

THE HOUSE OF REPRESENTATIVES
Monday, March 1, 2010

Committee Substitute for
House Bill No. 3397

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3397 - By: MCNIEL of the House.

An Act relating to revenue and taxation; amending 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), which relates to the Small Business Capital Formation Incentive Act; defining terms; modifying definition; amending 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), which relates to credits for investment in qualified small business capital companies; extending duration of credits; limiting aggregate investment per small business venture; amending 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), which relates to credits for investment in 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; limiting aggregate investment per rural small business venture; amending 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), which relates to credits for investment in qualified rural small business capital companies made in conjunction with certain other investments; extending duration of credits; limiting aggregate investment per rural small business venture; amending Section 22, Chapter 281, O.S.L. 2006, as amended by Section 10, Chapter 440, O.S.L. 2008 (68 O.S.

Supp. 2009, Section 2357.74B), which relates to recapture events; modifying definition; and declaring an emergency.

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

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

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

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

13 2. "Aggregate" means the total amount invested pursuant to Sections 2357.62 and
14 2357.63 of this title combined;

15 3. "Capitalization" means the amount of:

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

- 1 b. any contractual commitment to provide funds to the qualified small
2 business capital company to the extent that such commitment is
3 payable on demand and has substantial economic penalties for breach
4 of the commitment to provide such funds, and
- 5 c. any allocation of tax credit authority awarded to the qualified small
6 business capital company by the Community Development Financial
7 Institutions Fund pursuant to Section 45D of the Internal Revenue
8 Code of 1986, as amended, to the extent such allocation has not been
9 previously designated by the qualified small business capital company
10 as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code
11 of 1986, as amended;

12 ~~3.~~ 4. "Equity and near-equity security" means common stock, preferred stock,
13 warrants or other rights to subscribe to stock or its equivalent, or an interest in a limited
14 liability company, partnership, or subordinated debt that is convertible into, or entitles
15 the holder to receive upon its exercise, common stock, preferred stock, a royalty or net
16 profits interest, or an interest in a limited liability company or partnership;

17 ~~4.~~ 5. "Financial lending institution" means a bank, credit union, savings and loan,
18 commercial finance company or other entity principally engaged in the extension of
19 credit;

20 ~~5.~~ 6. "Oklahoma small business venture" means a business, incorporated or
21 unincorporated, which:

- 1 a. has or will have, within one hundred eighty (180) days after a qualified
2 investment is made by a qualified small business capital company, at
3 least fifty percent (50%) of its employees or assets located in
4 Oklahoma,
- 5 b. needs financial assistance in order to commence or expand such
6 business which provides or intends to provide goods or services,
- 7 c. is engaged in a lawful business activity under any Industry Number
8 appearing under any Major Group Number of Divisions A, C, D, E, F or
9 I of the Standard Industrial Classification Manual, 1987 revision with
10 the following exceptions:
- 11 (1) Major Group 1 of Division A, and
12 (2) Major Group 2 of Division A,
- 13 d. qualifies as a small business as defined by the federal Small Business
14 Administration, and
- 15 e. expends within eighteen (18) months after the date of the qualified
16 investment ~~at least fifty percent (50%)~~ one hundred percent (100%) of
17 the proceeds of the qualified investment for the acquisition of tangible
18 or intangible assets which are used in the active conduct of the trade or
19 business or to provide working capital for the active conduct of the
20 trade or business for which the determination of the small business
21 qualification pursuant to subparagraph d of this paragraph was made.
22 For purposes of this subparagraph, “working capital” shall not include

1 consulting, brokerage or transaction fees. Provided, that the Oklahoma
2 Tax Commission, upon request and demonstration of need by a
3 qualified small business capital company or an Oklahoma small
4 business venture, or an investor or an authorized agent of any such
5 entities, may extend the 18-month period otherwise required by this
6 subparagraph for a period not to exceed six (6) months. Provided, the
7 expenditure of the invested funds by the Oklahoma small business
8 venture shall otherwise comply with the requirements applicable to
9 the usage of tax credits for qualified investment in the Oklahoma small
10 business venture. As used in this subparagraph, "tangible assets"
11 shall include the acquisition of real property and the construction of
12 improvements upon real property if such acquisition and construction
13 otherwise comply with the requirements applicable to the usage of tax
14 credits for qualified investment in the Oklahoma small business
15 venture, and "intangible assets" shall be limited to computer software,
16 licenses, patents, copyrights and similar items;

