

1 ENGROSSED HOUSE
2 BILL NO. 3397

By: McNiell of the House

3 and

4 Lamb of the Senate
5
6

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 2357.61, as last amended by
9 Section 3, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
10 2009, Section 2357.61), which relates to the Small
11 Business Capital Formation Incentive Act; defining
12 terms; modifying definition; amending 68 O.S. 2001,
13 Section 2357.62, as last amended by Section 4,
14 Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section
15 2357.62), which relates to credits for investment in
16 qualified small business capital companies; extending
17 duration of credits; requiring certain proof of
18 expenditures; requiring Oklahoma Tax Commission to
19 prescribe forms; limiting aggregate investment per
20 small business venture; amending 68 O.S. 2001,
21 Section 2357.63, as last amended by Section 5,
22 Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section
23 2357.63), which relates to credits for investment in
24 qualified small business capital companies made in
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
credits; requiring certain proof of expenditures;

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

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

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

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

1. "Acquisition" means the use of capital by an Oklahoma small
business venture within six (6) months after obtaining the capital
to purchase fifty-one percent (51%) or more of the voting interest
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,
royalty interest or otherwise, and does not mean the right to

1 intellectual property, whether the rights arise from copyright,
2 trademark or patent law;

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

5 3. "Capitalization" means the amount of:

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

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

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

22 ~~3.~~ 4. "Equity and near-equity security" means common stock,
23 preferred stock, warrants or other rights to subscribe to stock or
24 its equivalent, or an interest in a limited liability company,

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

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

8 ~~5.~~ 6. "Oklahoma 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 small business capital company, at least fifty percent
13 (50%) of its employees or assets located in Oklahoma,
14 b. needs financial assistance in order to commence or
15 expand such business which provides or intends to
16 provide goods or services,
17 c. is engaged in a lawful business activity under any
18 Industry Number appearing under any Major Group Number
19 of Divisions A, C, D, E, F or I of the Standard
20 Industrial Classification Manual, 1987 revision with
21 the following exceptions:
22 (1) Major Group 1 of Division A, and
23 (2) Major Group 2 of Division A,
24

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~~ 4
13 of this section or "subordinated debt" as defined in paragraph ~~8~~ 9
14 of this section; provided, an investment which is contingent upon
15 the 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:
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- 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, 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. Before any credit authorized by this section may be allowed
8 on any tax return, the tax credit claimant shall provide proof of
9 compliance with the expenditure requirement for the qualified
10 investment as described by subparagraph e of paragraph 6 of Section
11 2357.61 of this title on such forms as the Tax Commission may
12 prescribe for such purpose.

13 3. For acquisition of tangible personal property, the forms
14 prescribed by the Tax Commission shall require a specific
15 identification of the tangible asset including:

- 16 a. a description of the asset,
- 17 b. its acquisition cost,
- 18 c. the entity from which the asset was acquired,
- 19 d. the total amount of consideration paid by the
20 qualified small business venture for the asset,
- 21 e. a certified copy of any document of title involved in
22 the acquisition,
- 23 f. any applicable serial number or other identifying
24 number or mark,

1 g. the specific use for the asset in the active conduct
2 of the business activity, and

3 h. any other information required by the Tax Commission.

4 4. For acquisition of intangible personal property, the forms
5 prescribed by the Tax Commission shall contain such information as
6 may be required to verify that the qualified investment was used to
7 acquire an intangible asset used in the active conduct of the
8 business enterprise;

9 5. For the use of any qualified investment as "working
10 capital", the forms prescribed by the Tax Commission shall contain
11 such information as may be required to verify that the qualified
12 investment in the small business venture was used or controlled by
13 the small business venture in a manner consistent with the
14 definition of "working capital" according to generally accepted
15 accounting principles.

16 6. To qualify for the credit authorized by this section, a
17 qualified investment shall be limited to a total investment of
18 Thirty Million Dollars (\$30,000,000.00) aggregate per Oklahoma small
19 business venture.

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

23 D. No taxpayer may claim the credit provided for in this
24 section if the capital provided by a qualified small business

1 capital company is used by an Oklahoma small business venture for
2 the acquisition of any other legal entity.

