

**EHB 3397**

**THE STATE SENATE**  
**Wednesday, March 31, 2010**

**ENGROSSED**

**House Bill No. 3397**

**As Amended**

ENGROSSED HOUSE BILL NO. 3397 - By: McNiel of the House and Lamb of the Senate.

[ revenue and taxation - Small Business Capital Formation Incentive Act - credits for investments in qualified small business capital companies - credits for investment in qualified small business capital companies made in conjunction with certain other investments - recapture events - Rural Venture Capital Formation Incentive Act - credits for investment capital companies - credits for investment in qualified rural small business capital companies made in conjunction with certain other investments - recapture events - definition ]

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

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

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

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As

1 used in the Small Business Capital Formation Incentive Act,  
2 "acquisition" does not mean the right to participate in the proceeds  
3 from sale of goods or services, whether denominated a royalty,  
4 royalty interest or otherwise, and does not mean the right to  
5 intellectual property, whether the rights arise from copyright,  
6 trademark or patent law;

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

9 3. "Capitalization" means the amount of:

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

1                   45D(b) (1) (C) of the Internal Revenue Code of 1986, as  
2                   amended;

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

10       ~~4.~~ 5. "Financial lending institution" means a bank, credit  
11 union, savings and loan, commercial finance company or other entity  
12 principally engaged in the extension of credit;

13       ~~5.~~ 6. "Oklahoma small business venture" means a business,  
14 incorporated or unincorporated, which:

15           a. has or will have, within one hundred eighty (180) days  
16           after a qualified investment is made by a qualified  
17           small business capital company, at least fifty percent  
18           (50%) of its employees or assets located in Oklahoma,

19           b. needs financial assistance in order to commence or  
20           expand such business which provides or intends to  
21           provide goods or services,

22           c. is engaged in a lawful business activity under any  
23           Industry Number appearing under any Major Group Number

1 of Divisions A, C, D, E, F or I of the Standard  
2 Industrial Classification Manual, 1987 revision with  
3 the following exceptions:  
4 (1) Major Group 1 of Division A, and  
5 (2) Major Group 2 of Division A,  
6 d. qualifies as a small business as defined by the  
7 federal Small Business Administration, and  
8 e. expends within eighteen (18) months after the date of  
9 the qualified investment ~~at least fifty percent (50%)~~  
10 one hundred percent (100%) of the proceeds of the  
11 qualified investment for the acquisition of tangible  
12 or intangible assets which are used in the active  
13 conduct of the trade or business or to provide working  
14 capital for the active conduct of the trade or  
15 business for which the determination of the small  
16 business qualification pursuant to subparagraph d of  
17 this paragraph was made. For purposes of this  
18 subparagraph, "working capital" shall not include  
19 consulting, brokerage or transaction fees. Provided,  
20 that the Oklahoma Tax Commission, upon request and  
21 demonstration of need by a qualified small business  
22 capital company or an Oklahoma small business venture,  
23 or an investor or an authorized agent of any such

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

17 ~~6.~~ 7. "Qualified investment" means an investment of funds in  
18 the form of "equity" and "near-equity" as defined in paragraph ~~3~~ 4  
19 of this section or "subordinated debt" as defined in paragraph ~~8~~ 9  
20 of this section; provided, an investment which is contingent upon  
21 the occurrence of an event or which is subject to being refunded or  
22 returned in the absence of such event shall only be deemed to have  
23 been made upon the occurrence of the event;

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

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

1       ~~8-~~ 9. "Subordinated debt" means indebtedness with a maturity  
2 date of not less than five (5) years that is subordinated to all  
3 other indebtedness of the issuer that has been issued or is to be  
4 issued to a financial lending institution. The indebtedness shall  
5 not have a repayment schedule that is faster than a level principal  
6 amortization over five (5) years.

7       SECTION 2.        AMENDATORY        68 O.S. 2001, Section 2357.62, as  
8 last amended by Section 4, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
9 2009, Section 2357.62), is amended to read as follows:

10       Section 2357.62 A. For taxable years beginning after December  
11 31, 1997, and before January 1, 2012, there shall be allowed a  
12 credit against the tax imposed by Section 2355 or, effective January  
13 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
14 against the tax imposed by Section 624 or 628 of Title 36 of the  
15 Oklahoma Statutes, for qualified investment in qualified small  
16 business capital companies.

