

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3092

By: Reynolds

4  
5 AS INTRODUCED

6  
7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Sections 2357.7, as last amended by  
9 Section 1, Chapter 440, O.S.L. 2008, 2357.11, as last  
10 amended by Section 9, Chapter 44, 2nd Extraordinary  
11 Session, O.S.L. 2006, 2357.28, as amended by Section  
12 1, Chapter 18, O.S.L. 2002, 2357.41, as last amended  
13 by Section 4, Chapter 436, O.S.L. 2008, 2357.62, as  
14 last amended by Section 4, Chapter 440, O.S.L. 2008,  
15 2357.63, as last amended by Section 5, Chapter 440,  
16 O.S.L. 2008, Section 1, Chapter 385, O.S.L. 2003, as  
17 last amended by Section 1, Chapter 252, O.S.L. 2007  
18 and 2357.73, as last amended by Section 8, Chapter  
19 440, O.S.L. 2008 (68 O.S. Supp. 2009, Sections  
20 2357.7, 2357.11, 2357.28, 2357.41, 2357.62, 2357.63,  
21 2357.66 and 2357.73), which relate to tax credits;  
22 removing applicability to certain tax types; and  
23 providing an effective date.  
24

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

19 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.7, as  
20 last amended by Section 1, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
21 2009, Section 2357.7), is amended to read as follows:

22 Section 2357.7 A. For taxable years beginning after December  
23 31, 1986, and before January 1, 2009, there shall be allowed a  
24 credit against the tax imposed by Section 2355 of this title ~~or~~

1 ~~Section 624 of Title 36 of the Oklahoma Statutes~~ for investments in  
2 qualified venture capital companies whose purpose is to establish or  
3 expand the development of business and industry within Oklahoma.  
4 ~~Provided, tax credits against liabilities imposed pursuant to~~  
5 ~~Section 624 of Title 36 of the Oklahoma Statutes shall be limited to~~  
6 ~~the amount that would otherwise be collected and allocated to the~~  
7 ~~General Revenue Fund of the State Treasury.~~

8 B. For purposes of this section:

9 1. "Qualified venture capital company" means a C corporation,  
10 as defined by the Internal Revenue Code of 1986, as amended,  
11 incorporated pursuant to the laws of Oklahoma or a registered  
12 business partnership with a certificate of partnership filed as  
13 required by law if such corporation or partnership is organized to  
14 provide the direct investment of debt and equity funds to companies  
15 within this state, with its principal place of business located  
16 within this state and which meets the following criteria:

- 17 a. capitalization of not less than Five Million Dollars  
18 (\$5,000,000.00),  
19 b. having a purpose and objective of investing at least  
20 seventy-five percent (75%) of its capitalization in  
21 Oklahoma business ventures. The temporary investment  
22 of funds by a qualified venture capital company in  
23 obligations of the United States, state and municipal  
24 bonds, bank certificates of deposit, or money market

1 securities pending investment in Oklahoma business  
2 ventures is hereby authorized, and

3 c. investment of not more than ten percent (10%) of its  
4 funds in any one company;

5 2. "Oklahoma business venture" means a business, incorporated  
6 or unincorporated, which:

7 a. has or will have, within one hundred eighty (180) days  
8 after an investment is made by a qualified venture  
9 capital company, at least fifty percent (50%) of its  
10 employees or assets located in Oklahoma,

11 b. needs financial assistance in order to commence or  
12 expand such business which provides or intends to  
13 provide goods or services,

14 c. is not engaged in oil and gas exploration, real estate  
15 development, real estate sales, retail sales of food  
16 or clothing, farming, ranching, banking, or lending or  
17 investing funds in other businesses. Provided,  
18 however, businesses which provide or intend to provide  
19 goods or services, including, but not limited to,  
20 goods or services involving new technology, equipment,  
21 or techniques to such businesses listed in this  
22 subparagraph, and investments in the development of  
23 tourism facilities in the form of amusement parks,  
24

1 entertainment parks, theme parks, golf courses, or  
2 museums shall not be subject to said prohibition, and  
3 d. expends within eighteen (18) months after the date of  
4 the investment at least fifty percent (50%) of the  
5 proceeds of the investment for the acquisition of  
6 tangible or intangible assets which are used in the  
7 active conduct of the trade or business of the  
8 Oklahoma business venture or to provide working  
9 capital for the active conduct of such trade or  
10 business. For purposes of this subparagraph, "working  
11 capital" shall not include consulting, brokerage or  
12 transaction fees. Provided, that the Oklahoma Tax  
13 Commission, upon request and demonstration of need by  
14 a qualified venture capital company or an Oklahoma  
15 business venture, may extend the eighteen-month period  
16 otherwise required by this subparagraph for a period  
17 not to exceed six (6) months. Provided, the  
18 expenditure of the invested funds by the Oklahoma  
19 business venture shall otherwise comply with the  
20 requirements applicable to the usage of tax credits  
21 for investment in the Oklahoma business venture. As  
22 used in this subparagraph, "tangible assets" shall  
23 include the acquisition of real property and the  
24 construction of improvements upon real property if

