

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3397

6 By: McNiell

7 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:

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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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