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

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

9 G. 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 pro-rata share of such borrowed funds. For purposes of the
22 Small Business Capital Formation Incentive Act, "pass-through
23 entity" means a corporation that for the applicable tax years is
24 treated as an S corporation under the Internal Revenue Code, general

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

4 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.63, as
5 last amended by Section 5, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
6 2009, Section 2357.63), is amended to read as follows:

7 Section 2357.63 A. For taxable years beginning after December
8 31, 1997, and before January 1, 2012, there shall be allowed a
9 credit against the tax imposed by Section 2355 or, effective January
10 1, 2001, Section 2370 of this title or, effective July 1, 2001,
11 against the tax imposed by Section 624 or 628 of Title 36 of the
12 Oklahoma Statutes, for qualified investment made in Oklahoma small
13 business ventures in conjunction with investment in such ventures
14 made by a qualified small business capital company.

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

1 exceed three (3) taxable years. To qualify for the credit
2 authorized by this section, a qualified investment shall be:

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

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

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

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

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

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

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

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 2357.73 or 2357.74 of this title.

24

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 only be claimed for funds borrowed by the
7 pass-through entity to make a qualified investment if a shareholder,
8 partner or member to whom the credit is allocated has 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 Oklahoma Small Business Capital
14 Formation Incentive Act, "pass-through entity" means a corporation
15 that for the applicable tax years is treated as an S corporation
16 under the Internal Revenue Code, general partnership, limited
17 partnership, limited liability partnership, trust, or limited
18 liability company that for the applicable tax year is not taxed as a
19 corporation for federal income tax purposes.

20 SECTION 4. AMENDATORY Section 11, Chapter 281, O.S.L.
21 2006, as amended by Section 6, Chapter 440, O.S.L. 2008 (68 O.S.
22 Supp. 2009, Section 2357.63B), is amended to read as follows:
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1 Section 2357.63B A. As used in this section, "recapture event"
2 means that with respect to a qualified investment in an Oklahoma
3 small business venture:

4 1. The Oklahoma small business venture fails to expend ~~at least~~
5 ~~fifty percent (50%)~~ one hundred percent (100%) of the proceeds of
6 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 small business venture within eighteen (18) months after the
10 qualified investment is made or within an extension of such period
11 as provided in Section 2357.61 of this title. For purposes of this
12 paragraph, "working capital" shall not include consulting, brokerage
13 or transaction fees;

14 2. The investment in the Oklahoma 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 Small Business Capital Formation
19 Incentive Act, a "market-based liquidity event" means that an
20 Oklahoma 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 small business capital company that provided
4 funds for use by the Oklahoma small business
5 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 small
9 business capital company that provided funds for
10 use by the Oklahoma small business venture,

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

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

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

22 3. The Oklahoma Tax Commission finds that the qualified
23 investment does not meet the requirements of the Small Business
24 Capital Formation Incentive Act.

1 B. If a recapture event occurs with respect to a qualified
2 investment for which a credit authorized by either Section 2357.62
3 or Section 2357.63 of this title was claimed, the tax imposed
4 pursuant to the applicable provisions of Title 36 or this title of
5 the Oklahoma Statutes shall be increased to the extent of the
6 recaptured credit amount.

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

9 1. The aggregate decrease in the credits previously allowed to
10 the taxpayer pursuant to Section 2357.62 or Section 2357.63 of this
11 title for all prior taxable periods which would have resulted if no
12 credit had been authorized with respect to the qualified investment;
13 plus

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

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

23 E. For any transaction that is audited by the Tax Commission
24 after such credits have been allowed, but which is subsequently

1 determined to constitute a recapture event, the Tax Commission shall
2 be required to disallow any and all credits claimed in violation of
3 the requirements of this section or any other provision of the Small
4 Business Capital Formation Incentive Act for a period of ten (10)
5 years after the date as of which any applicable tax report or return
6 utilizing such credits is filed.