17       B. 1. The credit provided for in subsection A of this section  
18 shall be twenty percent (20%) of the qualified investment in  
19 qualified small business capital companies which is subsequently  
20 invested in an Oklahoma small business venture by the qualified  
21 venture capital company and may only be claimed for a taxable year  
22 during which the qualified small business capital company makes the  
23 qualified investment in an Oklahoma small business venture. The

1 credit shall be allowed for the amount of the qualified investment  
2 in an Oklahoma small business venture if the funds are used in  
3 pursuit of a legitimate business purpose of the Oklahoma small  
4 business venture consistent with its organizational instrument,  
5 bylaws or other agreement responsible for the governance of the  
6 small business venture. The qualified small business capital  
7 company shall issue such reports as the Oklahoma Tax Commission may  
8 require attributing the source of funds of each investment it makes  
9 in an Oklahoma business venture. If the tax credit exceeds the  
10 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.

14 2. Before any credit authorized by this section may be allowed  
15 on any tax return, the tax credit claimant shall provide proof of  
16 compliance with the expenditure requirement for the qualified  
17 investment as described by subparagraph e of paragraph 6 of Section  
18 2357.61 of this title on such forms as the Tax Commission may  
19 prescribe for such purpose.

20 3. For acquisition of tangible personal property, the forms  
21 prescribed by the Tax Commission shall require a specific  
22 identification of the tangible asset including:

23 a. a description of the asset,



- 1           b. its acquisition cost,  
2           c. the entity from which the asset was acquired,  
3           d. the total amount of consideration paid by the  
4           qualified small business venture for the asset,  
5           e. a certified copy of any document of title involved in  
6           the acquisition,  
7           f. any applicable serial number or other identifying  
8           number or mark,  
9           g. the specific use for the asset in the active conduct  
10           of the business activity, and  
11           h. any other information required by the Tax Commission.

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

17           5. For the use of any qualified investment as "working  
18           capital", the forms prescribed by the Tax Commission shall contain  
19           such information as may be required to verify that the qualified  
20           investment in the small business venture was used or controlled by  
21           the small business venture in a manner consistent with the  
22           definition of "working capital" according to generally accepted  
23           accounting principles.

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

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

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

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

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

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

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

14 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.63, as  
15 last amended by Section 5, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
16 2009, Section 2357.63), is amended to read as follows:

17 Section 2357.63 A. For taxable years beginning after December  
18 31, 1997, and before January 1, 2012, there shall be allowed a  
19 credit against the tax imposed by Section 2355 or, effective January  
20 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
21 against the tax imposed by Section 624 or 628 of Title 36 of the  
22 Oklahoma Statutes, for qualified investment made in Oklahoma small

1 business ventures in conjunction with investment in such ventures  
2 made by a qualified 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~~ a total  
7                     investment of Thirty Million Dollars (\$30,000,000.00)  
8                     aggregate per Oklahoma small business venture.

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

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

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

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

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

13 Section 2357.63B A. As used in this section, "recapture event"  
14 means that with respect to a qualified investment in an Oklahoma  
15 small business venture:

16 1. The Oklahoma small business venture fails to expend ~~at least~~  
17 ~~fifty percent (50%)~~ one hundred percent (100%) of the proceeds of  
18 qualified investments for acquisition of tangible or intangible  
19 assets to be used in the active conduct of the trade or business or  
20 for working capital for the active conduct of the trade or business  
21 of the small business venture within eighteen (18) months after the  
22 qualified investment is made or within an extension of such period  
23 as provided in Section 2357.61 of this title. For purposes of this

1 paragraph, "working capital" shall not include consulting, brokerage  
2 or transaction fees;

3 2. The investment in the Oklahoma small business venture is  
4 transferred, withdrawn or otherwise returned within five (5) years;  
5 provided, a "recapture event" shall not include the transfer,  
6 withdrawal or return of an investment as a result of a "market-based  
7 liquidity event". As used in the Small Business Capital Formation  
8 Incentive Act, a "market-based liquidity event" means that an  
9 Oklahoma small business venture:

10 a. sells all or substantially all of its assets to, or is  
11 acquired by share acquisition, share exchange, merger,  
12 consolidation or other similar transaction by another  
13 person or entity other than:

14 (1) a person or entity controlled by a person that  
15 made a qualified investment in the qualified  
16 small business capital company that provided  
17 funds for use by the Oklahoma small business  
18 venture, or

19 (2) a person or entity controlled by a person that  
20 made an investment in conjunction with a  
21 qualified investment made by the qualified small  
22 business capital company that provided funds for  
23 use by the Oklahoma small business venture,