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

1 ~~7.~~ 8. "Qualified small business capital company" means a C corporation or a
2 subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended,
3 incorporated pursuant to the laws of Oklahoma, limited liability company or a registered
4 business partnership with a certificate of partnership filed as required by law, which
5 meets the following criteria:

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

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

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

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

9 B. 1. The credit provided for in subsection A of this section shall be twenty percent
10 (20%) of the qualified investment in qualified small business capital companies which is
11 subsequently invested in an Oklahoma small business venture by the qualified venture
12 capital company and may only be claimed for a taxable year during which the qualified
13 small business capital company makes the qualified investment in an Oklahoma small
14 business venture. The credit shall be allowed for the amount of the qualified investment
15 in an Oklahoma small business venture if the funds are used in pursuit of a legitimate
16 business purpose of the Oklahoma small business venture consistent with its
17 organizational instrument, bylaws or other agreement responsible for the governance of
18 the small business venture. The qualified small business capital company shall issue
19 such reports as the Oklahoma Tax Commission may require attributing the source of
20 funds of each investment it makes in an Oklahoma business venture. If the tax credit
21 exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

6 C. No taxpayer may claim the credit provided for in this section for qualified
7 investments in qualified small business capital companies made prior to January 1,
8 1998.

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

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

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

18 G. If a pass-through entity is entitled to a credit under this section, the pass-
19 through entity shall allocate such credit to one or more of the shareholders, partners or
20 members of the pass-through entity; provided, the total of all credits allocated shall not
21 exceed the amount of the credit to which the pass-through entity is entitled. The credit
22 may also be claimed for funds borrowed by the pass-through entity to make a qualified

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

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

14 Section 2357.63 A. For taxable years beginning after December 31, 1997, and
15 before January 1, ~~2012~~ 2017, there shall be allowed a credit against the tax imposed by
16 Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1,
17 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma
18 Statutes, for qualified investment made in Oklahoma small business ventures in
19 conjunction with investment in such ventures made by a qualified small business capital
20 company.

21 B. The credit provided for in this section shall be twenty percent (20%) of the
22 qualified investment made in Oklahoma small business ventures in conjunction with

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

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

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

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

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

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

17 b. ~~two hundred percent (200%) of the qualified investment made by the~~
18 ~~qualified small business capital company in the Oklahoma small~~
19 ~~business venture~~ a total investment of Thirty Million Dollars

20 (\$30,000,000.00) aggregate per Oklahoma small business venture.

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

1 D. No taxpayer may claim the credit authorized by this section for the same
2 qualified investment amount for which any credit is claimed pursuant to either Section
3 2357.73 or 2357.74 of this title.

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

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

1 Section 2357.63B A. As used in this section, “recapture event” means that with
2 respect to a qualified investment in an Oklahoma small business venture:

3 1. The Oklahoma small business venture fails to expend ~~at least fifty percent (50%)~~
4 one hundred percent (100%) of the proceeds of qualified investments for acquisition of
5 tangible or intangible assets to be used in the active conduct of the trade or business or
6 for working capital for the active conduct of the trade or business of the small business
7 venture within eighteen (18) months after the qualified investment is made or within an
8 extension of such period as provided in Section 2357.61 of this title. For purposes of this
9 paragraph, “working capital” shall not include consulting, brokerage or transaction fees;

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

- 16 a. sells all or substantially all of its assets to, or is acquired by share
17 acquisition, share exchange, merger, consolidation or other similar
18 transaction by another person or entity other than:
- 19 (1) a person or entity controlled by a person that made a qualified
20 investment in the qualified small business capital company that
21 provided funds for use by the Oklahoma small business venture,
22 or

