

THE STATE SENATE  
Wednesday, March 24, 2010

Committee Substitute for  
ENGROSSED

House Bill No. 2545

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2545 - By: Wright  
(John), Tibbs, Reynolds, Cooksey and Kern of the House and  
Stanislawski, Adelson, Gumm and Ivester of the Senate.

[ revenue and taxation - tax record confidentiality -  
providing specific disclosure requirements -  
emergency ]

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

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

Section 205. A. The records and files of the Oklahoma Tax  
Commission concerning the administration of the Uniform Tax  
Procedure Code or of any state tax law shall be considered  
confidential and privileged, except as otherwise provided for by  
law, and neither the Tax Commission nor any employee engaged in the  
administration of the Tax Commission or charged with the custody of  
any such records or files nor any person who may have secured  
information from the Tax Commission shall disclose any information  
obtained from the records or files or from any examination or  
inspection of the premises or property of any person.

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

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

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

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

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

7           4. The examination of records and files by the State Auditor  
8 and Inspector or the duly authorized agents of the State Auditor and  
9 Inspector;

10          5. The disclosing of information or evidence to the Oklahoma  
11 State Bureau of Investigation, Attorney General, Oklahoma State  
12 Bureau of Narcotics and Dangerous Drugs Control, any district  
13 attorney, or agent of any federal law enforcement agency when the  
14 information or evidence is to be used by such officials to  
15 investigate or prosecute violations of the criminal provisions of  
16 the Uniform Tax Procedure Code or of any state tax law or of any  
17 federal crime committed against this state. Any information  
18 disclosed to the Oklahoma State Bureau of Investigation, Attorney  
19 General, Oklahoma State Bureau of Narcotics and Dangerous Drugs  
20 Control, any district attorney, or agent of any federal law  
21 enforcement agency shall be kept confidential by such person and not  
22 be disclosed except when presented to a court in a prosecution for  
23 violation of the tax laws of this state or except as specifically

1 authorized by law, and a violation by the Oklahoma State Bureau of  
2 Investigation, Attorney General, Oklahoma State Bureau of Narcotics  
3 and Dangerous Drugs Control, district attorney, or agent of any  
4 federal law enforcement agency by otherwise releasing the  
5 information shall be a felony;

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

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

1 title. The provisions of this paragraph shall also include the  
2 furnishing of information to the State Treasurer for the purpose of  
3 administration of the Uniform Unclaimed Property Act;

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

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

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

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

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

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

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

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

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

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

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

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

1           20. The disclosure to a plaintiff of a corporation's last-known  
2 address shown on the records of the Franchise Tax Division of the  
3 Tax Commission in order for such plaintiff to comply with the  
4 requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

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

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

22           23. The furnishing of information regarding incentive payments  
23 made pursuant to the provisions of Sections 3601 through 3609 of

1 this title or incentive payments made pursuant to the provisions of  
2 Sections 3501 through 3508 of this title;

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

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

1 to engage in business pursuant to the permit, license, exemption,  
2 deduction, credit or other tax preference;

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

1 (90) days and any extensions granted by the magistrate, a copy of  
2 the application and order shall be served upon the person or entity  
3 whose records were examined, along with a copy of the records or  
4 information actually provided by the Tax Commission;

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

- 14 a. the legal name of any qualified venture capital  
15 company, qualified small business capital company, or  
16 qualified rural small business capital company,  
17 b. the identity or legal name of any person or entity  
18 that is a shareholder or partner of a qualified  
19 venture capital company, qualified small business  
20 capital company, or qualified rural small business  
21 capital company,  
22 c. the identity or legal name of any Oklahoma business  
23 venture, Oklahoma small business venture, or Oklahoma

1 rural small business venture in which a qualified  
2 investment has been made by a capital company, or  
3 d. the amount of funds invested in a qualified venture  
4 capital company, the amount of qualified investments  
5 in a qualified small business capital company or  
6 qualified rural small business capital company and the  
7 amount of investments made by a qualified venture  
8 capital company, qualified small business capital  
9 company, or qualified rural small business capital  
10 company;

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

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

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

17 31. The disclosure of specific information as required by  
18 Section 3 of this act.

19 D. The Tax Commission shall cause to be prepared and made  
20 available for public inspection in the office of the Tax Commission  
21 in such manner as it may determine an annual list containing the  
22 name and post office address of each person, whether individual,

1 corporate, or otherwise, making and filing an income tax return with  
2 the Tax Commission.

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

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

1 Tax Commission such information as requested so that the Tax  
2 Commission may provide the information to the Incentive Review  
3 Committee or fulfill its obligations as required by this subsection.  
4 The Tax Commission may require this information to be submitted in  
5 an electronic format. The Tax Commission may disallow any claim of  
6 a person for a tax incentive due to its failure to file a report as  
7 required under the authority of this subsection. The Tax Commission  
8 may consult with the Incentive Review Committee to develop a  
9 reporting system to obtain the information requested in a manner  
10 that is the least burdensome on the taxpayer.

