federal identification
24 number of such partnership or corporation making such qualified

1 investments. The report shall also include a schedule listing the
2 type and amount of qualified investment made by or in conjunction
3 with the rural small business capital company, a listing provided by
4 any pass-through entity that made a qualified investment that
5 details the allocation of credits by the pass-through entity and
6 such other information as the Tax Commission may prescribe.

7 B. Each qualified rural small business capital company shall
8 furnish to each person, partnership or corporation which made a
9 qualified investment in or in conjunction with such company during
10 the preceding year a written statement showing the name of the rural
11 small business capital company, the name of the investor, the total
12 amount of qualified investment in or in conjunction with the company
13 made by such person, partnership or corporation, the amount of the
14 qualified investment which was subsequently invested by the capital
15 company in a rural small business venture, the date of such
16 investment and the name of the business venture invested in and such
17 other information as the Tax Commission may require. The statement
18 shall be attached to the income tax return or other applicable tax
19 report or return of such person, partnership or corporation in order
20 to qualify for the tax credit allowed by Section 2357.73 or Section
21 2357.74 of this title.

22 C. On or before April 30 of each year, the qualified rural
23 small business capital company shall provide to the Tax Commission a
24 copy of its annual financial statements, including documentation

1 which, to the satisfaction of the ~~Oklahoma~~ Tax Commission, shall
2 address the methods of operation and conduct of the business of the
3 capital company to determine whether the capital company is
4 complying with the terms of the Rural Venture Capital Formation
5 Incentive Act and any rules promulgated by the Tax Commission,
6 including whether qualified investments in Oklahoma rural small
7 business ventures have been made in the manner required by law. No
8 credit shall be allowed for an investment in a rural small business
9 capital company unless the report required by this subsection for
10 the year in which the investment is made is provided.

11 D. Qualified rural small business capital companies or any
12 entity making an investment in conjunction with investment by a
13 qualified rural small business capital company pursuant to Section
14 2357.74 of this title must notify the Tax Commission within twenty
15 (20) business days if:

16 1. The investment in an Oklahoma rural small business venture
17 is transferred, withdrawn or otherwise returned; or

18 2. An occurrence upon which an investment is contingent has
19 taken place.

20 If the qualified investment is held in the Oklahoma rural small
21 business venture for less than five (5) years, the Tax Commission
22 shall revoke the verification of tax credits and take action to
23 recapture the tax credits pursuant to Section 22 of this act to the
24 extent such credits were authorized based upon an amount of

1 qualified investment that was transferred, withdrawn or otherwise
2 returned.

3 E. Any qualified rural small business capital company who
4 refuses or fails to comply with the provisions of this section or is
5 hereafter found guilty in a court of competent jurisdiction of any
6 violation of any Oklahoma tax law shall not be eligible to be a
7 qualified rural small business capital company for purposes of this
8 act.

9 F. Any taxpayer who refuses or fails to comply with the
10 provisions of this section or is hereafter found guilty in a court
11 of competent jurisdiction of any violation of any Oklahoma tax law
12 shall not be eligible for the tax credits granted in Sections
13 2357.73 and 2357.74 of this title.

14 G. The Tax Commission is directed to immediately develop a
15 system for reporting of any tax credits issued pursuant to Sections
16 2357.73 and 2357.74 of this title and a system which requires the
17 filing of informational reports on how the qualified investments
18 were used, economic benchmarks achieved, implementation of a
19 business plan for the Oklahoma rural small business venture,
20 commercialization success, additional investments in the business by
21 other investors and job creation that has taken place.

22 SECTION 10. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
24

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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