- 1           b.    conducts an initial public offering of a class of its  
2                    equity securities pursuant to the requirements of the  
3                    United States Securities and Exchange Commission or  
4                    other applicable federal law governing the sale of  
5                    securities in interstate commerce,  
6            c.    makes an amortization payment under the terms of a  
7                    subordinated debt instrument, or  
8            d.    repays indebtedness from net income as determined in  
9                    accordance with generally accepted accounting  
10                   principles or proceeds of the sale of assets in the  
11                   ordinary course of business; or

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

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

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



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

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

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

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

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

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

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

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

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

23 3. "Capitalization" means the amount of:

- 1           a.    any funds that have actually been contributed to the  
2                   qualified rural small business capital company,  
3           b.    any contractual commitment to provide funds to the  
4                   qualified rural small business capital company to the  
5                   extent that such commitment is payable on demand and  
6                   has substantial economic penalties for breach of the  
7                   commitment to provide such funds,  
8           c.    any allocation of tax credit authority awarded to the  
9                   qualified rural small business capital company by the  
10                  Community Development Financial Institutions Fund  
11                  pursuant to Section 45D of the Internal Revenue Code  
12                  of 1986, as amended, to the extent such allocation has  
13                  not been previously designated by the qualified rural  
14                  small business capital company as contemplated by  
15                  Section 45D(b)(1)(C) of the Internal Revenue Code of  
16                  1986, as amended, and  
17           d.    any funds loaned to the qualified rural small business  
18                  capital company, which is licensed as a rural business  
19                  investment company under 7 U.S.C., Section 2009cc et  
20                  seq., or any successor statute, by the U.S. Small  
21                  Business Administration or U.S. Department of  
22                  Agriculture;

1       ~~3.~~ 4. "Equity and near-equity security" means common stock,  
2 preferred stock, warrants or other rights to subscribe to stock or  
3 its equivalent, or an interest in a limited liability company,  
4 partnership, or subordinated debt that is convertible into, or  
5 entitles the holder to receive upon its exercise, common stock,  
6 preferred stock, a royalty or net profits interest, or an interest  
7 in a limited liability company or partnership;

8       ~~4.~~ 5. "Financial lending institution" means a bank, credit  
9 union, savings and loan, commercial finance company or other entity  
10 principally engaged in the extension of credit;

11       ~~5.~~ 6. "Nonmetropolitan area" means all areas of the state  
12 except a county having a population in excess of one hundred  
13 thousand (100,000) persons according to the most recent Federal  
14 Decennial Census;

15       ~~6.~~ 7. "Oklahoma rural small business venture" means a business,  
16 incorporated or unincorporated, which:

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

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

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

1 applicable to the usage of tax credits for qualified  
2 investment in the Oklahoma rural small business  
3 venture, and "intangible assets" shall be limited to  
4 computer software, licenses, patents, copyrights and  
5 similar items;

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

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

- 19 a. the corporation, limited liability company or  
20 partnership is organized to provide the direct  
21 investment of equity and near-equity funds to  
22 companies within this state,

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

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

19       SECTION 6.        AMENDATORY        68 O.S. 2001, Section 2357.73, as  
20   last amended by Section 8, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
21   2009, Section 2357.73), is amended to read as follows:

22       Section 2357.73 A. For taxable years beginning after December  
23   31, 2000, and before January 1, 2012, there shall be allowed a



1 credit against the tax imposed by Section 2355 or, effective January  
2 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
3 against the tax imposed by Section 624 or 628 of Title 36 of the  
4 Oklahoma Statutes, for qualified investment in qualified rural small  
5 business capital companies.

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

1 be carried forward for a period not to exceed three (3) taxable  
2 years.

3 2. Before any credit authorized by this section may be allowed  
4 on any tax return, the tax credit claimant shall provide proof of  
5 compliance with the expenditure requirement for the qualified  
6 investment as described by subparagraph f of paragraph 7 of Section  
7 2357.72 of this title on such forms as the Tax Commission may  
8 prescribe for such purpose.

9 3. For acquisition of tangible personal property, the forms  
10 prescribed by the Tax Commission shall require a specific  
11 identification of the tangible asset including:

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

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

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

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

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

20        D. No taxpayer may claim the credit provided for in this  
21 section if the capital provided by a qualified rural small business  
22 capital company is used by an Oklahoma rural small business venture  
23 for 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 rural small business capital  
4 company.