11 F. It is further provided that the provisions of this section  
12 shall be strictly interpreted and shall not be construed as  
13 permitting the disclosure of any other information contained in the  
14 records and files of the Tax Commission relating to income tax or to  
15 any other taxes.

16 G. Unless otherwise provided for in this section, any violation  
17 of the provisions of this section shall constitute a misdemeanor and  
18 shall be punishable by the imposition of a fine not exceeding One  
19 Thousand Dollars (\$1,000.00) or by imprisonment in the county jail  
20 for a term not exceeding one (1) year, or by both such fine and  
21 imprisonment, and the offender shall be removed or dismissed from  
22 office.

1           H. Offenses described in Section 2376 of this title shall be  
2 reported to the appropriate district attorney of this state by the  
3 Tax Commission as soon as the offenses are discovered by the Tax  
4 Commission or its agents or employees. The Tax Commission shall  
5 make available to the appropriate district attorney or to the  
6 authorized agent of the district attorney its records and files  
7 pertinent to prosecutions, and such records and files shall be fully  
8 admissible as evidence for the purpose of such prosecutions.

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

12           A. The Oklahoma Tax Commission shall compile the information  
13 listed in paragraph 27 of Section 205 of this title and make the  
14 information available on its website. The information shall be  
15 provided for each tax year in which a qualified small business  
16 capital company or qualified rural small business capital company  
17 makes qualified investments.

18           B. Any disclosure made by the Tax Commission or its employees,  
19 in a good-faith effort to comply with the provisions of this  
20 section, shall not be considered a violation of Section 205 of this  
21 title or any other statute prohibiting disclosure of taxpayer  
22 information and no liability whatsoever, civil or criminal, shall

1 attach to any member of the Tax Commission or any employee thereof  
2 for any error or omission in the disclosure of such information.

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

6 A. For any tax credit that may be claimed by any person or any  
7 lawfully recognized business entity pursuant to the provisions of  
8 Sections 2357.62, 2357.63, 2357.73 and 2357.74 of Title 68 of the  
9 Oklahoma Statutes, the Oklahoma Tax Commission shall maintain a list  
10 of any person and any such entity pursuant to the provisions of  
11 subsection G of Section 2357.62, subsection E of Section 2357.63,  
12 subsection G of Section 2357.73 and subsection E of Section 2357.74  
13 of Title 68 of the Oklahoma Statutes. For purposes of this  
14 subsection, the Tax Commission shall determine the identity of such  
15 persons and legal entities as of the end of their applicable tax  
16 year during which the qualified investment was made.

17 B. In addition to the requirements of this section, the Tax  
18 Commission shall disclose upon request and provide copies of any  
19 Determination Letter, Letter ruling or equivalent document provided  
20 to any person or entity in connection with or in any way related to  
21 the Small Business Capital Formation Incentive Act and the Rural  
22 Venture Capital Formation Incentive Act.

1 C. Any disclosure made by the Tax Commission or its employees,  
2 in a good-faith effort to comply with the provisions of this  
3 section, shall not be considered a violation of Section 205 of Title  
4 68 of the Oklahoma Statutes or any other statute prohibiting  
5 disclosure of taxpayer information and no liability whatsoever,  
6 civil or criminal, shall attach to any member of the Tax Commission  
7 or any employee thereof for any error or omission in the disclosure  
8 of such information.

9 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.62, as  
10 last amended by Section 4, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
11 2009, Section 2357.62), is amended to read as follows:

12 Section 2357.62. A. For taxable years beginning after December  
13 31, 1997, and before January 1, 2012, there shall be allowed a  
14 credit against the tax imposed by Section 2355 or, effective January  
15 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
16 against the tax imposed by Section 624 or 628 of Title 36 of the  
17 Oklahoma Statutes, for qualified investment in qualified small  
18 business capital companies.

19 B. The credit provided for in subsection A of this section  
20 shall be twenty percent (20%) of the qualified investment in  
21 qualified small business capital companies which is subsequently  
22 invested in an Oklahoma small business venture by the qualified  
23 venture capital company and may only be claimed for a taxable year

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

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

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

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

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

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

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

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

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

14 Section 2357.63. Credit for qualified investment made in  
15 Oklahoma small business ventures in conjunction with investment made  
16 by qualified small business capital company.

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

1 conjunction with investment in such ventures made by a qualified  
2 small business capital company.