1           such acquisition and construction otherwise complies  
2           with the requirements applicable to the usage of tax  
3           credits for investment in the Oklahoma business  
4           venture and "intangible assets" shall be limited to  
5           computer software, licenses, patents, copyrights, and  
6           similar items;

7           3. "Direct investment" means the purchase of securities of a  
8 private company, or securities of a public company if the securities  
9 constitute a new issue of a public company and such public company  
10 had previous year sales of less than Ten Million Dollars  
11 (\$10,000,000.00); and

12           4. "Debt and equity funds" means investments in debt  
13 securities; including unsecured, undersecured, subordinated or  
14 convertible loans or debt securities; and/or equity securities,  
15 including common and preferred stock, royalty rights, limited  
16 partnership interest, and any other securities or rights that  
17 evidence ownership in businesses; provided such investment of debt  
18 and equity funds shall not have a repayment schedule that is faster  
19 than a level principal amortization over five (5) years.

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

1 qualified venture capital company makes an investment in an Oklahoma  
2 business venture. The credit shall be allowed for the amount of the  
3 investment in an Oklahoma business venture if the funds are used in  
4 pursuit of a legitimate business purpose of the Oklahoma business  
5 venture consistent with its organizational instrument, bylaws or  
6 other agreement responsible for the governance of the business  
7 venture. The qualified venture capital company shall issue such  
8 reports as the Oklahoma Tax Commission may require attributing the  
9 source of funds of each investment it makes in an Oklahoma business  
10 venture. The Oklahoma Capital Investment Board shall have the  
11 authority to certify an entity as a qualified venture capital  
12 company and to certify an investment to be a qualifying Oklahoma  
13 business venture for purposes of complying with subsection B of this  
14 section. Such certification shall be binding on the Oklahoma Tax  
15 Commission. Such certification shall not be mandatory but may be  
16 requested by any entity that desires to be certified. A reasonable  
17 certification fee may be charged by the Oklahoma Capital Investment  
18 Board for this service. If the tax credit allowed pursuant to  
19 subsection A of this section exceeds the amount of taxes due or if  
20 there are no state taxes due of the taxpayer, the amount of the  
21 claim not used as an offset against the taxes of a taxable year may  
22 be carried forward as a credit against subsequent tax liability for  
23 a period not to exceed three (3) years. No investor in a venture

24

1 capital company organized after July 1, 1992, may claim tax credits  
2 under the provisions of this section.

3 D. No taxpayer may claim the credit provided for in subsection  
4 A of this section for investments in qualified venture capital  
5 companies made prior to January 1, 1987.

6 E. No investor whose capital is guaranteed by the Oklahoma  
7 Capital Investment Board may claim or transfer the credit provided  
8 for in subsection A of this section for investments in such  
9 guaranteed portfolio.

10 F. The credit provided for in subsection A of this section, to  
11 the extent not previously utilized, shall be freely transferable to  
12 and by subsequent transferees for a period of three (3) years from  
13 the date of investment in the Oklahoma business venture.

14 G. 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 also 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  
24 pro rata equity share of the pass-through entity even if the

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

9 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.11, as  
10 last amended by Section 9, Chapter 44, 2nd Extraordinary Session,  
11 O.S.L. 2006 (68 O.S. Supp. 2009, Section 2357.11), is amended to  
12 read as follows:

13 Section 2357.11 A. For purposes of this section, the term  
14 "person" means any legal business entity including limited and  
15 general partnerships, corporations, sole proprietorships, and  
16 limited liability companies, but does not include individuals.

17 B. 1. For tax years beginning on or after January 1, 1993 and  
18 ending on or before December 31, 2012, there shall be allowed a  
19 credit against the tax imposed by ~~Section 1803 or~~ Section 2355 of  
20 this title ~~or Section 624 or 628 of Title 36 of the Oklahoma~~  
21 ~~Statutes~~ for every person in this state furnishing water, heat,  
22 light or power to the state or its citizens, or for every person in  
23 this state burning coal to generate heat, light or power for use in  
24 manufacturing operations located in this state.