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

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

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

4 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.74, as  
5 last amended by Section 9, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
6 2009, Section 2357.74), is amended to read as follows:

7 Section 2357.74 A. For taxable years beginning after December  
8 31, 2000, and before January 1, 2012, there shall be allowed a  
9 credit against the tax imposed by Section 2355 or, effective January  
10 1, 2001, Section 2370 of this title or, effective July 1, 2001,  
11 against the tax imposed by Section 624 or 628 of Title 36 of the  
12 Oklahoma Statutes, for qualified investment made in Oklahoma rural  
13 small business ventures in conjunction with investment in such  
14 ventures made by a qualified rural small business capital company.

15 B. The credit provided for in this section shall be thirty  
16 percent (30%) of the qualified investment made in Oklahoma rural  
17 small business ventures in conjunction with qualified investment in  
18 such ventures made by a qualified rural small business capital  
19 company and shall be allowed for the taxable year during which the  
20 qualified investment is made in an Oklahoma rural small business  
21 venture. If the tax credit allowed pursuant to subsection A of this  
22 section exceeds the amount of taxes due or if there are no state  
23 taxes due of the taxpayer, the amount of the claim not used as an

1 offset against the taxes of a taxable year may be carried forward  
2 for a period not to exceed three (3) taxable years. To qualify for  
3 the credit authorized by this section, a qualified investment shall  
4 be:

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

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

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

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

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

17 b. ~~two hundred percent (200%) of the qualified investment~~  
18 ~~made by the qualified rural small business capital~~  
19 ~~company in the Oklahoma rural small business venture a~~  
20 total investment of Thirty Million Dollars  
21 (\$30,000,000.00) aggregate per Oklahoma rural small  
22 business venture.

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

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

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

1 that for the applicable tax year is not taxed as a corporation for  
2 federal income tax purposes.

3 SECTION 8. AMENDATORY Section 22, Chapter 281, O.S.L.  
4 2006, as amended by Section 10, Chapter 440, O.S.L. 2008 (68 O.S.  
5 Supp. 2009, Section 2357.74B), is amended to read as follows:

6 Section 2357.74B A. As used in this section, "recapture event"  
7 means that with respect to a qualified investment in an Oklahoma  
8 rural small business venture:

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

19 2. The investment in the rural small business venture is  
20 transferred, withdrawn or otherwise returned within five (5) years;  
21 provided, a "recapture event" shall not include the transfer,  
22 withdrawal or return of an investment as a result of a "market-based  
23 liquidity event". As used in the Rural Venture Capital Formation



1 Incentive Act, a "market-based liquidity event" means that an  
2 Oklahoma rural small business venture:

3 a. sells all or substantially all of its assets to, or is  
4 acquired by share acquisition, share exchange, merger,  
5 consolidation or other similar transaction by another  
6 person or entity other than:

7 (1) a person or entity controlled by a person that  
8 made a qualified investment in the qualified  
9 rural small business capital company that  
10 provided funds for use by the Oklahoma rural  
11 small business venture, or

12 (2) a person or entity controlled by a person that  
13 made an investment in conjunction with a  
14 qualified investment made by the qualified rural  
15 small business capital company that provided  
16 funds for use by the Oklahoma rural small  
17 business venture,

18 b. conducts an initial public offering of a class of its  
19 equity securities pursuant to the requirements of the  
20 United States Securities and Exchange Commission or  
21 other applicable federal law governing the sale of  
22 securities in interstate commerce,

- 1           c.    makes an amortization payment under the terms of a  
2                    subordinated debt instrument, or
- 3           d.    repays indebtedness from net income as determined in  
4                    accordance with generally accepted accounting  
5                    principles or proceeds of the sale of assets in the  
6                    ordinary course of business; or

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

10          B.    If a recapture event occurs with respect to a qualified  
11 investment for which a credit authorized by either Section 2357.73  
12 or Section 2357.74 of this title has been claimed, the tax imposed  
13 pursuant to the applicable provisions of Title 36 or this title of  
14 the Oklahoma Statutes against which the credit has been claimed  
15 shall be increased to the extent of the recaptured credit amount.

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

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

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

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

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

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

22          G. Notwithstanding any other provision of this section, a  
23 recapture event shall not occur with respect to qualified

1 investments made by a qualified rural small business capital company  
2 that is also licensed as a rural business investment company under 7  
3 U.S.C., Section 2009cc et seq., or any successor statute, at the  
4 time of the qualified investment. The qualified rural small  
5 business capital company shall include in its annual report proof of  
6 a valid license under the federal statute.

7 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-30-10 - DO PASS,  
8 As Amended.