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

- 15 1. Made by a shareholder, member or partner of a qualified  
16 small business capital company that has made a qualified investment  
17 in an Oklahoma small business venture;
- 18 2. Invested in the purchase of equity or near-equity in an  
19 Oklahoma small business venture;
- 20 3. Made under the same terms and conditions as the qualified  
21 investment made by the qualified small business capital company; and
- 22 4. Limited to the lesser of:

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

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

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

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

12          E.    If a pass-through entity is entitled to a credit under this  
13 section, the pass-through entity shall allocate such credit to one  
14 or more of the shareholders, partners or members of the pass-through  
15 entity; provided, the total of all credits allocated shall not  
16 exceed the amount of the credit to which the pass-through entity is  
17 entitled. The credit may only be claimed for funds borrowed by the  
18 pass-through entity to make a qualified investment if a shareholder,  
19 partner or member to whom the credit is allocated has an unlimited  
20 and continuing legal obligation to repay the borrowed funds but the  
21 allocation may not exceed such shareholder's, partner's or member's  
22 pro-rata equity share of the pass-through entity even if the  
23 taxpayer's legal obligation to repay the borrowed funds is in excess

1 of such amount. For purposes of the Oklahoma Small Business Capital  
2 Formation Incentive Act, "pass-through entity" means a corporation  
3 that for the applicable tax years is treated as an S corporation  
4 under the Internal Revenue Code, general partnership, limited  
5 partnership, limited liability partnership, trust, or limited  
6 liability company that for the applicable tax year is not taxed as a  
7 corporation for federal income tax purposes.

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

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

19 Section 2357.64. A. Each qualified small business capital  
20 company shall file an annual report with the Oklahoma Tax Commission  
21 no later than April 30 of each year which lists all qualified  
22 investments in or in conjunction with such company which may qualify  
23 for the tax credit allowed by Section 2357.62 or Section 2357.63 of

1 this title. The report shall state the amount of qualified  
2 investments in or in conjunction with such company during the  
3 taxable year by persons, partnerships or corporations and the social  
4 security number of such person or the federal identification number  
5 of such partnership or corporation making such qualified  
6 investments. The report shall also include a schedule listing the  
7 type and amount of qualified investment made by or in conjunction  
8 with the small business capital company, a listing provided by any  
9 pass-through entity that made a qualified investment that details  
10 the allocation of credits by the pass-through entity and such other  
11 information as the Tax Commission may prescribe.

12 B. Each qualified small business capital company shall furnish  
13 to each person, partnership or corporation which made a qualified  
14 investment in or in conjunction with such company during the  
15 preceding year a written statement showing the name of the small  
16 business capital company, the name of the investor, the total amount  
17 of qualified investment in or in conjunction with the company made  
18 by such person, partnership or corporation, the amount of the  
19 qualified investment which was subsequently invested by the capital  
20 company in a small business venture, the date of such investment and  
21 the name of the business venture invested in and such other  
22 information as the Tax Commission may require. The statement shall  
23 be attached to the income tax return or other applicable tax report

1 or return of such person, partnership or corporation in order to  
2 qualify for the tax credit allowed by Section 2357.62 or Section  
3 2357.63 of this title.

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

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

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

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

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

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

15          F. Any taxpayer who refuses or fails to comply with the  
16 provisions of this section or is hereafter found guilty in a court  
17 of competent jurisdiction of any violation of any Oklahoma tax law  
18 shall not be eligible for the tax credits granted in Sections  
19 2357.62 and 2357.63 of this title.

20          G. The Tax Commission is directed to immediately develop a  
21 system for reporting of any income tax credits issued pursuant to  
22 Sections 2357.62 and 2357.63 of this title and a system which  
23 requires the filing of informational reports on how the qualified

1 investments were used, economic benchmarks achieved, implementation  
2 of a business plan for the Oklahoma small business venture,  
3 commercialization success, additional investments in the business by  
4 other investors and job creation that has taken place.

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

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

15 B. The credit provided for in subsection A of this section  
16 shall be thirty percent (30%) of the amount of a qualified  
17 investment in qualified rural small business capital companies which  
18 is subsequently invested in an Oklahoma rural small business venture  
19 by the qualified rural small business capital company and may only  
20 be claimed for a taxable year during which the qualified rural small  
21 business capital company makes the qualified investment in an  
22 Oklahoma rural small business venture if the funds are used in  
23 pursuit of a legitimate business purpose of the Oklahoma rural small

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

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.

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

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

12        Section 2357.74. A. For taxable years beginning after December  
13 31, 2000, and before January 1, 2012, there shall be allowed a  
14 credit against the tax imposed by Section 2355 or, effective January  
15 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
16 against the tax imposed by Section 624 or 628 of Title 36 of the  
17 Oklahoma Statutes, for qualified investment made in Oklahoma rural  
18 small business ventures in conjunction with investment in such  
19 ventures made by a qualified rural small business capital company.