- 1 (2) a person or entity controlled by a person that made an
2 investment in conjunction with a qualified investment made by
3 the qualified small business capital company that provided
4 funds for use by the Oklahoma small business venture,
5 b. conducts an initial public offering of a class of its equity securities
6 pursuant to the requirements of the United States Securities and
7 Exchange Commission or other applicable federal law governing the
8 sale of securities in interstate commerce,
9 c. makes an amortization payment under the terms of a subordinated
10 debt instrument, or
11 d. repays indebtedness from net income as determined in accordance with
12 generally accepted accounting principles or proceeds of the sale of
13 assets in the ordinary course of business; or

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

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

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

- 21 1. The aggregate decrease in the credits previously allowed to the taxpayer
22 pursuant to Section 2357.62 or Section 2357.63 of this title for all prior taxable periods

1 which would have resulted if no credit had been authorized with respect to the qualified
2 investment; plus

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

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

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

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

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

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

1 1. "Acquisition" means the use of capital by an Oklahoma rural small business
2 venture within six (6) months after obtaining the capital to purchase fifty-one percent
3 (51%) or more of the voting interest entitled to elect the governing board, or its
4 equivalent, of any other legal entity, regardless of the legal form of the entity. As used in
5 the Rural Venture Capital Formation Incentive Act, "acquisition" does not mean the
6 right to participate in the proceeds from sale of goods or services, whether denominated a
7 royalty, royalty interest or otherwise, and does not mean the right to intellectual
8 property, whether the rights arise from copyright, trademark or patent law;

9 2. "Aggregate" means the total amount invested pursuant to Sections 2357.73 and
10 2357.74 of this title combined;

11 3. "Capitalization" means the amount of:

- 12 a. any funds that have actually been contributed to the qualified rural
13 small business capital company,
14 b. any contractual commitment to provide funds to the qualified rural
15 small business capital company to the extent that such commitment is
16 payable on demand and has substantial economic penalties for breach
17 of the commitment to provide such funds,
18 c. any allocation of tax credit authority awarded to the qualified rural
19 small business capital company by the Community Development
20 Financial Institutions Fund pursuant to Section 45D of the Internal
21 Revenue Code of 1986, as amended, to the extent such allocation has
22 not been previously designated by the qualified rural small business

1 capital company as contemplated by Section 45D(b)(1)(C) of the
2 Internal Revenue Code of 1986, as amended, and

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

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

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

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

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

21 a. has or will have, within one hundred eighty (180) days after a qualified
22 investment is made by a qualified rural small business capital

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

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

20 7. 8. "Qualified investment" means an investment of funds in the form of "equity"
21 and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as
22 defined in paragraph 9 of this section; provided, an investment which is contingent upon

1 the occurrence of an event or which is subject to being refunded or returned in the
2 absence of such event shall only be deemed to have been made upon the occurrence of the
3 event;

4 ~~8.~~ 9. "Qualified rural small business capital company" means a C corporation or a
5 subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended,
6 incorporated pursuant to the laws of Oklahoma, limited liability company or a registered
7 business partnership with a certificate of partnership filed as required by law, which
8 meets the following criteria:

- 9 a. the corporation, limited liability company or partnership is organized
10 to provide the direct investment of equity and near-equity funds to
11 companies within this state,
- 12 b. the principal place of business of the corporation, limited liability
13 company or partnership is located within this state,
- 14 c. the capitalization of the corporation, limited liability company or
15 partnership is not less than Five Hundred Thousand Dollars
16 (\$500,000.00), and
- 17 d. the corporation, limited liability company or partnership has
18 investment of not more than twenty-five percent (25%) of its
19 capitalization in any one company at any time during the calendar
20 year of the corporation, limited liability company or partnership; and

21 ~~9.~~ 10. "Subordinated debt" means indebtedness with a maturity date of not less
22 than five (5) years that is subordinated to all other indebtedness of the issuer that has

1 been issued or is to be issued to a financial lending institution. The indebtedness shall
2 not have a repayment schedule that is faster than a level principal amortization over five
3 (5) years.

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

7 Section 2357.73 A. For taxable years beginning after December 31, 2000, and
8 before January 1, ~~2012~~ 2017, there shall be allowed a credit against the tax imposed by
9 Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1,
10 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma
11 Statutes, for qualified investment in qualified rural small business capital companies.

