

ENROLLED SENATE
BILL NO. 1590

By: Johnson (Mike) and Myers
of the Senate

and

Miller and Martin (Scott)
of the House

An Act relating to income tax credits; amending 68 O.S. 2001, Sections 2357.62, as last amended by Section 4, Chapter 440, O.S.L. 2008, 2357.63, as last amended by Section 5, Chapter 440, O.S.L. 2008, 2357.73, as last amended by Section 8, Chapter 440, O.S.L. 2008, and 2357.74, as last amended by Section 9, Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Sections 2357.62, 2357.63, 2357.73 and 2357.74), which relate to income tax credits for certain qualified investments in capital companies; providing for moratorium on claims for certain tax credits; limiting time period of moratorium; modifying the time period during which certain investments in qualified small business capital companies qualify for a specified credit and clarifies status of such investments; modifying the time period during which certain investments in small business ventures in conjunction with certain other investments qualify for a specified credit and clarifies status of such investments; providing for moratorium on claims for certain tax credits; limiting time period of moratorium; modifying the time period during which certain investments in qualified rural small business capital companies qualify for a specified credit and clarifies status of such investments; modifying the time period during which certain investments in rural small business ventures in conjunction with certain other investments qualify for a specified credit and

clarifies status of such investments; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.61a of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby establishes a moratorium on tax credits authorized pursuant to Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes, subject to the provisions of subsection A of Section 2357.62 and subsection A of Section 2357.63 of Title 68 of the Oklahoma Statutes. Unless otherwise repealed or revoked by the Oklahoma Legislature, the moratorium shall be in effect for investments made on or after June 1, 2010, through December 31, 2011.

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

Section 2357.62 A. ~~For~~ Except as provided in Section 1 of this act, for taxable years beginning after December 31, 1997, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, for qualified investment in qualified small business capital companies. No amount of a qualified investment made in a qualified small business capital company which has not been invested in one or more Oklahoma small business ventures prior to the effective date of the moratorium provided for in Section 1 of this act shall be eligible for any credit otherwise authorized pursuant to this section. No qualified investment made in a qualified small business capital company or qualified investment made by a qualified small business capital company in one or more Oklahoma small business ventures during the period of the moratorium pursuant to Section 1 of this act shall be eligible for any credit otherwise authorized pursuant to this section.

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

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

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

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

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

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through

entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has an unlimited and continuing legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such pro-rata share of such borrowed funds. For purposes of the Small Business Capital Formation Incentive Act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

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

Section 2357.63 A. ~~For~~ Except as provided in Section 1 of this act, for taxable years beginning after December 31, 1997, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, for qualified investment made in Oklahoma small business ventures in conjunction with investment in such ventures made by a qualified small business capital company. No amount of a qualified investment made in conjunction with investment made by a qualified small business capital company which has not been invested in one or more Oklahoma small business ventures prior to the effective date of the moratorium provided for in Section 1 of this act shall be eligible for any credit otherwise authorized pursuant to this section. No qualified investment made in conjunction with investment made by a qualified small business capital company in one or more Oklahoma small business ventures during the period of the moratorium pursuant to Section 1 of this act shall be eligible for any credit otherwise authorized pursuant to this section.

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

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

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

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

4. Limited to the lesser of:

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

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

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

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

E. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one

or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may only be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has an unlimited and continuing legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such amount. For purposes of the Oklahoma Small Business Capital Formation Incentive Act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.72a of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby establishes a moratorium on tax credits authorized pursuant to Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes, subject to the provisions of subsection A of Section 2357.73 and subsection A of Section 2357.74. Unless otherwise repealed or revoked by the Oklahoma Legislature, the moratorium shall be in effect for investments made on or after June 1, 2010, through December 31, 2011.

SECTION 5. AMENDATORY 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), is amended to read as follows:

Section 2357.73 A. ~~For~~ Except as provided in Section 4 of this act, for taxable years beginning after December 31, 2000, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, for qualified investment in qualified rural small business capital companies. No amount of a qualified investment made in a qualified

rural small business capital company which has not been invested in one or more Oklahoma rural small business ventures prior to the effective date of the moratorium provided for in Section 4 of this act shall be eligible for any credit otherwise authorized pursuant to this section. No qualified investment made in a qualified rural small business capital company or qualified investment made by a qualified rural small business capital company in one or more Oklahoma rural small business ventures during the period of the moratorium pursuant to Section 4 of this act shall be eligible for any credit otherwise authorized pursuant to this section.

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

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

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

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

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

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

SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.74, as last amended by Section 9, Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section 2357.74), is amended to read as follows:

Section 2357.74 A. ~~For~~ Except as provided in Section 4 of this act, for taxable years beginning after December 31, 2000, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, for qualified investment made in Oklahoma rural small business ventures in conjunction with investment in such ventures made by a qualified rural small business capital company. No amount of a qualified

investment made in conjunction with investment made by a qualified rural small business capital company which has not been invested in one or more Oklahoma rural small business ventures prior to the effective date of the moratorium provided for in Section 4 of this act shall be eligible for any credit otherwise authorized pursuant to this section. No qualified investment made in conjunction with investment made by a qualified rural small business capital company in one or more Oklahoma rural small business ventures during the period of the moratorium pursuant to Section 4 of this act shall be eligible for any credit otherwise authorized pursuant to this section.

B. The credit provided for in this section shall be thirty percent (30%) of the qualified investment made in Oklahoma rural small business ventures in conjunction with qualified investment in such ventures made by a qualified rural small business capital company and shall be allowed for the taxable year during which the qualified investment is made in an Oklahoma rural small business venture. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed three (3) taxable years. To qualify for the credit authorized by this section, a qualified investment shall be:

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

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

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

4. Limited to the lesser of:

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

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

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

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

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

SECTION 7. This act shall become effective June 1, 2010.

Passed the Senate the 19th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2010.

Presiding Officer of the House
of Representatives