1           2. For tax years beginning on or after January 1, 1993 and  
2 ending on or before December 31, 2005, and for the period of January  
3 1, 2006 through June 30, 2006, the credit shall be in the amount of  
4 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal  
5 purchased by such person.

6           3. For the period of July 1, 2006 through December 31, 2006,  
7 and for tax years beginning on or after January 1, 2007 and ending  
8 on or before December 31, 2012, the credit shall be in the amount of  
9 Two Dollars and eighty-five cents (\$2.85) per ton for each ton of  
10 Oklahoma-mined coal purchased by such person.

11           4. In addition to the credit allowed pursuant to the provisions  
12 of paragraph 3 of this subsection, for the period of July 1, 2006,  
13 through December 31, 2006, and for tax years beginning on or after  
14 January 1, 2007, and ending on or before December 31, 2012, there  
15 shall be allowed a credit in the amount of Two Dollars and fifteen  
16 cents (\$2.15) per ton for each ton of Oklahoma-mined coal purchased  
17 by such person. The credit allowed pursuant to the provisions of  
18 this paragraph may not be claimed or transferred prior to January 1,  
19 2008.

20           C. For tax years beginning on or after January 1, 1995 and  
21 ending on or before December 31, 2005 and for the period beginning  
22 January 1, 2006 through June 30, 2006, there shall be allowed, in  
23 addition to the credits allowed pursuant to subsection B of this  
24 section, a credit against the tax imposed by ~~Section 1803~~ or Section

1 2355 of this title ~~or Section 624 or 628 of Title 36 of the Oklahoma~~  
2 ~~Statutes~~ for every person in this state which:

3 1. Furnishes water, heat, light or power to the state or its  
4 citizens, or burns coal to generate heat, light or power for use in  
5 manufacturing operations located in this state; and

6 2. Purchases at least seven hundred fifty thousand (750,000)  
7 tons of Oklahoma-mined coal in the tax year.

8 The additional credit allowed pursuant to this subsection shall  
9 be in the amount of Three Dollars (\$3.00) per ton for each ton of  
10 Oklahoma-mined coal purchased by such person.

11 D. Except as otherwise provided in subsection E of this  
12 section, for tax years beginning on or after January 1, 2001, there  
13 shall be allowed a credit against the tax imposed by ~~Section 1803 or~~  
14 ~~Section 2355 of this title or Section 624 or 628 of Title 36 of the~~  
15 ~~Oklahoma Statutes~~ for every person in this state primarily engaged  
16 in mining, producing or extracting coal, and holding a valid permit  
17 issued by the Oklahoma Department of Mines. For tax years beginning  
18 on or after January 1, 2001 and ending on or before December 31,  
19 2005, and for the period beginning January 1, 2006 through June 30,  
20 2006, the credit shall be in the amount of ninety-five cents (\$0.95)  
21 per ton and for the period of July 1, 2006 through December 31,  
22 2006, and for tax years beginning on or after January 1, 2007, the  
23 credit shall be in the amount of Five Dollars (\$5.00) for each ton

24

1 of coal mined, produced or extracted in on, under or through a  
2 permit in this state by such person.

3 E. In addition to the credit allowed pursuant to the provisions  
4 of subsection D of this section and except as otherwise provided in  
5 subsection F of this section, for tax years beginning on or after  
6 January 1, 2001 and ending on or before December 31, 2005, and for  
7 the period of January 1, 2006 through June 30, 2006, there shall be  
8 allowed a credit against the tax imposed by ~~Section 1803 or~~ Section  
9 2355 of this title ~~or Section 624 or 628 of Title 36 of the Oklahoma~~  
10 ~~Statutes~~ for every person in this state primarily engaged in mining,  
11 producing or extracting coal, and holding a valid permit issued by  
12 the Oklahoma Department of Mines in the amount of ninety-five cents  
13 (\$0.95) per ton for each ton of coal mined, produced or extracted  
14 from thin seams in this state by such person; provided, the credit  
15 shall not apply to such coal sold to any consumer who purchases at  
16 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined  
17 coal per year.

18 F. In addition to the credit allowed pursuant to the provisions  
19 of subsection D of this section and except as otherwise provided in  
20 subsection G of this section, for tax years beginning on or after  
21 January 1, 2005 and ending on or before December 31, 2005, and for  
22 the period of January 1, 2006, through June 30, 2006, there shall be  
23 allowed a credit against the tax imposed by ~~Section 1803 or~~ Section  
24 2355 of this title ~~or that portion of the tax imposed by Section 624~~

1 ~~or 628 of Title 36 of the Oklahoma Statutes~~, which is actually paid  
2 to and placed into the General Revenue Fund, in the amount of  
3 ninety-five cents (\$0.95) per ton for each ton of coal mined,  
4 produced or extracted from thin seams in this state by such person  
5 on or after July 1, 2005.