12 B. 1. The credit provided for in subsection A of this section shall be thirty percent
13 (30%) of the amount of a qualified investment in qualified rural small business capital
14 companies which is subsequently invested in an Oklahoma rural small business venture
15 by the qualified rural small business capital company and may only be claimed for a
16 taxable year during which the qualified rural small business capital company makes the
17 qualified investment in an Oklahoma rural small business venture if the funds are used
18 in pursuit of a legitimate business purpose of the Oklahoma rural small business venture
19 consistent with its organizational instrument, bylaws or other agreement responsible for
20 the governance of the rural small business venture. The qualified rural small business
21 capital company shall issue such reports as the Oklahoma Tax Commission may require
22 attributing the source of funds of each qualified investment it makes in an Oklahoma

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 rural small business venture. If the tax credit exceeds the amount of taxes due or if
2 there are no state taxes due of the taxpayer, the amount of the claim not used as an
3 offset against the taxes of a taxable year may be carried forward for a period not to
4 exceed three (3) taxable years.

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

8 C. No taxpayer may claim the credit provided for in this section for qualified
9 investments in qualified rural small business capital companies made prior to January 1,
10 2001.

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

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

17 F. No taxpayer may claim the credit authorized by this section for the same
18 qualified investment amount for which any credit is claimed pursuant to either Section
19 2357.62 or 2357.63 of this title.

20 G. If a pass-through entity is entitled to a credit under this section, the pass-
21 through entity shall allocate such credit to one or more of the shareholders, partners or
22 members of the pass-through entity; provided, the total of all credits allocated shall not

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

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

15 Section 2357.74 A. For taxable years beginning after December 31, 2000, and
16 before January 1, ~~2012~~ 2017, there shall be allowed a credit against the tax imposed by
17 Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1,
18 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma
19 Statutes, for qualified investment made in Oklahoma rural small business ventures in
20 conjunction with investment in such ventures made by a qualified rural small business
21 capital company.

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

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

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

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

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

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

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

1 ~~small business venture~~ a total investment of Thirty Million Dollars
2 (\$30,000,000.00) aggregate per Oklahoma rural small business
3 venture.

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

6 D. No taxpayer may claim the credit authorized by this section for the same
7 qualified investment amount for which any credit is claimed pursuant to either Section
8 2357.62 or 2357.63 of this title.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 8. AMENDATORY Section 22, Chapter 281, O.S.L. 2006, as
2 amended by Section 10, Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2009, Section
3 2357.74B), is amended to read as follows:

4 Section 2357.74B A. As used in this section, “recapture event” means that with
5 respect to a qualified investment in an Oklahoma rural small business venture:

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

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

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

- 1 (1) a person or entity controlled by a person that made a qualified
2 investment in the qualified rural small business capital
3 company that provided funds for use by the Oklahoma rural
4 small business venture, or
- 5 (2) a person or entity controlled by a person that made an
6 investment in conjunction with a qualified investment made by
7 the qualified rural small business capital company that provided
8 funds for use by the Oklahoma rural small business venture,
- 9 b. conducts an initial public offering of a class of its equity securities
10 pursuant to the requirements of the United States Securities and
11 Exchange Commission or other applicable federal law governing the
12 sale of securities in interstate commerce,
- 13 c. makes an amortization payment under the terms of a subordinated
14 debt instrument, or
- 15 d. repays indebtedness from net income as determined in accordance with
16 generally accepted accounting principles or proceeds of the sale of
17 assets in the ordinary course of business; or

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

20 B. If a recapture event occurs with respect to a qualified investment for which a
21 credit authorized by either Section 2357.73 or Section 2357.74 of this title has been
22 claimed, the tax imposed pursuant to the applicable provisions of Title 36 or this title of

1 the Oklahoma Statutes against which the credit has been claimed shall be increased to
2 the extent of the recaptured credit amount.

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

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

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

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

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

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

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

10 SECTION 9. It being immediately necessary for the preservation of the public
11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
12 this act shall take effect and be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
14 dated 02-25-10 - DO PASS, As Amended.