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

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

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

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

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

18 4. Limited to the lesser of:

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

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

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

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

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

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

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

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

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

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

9 B. Each qualified rural small business capital company shall  
10 furnish to each person, partnership or corporation which made a  
11 qualified investment in or in conjunction with such company during  
12 the preceding year a written statement showing the name of the rural  
13 small business capital company, the name of the investor, the total  
14 amount of qualified investment in or in conjunction with the company  
15 made by such person, partnership or corporation, the amount of the  
16 qualified investment which was subsequently invested by the capital  
17 company in a rural small business venture, the date of such  
18 investment and the name of the business venture invested in and such  
19 other information as the Tax Commission may require. The statement  
20 shall be attached to the income tax return or other applicable tax  
21 report or return of such person, partnership or corporation in order  
22 to qualify for the tax credit allowed by Section 2357.73 or Section  
23 2357.74 of this title.

1 C. On or before April 30 of each year, the qualified rural  
2 small business capital company shall provide to the Tax Commission a  
3 copy of its annual financial statements, including documentation  
4 which, to the satisfaction of the ~~Oklahoma~~ Tax Commission, shall  
5 address the methods of operation and conduct of the business of the  
6 capital company to determine whether the capital company is  
7 complying with the terms of the Rural Venture Capital Formation  
8 Incentive Act and any rules promulgated by the Tax Commission,  
9 including whether qualified investments in Oklahoma rural small  
10 business ventures have been made in the manner required by law. No  
11 credit shall be allowed for an investment in a rural small business  
12 capital company unless the report required by this subsection for  
13 the year in which the investment is made is provided.

14 D. Qualified rural small business capital companies or any  
15 entity making an investment in conjunction with investment by a  
16 qualified rural small business capital company pursuant to Section  
17 2357.74 of this title must notify the Tax Commission within twenty  
18 (20) business days if:

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

21 2. An occurrence upon which an investment is contingent has  
22 taken place.

1           If the qualified investment is held in the Oklahoma rural small  
2 business venture for less than five (5) years, the Tax Commission  
3 shall revoke the verification of tax credits and take action to  
4 recapture the tax credits pursuant to Section 22 of this act to the  
5 extent such credits were authorized based upon an amount of  
6 qualified investment that was transferred, withdrawn or otherwise  
7 returned.

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

14           F. Any taxpayer who refuses or fails to comply with the  
15 provisions of this section or is hereafter found guilty in a court  
16 of competent jurisdiction of any violation of any Oklahoma tax law  
17 shall not be eligible for the tax credits granted in Sections  
18 2357.73 and 2357.74 of this title.

19           G. The Tax Commission is directed to immediately develop a  
20 system for reporting of any tax credits issued pursuant to Sections  
21 2357.73 and 2357.74 of this title and a system which requires the  
22 filing of informational reports on how the qualified investments  
23 were used, economic benchmarks achieved, implementation of a

1 business plan for the Oklahoma rural small business venture,  
2 commercialization success, additional investments in the business by  
3 other investors and job creation that has taken place.

4 SECTION 10. AMENDATORY 68 O.S. 2001, Section 1361.1, as  
5 amended by Section 2, Chapter 272, O.S.L. 2006 (68 O.S. Supp. 2009,  
6 Section 1361.1), is amended to read as follows:

7 Section 1361.1 A. If a vendor, in good faith, timely accepts  
8 from a consumer properly completed documentation certified by the  
9 Oklahoma Tax Commission that such consumer is exempt from the taxes  
10 levied by the Oklahoma Sales Tax Code, the vendor shall be relieved  
11 of any liability for any sales tax or the duty to collect any sales  
12 tax imposed by the provisions of Section 1361 of this title upon  
13 such vendor with respect to such sale.

14 B. A vendor who has actual knowledge that a consumer is  
15 entitled to an exemption under paragraph 34 of Section 1357 of this  
16 title and who willfully or intentionally refuses to honor the  
17 exemption shall be ~~punished by an administrative fine of~~ guilty of a  
18 misdemeanor and fined not more than Five Hundred Dollars (\$500.00)  
19 per offense. For the purposes of this paragraph, "vendor" shall  
20 mean any individual most responsible for supervising, and the  
21 conduct of, any employee who intentionally refuses to honor the  
22 exemption including, but not limited to, a manager, owner, partner,  
23 or corporate officer.

1        C. Any written communication between the Oklahoma Tax  
2 Commission and any vendor that is an attempt by the Commission to  
3 enforce the provisions of this section shall be public and,  
4 notwithstanding any provision of law, no presumption of  
5 confidentiality shall exist for such communications. Further, the  
6 Commission shall upon request of any consumer entitled to an  
7 exemption under paragraph 34 of Section 1357 of this title transmit  
8 to such consumer copies of any such communication.

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

13 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-23-10 - DO PASS,  
14 As Amended and Coauthored.