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

11 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.72, as
12 last amended by Section 7, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
13 2009, Section 2357.72), is amended to read as follows:

14 Section 2357.72 As used in the Rural Venture Capital Formation
15 Incentive Act:

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

1 to intellectual property, whether the rights arise from copyright,
2 trademark or patent law;

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

5 3. "Capitalization" means the amount of:

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

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

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

22 d. any funds loaned to the qualified rural small business
23 capital company, which is licensed as a rural business
24 investment company under 7 U.S.C., Section 2009cc et

1 seq., or any successor statute, by the U.S. Small
2 Business Administration or U.S. Department of
3 Agriculture;

4 ~~3-~~ 4. "Equity and near-equity security" means common stock,
5 preferred stock, warrants or other rights to subscribe to stock or
6 its equivalent, or an interest in a limited liability company,
7 partnership, or subordinated debt that is convertible into, or
8 entitles the holder to receive upon its exercise, common stock,
9 preferred stock, a royalty or net profits interest, or an interest
10 in a limited liability company or partnership;

11 ~~4-~~ 5. "Financial lending institution" means a bank, credit
12 union, savings and loan, commercial finance company or other entity
13 principally engaged in the extension of credit;

14 ~~5-~~ 6. "Nonmetropolitan area" means all areas of the state
15 except a county having a population in excess of one hundred
16 thousand (100,000) persons according to the most recent Federal
17 Decennial Census;

18 ~~6-~~ 7. "Oklahoma rural small business venture" means a business,
19 incorporated or unincorporated, which:

- 20 a. has or will have, within one hundred eighty (180) days
21 after a qualified investment is made by a qualified
22 rural small business capital company, at least fifty
23 percent (50%) of its employees or assets located in
24 Oklahoma,

- 1 b. needs financial assistance in order to commence or
2 expand such business which provides or intends to
3 provide goods or services,
- 4 c. has its principal place of business within a
5 nonmetropolitan area of the state and conducts the
6 activity resulting in at least seventy-five percent
7 (75%) of its gross annual revenue from a
8 nonmetropolitan area of the state,
- 9 d. except as otherwise provided by this subparagraph, is
10 engaged in a lawful business activity under any
11 Industry Number appearing under any Major Group Number
12 of ~~Divisions~~ Division A, C, D, E, F or I of the
13 Standard Industrial Classification Manual, 1987
14 revision with the following exceptions:
- 15 (1) Major Group 1 of Division A, and
16 (2) Major Group 2 of Division A,
- 17 e. qualifies as a small business as defined by the
18 federal Small Business Administration, and
- 19 f. expends within eighteen (18) months after the date of
20 the qualified investment ~~at least fifty percent (50%)~~
21 one hundred percent (100%) of the proceeds of the
22 qualified investment for the acquisition of tangible
23 or intangible assets which are used in the active
24 conduct of the trade or business or for working

1 capital for the active conduct of such trade or
2 business for which the determination of the small
3 business qualification pursuant to subparagraph e of
4 this paragraph was made. For purposes of this
5 subparagraph, "working capital" shall not include
6 consulting, brokerage or transaction fees. Provided,
7 that the Oklahoma Tax Commission, upon request and
8 demonstration by a qualified rural small business
9 capital company or an Oklahoma rural small business
10 venture, or an investor or an authorized agent of any
11 such entities, may extend the 18-month period
12 otherwise required by this subparagraph for a period
13 not to exceed six (6) months. Provided, the
14 expenditure of the invested funds by the Oklahoma
15 rural small business shall otherwise comply with the
16 requirements applicable to the usage of tax credits
17 for qualified investment in the Oklahoma rural small
18 business venture. As used in this subparagraph,
19 "tangible assets" shall include the acquisition of
20 real property and the construction of improvements
21 upon real property if such acquisition and
22 construction otherwise comply with the requirements
23 applicable to the usage of tax credits for qualified
24 investment in the Oklahoma rural small business

1 venture, and "intangible assets" shall be limited to
2 computer software, licenses, patents, copyrights and
3 similar items;

4 ~~7.~~ 8. "Qualified investment" means an investment of funds in
5 the form of "equity" and "near-equity" as defined in paragraph ~~3~~ 4
6 of this section or "subordinated debt" as defined in paragraph ~~9~~ 10
7 of this section; provided, an investment which is contingent upon
8 the occurrence of an event or which is subject to being refunded or
9 returned in the absence of such event shall only be deemed to have
10 been made upon the occurrence of the event;

11 ~~8.~~ 9. "Qualified rural small business capital company" means a
12 C corporation or a subchapter S corporation, as defined by the
13 Internal Revenue Code of 1986, as amended, incorporated pursuant to
14 the laws of Oklahoma, limited liability company or a registered
15 business partnership with a certificate of partnership filed as
16 required by law, which meets the following criteria:

- 17 a. the corporation, limited liability company or
18 partnership is organized to provide the direct
19 investment of equity and near-equity funds to
20 companies within this state,
21 b. the principal place of business of the corporation,
22 limited liability company or partnership is located
23 within this state,
24

- 1 c. the capitalization of the corporation, limited
2 liability company or partnership is not less than Five
3 Hundred Thousand Dollars (\$500,000.00), and
4 d. the corporation, limited liability company or
5 partnership has investment of not more than twenty-
6 five percent (25%) of its capitalization in any one
7 company at any time during the calendar year of the
8 corporation, limited liability company or partnership;
9 and

10 ~~9.~~ 10. "Subordinated debt" means indebtedness with a maturity
11 date of not less than five (5) years that is subordinated to all
12 other indebtedness of the issuer that has been issued or is to be
13 issued to a financial lending institution. The indebtedness shall
14 not have a repayment schedule that is faster than a level principal
15 amortization over five (5) years.

16 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.73, as
17 last amended by Section 8, Chapter 440, O.S.L. 2008 (68 O.S. Supp.
18 2009, Section 2357.73), is amended to read as follows:

19 Section 2357.73 A. For taxable years beginning after December
20 31, 2000, and before January 1, 2012, there shall be allowed a
21 credit against the tax imposed by Section 2355 or, effective January
22 1, 2001, Section 2370 of this title or, effective July 1, 2001,
23 against the tax imposed by Section 624 or 628 of Title 36 of the
24

1 Oklahoma Statutes, for qualified investment in qualified rural small
2 business capital companies.

3 B. 1. The credit provided for in subsection A of this section
4 shall be thirty percent (30%) of the amount of a qualified
5 investment in qualified rural small business capital companies which
6 is subsequently invested in an Oklahoma rural small business venture
7 by the qualified rural small business capital company and may only
8 be claimed for a taxable year during which the qualified rural small
9 business capital company makes the qualified investment in an
10 Oklahoma rural small business venture if the funds are used in
11 pursuit of a legitimate business purpose of the Oklahoma rural small
12 business venture consistent with its organizational instrument,
13 bylaws or other agreement responsible for the governance of the
14 rural small business venture. The qualified rural small business
15 capital company shall issue such reports as the Oklahoma Tax
16 Commission may require attributing the source of funds of each
17 qualified investment it makes in an Oklahoma rural small business
18 venture. If the tax credit exceeds the amount of taxes due or if
19 there are no state taxes due of the taxpayer, the amount of the
20 claim not used as an offset against the taxes of a taxable year may
21 be carried forward for a period not to exceed three (3) taxable
22 years.

23 2. Before any credit authorized by this section may be allowed
24 on any tax return, the tax credit claimant shall provide proof of

1 compliance with the expenditure requirement for the qualified
2 investment as described by subparagraph f of paragraph 7 of Section
3 2357.72 of this title on such forms as the Tax Commission may
4 prescribe for such purpose.

5 3. For acquisition of tangible personal property, the forms
6 prescribed by the Tax Commission shall require a specific
7 identification of the tangible asset including:

- 8 a. a description of the asset,
- 9 b. its acquisition cost,
- 10 c. the entity from which the asset was acquired,
- 11 d. the total amount of consideration paid by the
12 qualified rural small business venture for the asset,
- 13 e. a certified copy of any document of title involved in
14 the acquisition,
- 15 f. any applicable serial number or other identifying
16 number or mark,
- 17 g. the specific use for the asset in the active conduct
18 of the business activity, and
- 19 h. any other information required by the Tax Commission.

20 4. For acquisition of intangible personal property, the forms
21 prescribed by the Tax Commission shall contain such information as
22 may be required to verify that the qualified investment was used to
23 acquire an intangible asset used in the active conduct of the
24 business enterprise;

1 5. For the use of any qualified investment as "working
2 capital", the forms prescribed by the Tax Commission shall contain
3 such information as may be required to verify that the qualified
4 investment in the rural small business venture was used or
5 controlled by the rural small business venture in a manner
6 consistent with the definition of "working capital" according to
7 generally accepted accounting principles.

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

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

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

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

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

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

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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, 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

23

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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
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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.

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1 Passed the House of Representatives the 11th day of March, 2010.

2
3
4 Presiding Officer of the House of
Representatives

5
6 Passed the Senate the ____ day of _____, 2010.

7
8
9 Presiding Officer of the Senate