6 G. The credits provided in subsections D and E of this section  
7 shall not be allowed for coal mined, produced or extracted in any  
8 month in which the average price of coal is Sixty-eight Dollars  
9 (\$68.00) or more per ton, excluding freight charges, as determined  
10 by the Tax Commission.

11 H. The additional credits allowed pursuant to subsections B, C,  
12 D and E of this section but not used shall be freely transferable  
13 after January 1, 2002, by written agreement to subsequent  
14 transferees at any time during the five (5) years following the year  
15 of qualification; provided, the additional credits allowed pursuant  
16 to the provisions of paragraph 4 of subsection B of this section but  
17 not used shall be freely transferable after January 1, 2008, by  
18 written agreement to subsequent transferees at any time during the  
19 five (5) years following the year of qualification. An eligible  
20 transferee shall be any taxpayer subject to the tax imposed by  
21 ~~Section 1803 or Section 2355 of this title or Section 624 or 628 of~~  
22 ~~Title 36 of the Oklahoma Statutes~~. The person originally allowed  
23 the credit and the subsequent transferee shall jointly file a copy  
24 of the written credit transfer agreement with the Tax Commission

1 within thirty (30) days of the transfer. The written agreement  
2 shall contain the name, address and taxpayer identification number  
3 of the parties to the transfer, the amount of credit being  
4 transferred, the year the credit was originally allowed to the  
5 transferring person and the tax year or years for which the credit  
6 may be claimed. The Tax Commission may promulgate rules to permit  
7 verification of the validity and timeliness of a tax credit claimed  
8 upon a tax return pursuant to this subsection but shall not  
9 promulgate any rules which unduly restrict or hinder the transfers  
10 of such tax credit.

11 I. The additional credit allowed pursuant to subsection F of  
12 this section but not used shall be freely transferable on or after  
13 July 1, 2006, by written agreement to subsequent transferees at any  
14 time during the five (5) years following the year of qualification.  
15 An eligible transferee shall be any taxpayer subject to the tax  
16 imposed by ~~Section 1803 or Section 2355 of this title or Section 624~~  
17 ~~or 628 of Title 36 of the Oklahoma Statutes.~~ The person originally  
18 allowed the credit and the subsequent transferee shall jointly file  
19 a copy of the written credit transfer agreement with the Tax  
20 Commission within thirty (30) days of the transfer. The written  
21 agreement shall contain the name, address and taxpayer  
22 identification number of the parties to the transfer, the amount of  
23 credit being transferred, the year the credit was originally allowed  
24 to the transferring person and the tax year or years for which the

1 credit may be claimed. The Tax Commission may promulgate rules to  
2 permit verification of the validity and timeliness of a tax credit  
3 claimed upon a tax return pursuant to this subsection but shall not  
4 promulgate any rules which unduly restrict or hinder the transfers  
5 of such tax credit.

6 J. Any person receiving tax credits pursuant to the provisions  
7 of this section shall apply the credits against taxes payable or  
8 shall transfer the credits as provided in this section. Credits  
9 shall not be used to lower the price of any Oklahoma-mined coal sold  
10 that is produced by a subsidiary of the person receiving a tax  
11 credit under this section to other buyers of the Oklahoma-mined  
12 coal.

13 K. The credits allowed by subsections B, C, D, E and F of this  
14 section, upon election of the taxpayer, shall be treated and may be  
15 claimed as a payment of tax, a prepayment of tax or a payment of  
16 estimated tax for purposes of ~~Section 1803 or~~ 2355 of this title ~~or~~  
17 ~~Section 624 or 628 of Title 36 of the Oklahoma Statutes.~~

18 L. Any credits allowed pursuant to the provisions of  
19 subsections B, C, D, E and F of this section but not used in any tax  
20 year may be carried over in order to each of the five (5) years  
21 following the year of qualification.

22 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.28, as  
23 amended by Section 1, Chapter 18, O.S.L. 2002 (68 O.S. Supp. 2009,  
24 Section 2357.28), is amended to read as follows:

1 Section 2357.28 A. For tax years beginning after December 31,  
2 1999, and ending before January 1, 2006, there shall be allowed to  
3 an investor making an eligible investment a credit against the tax  
4 imposed by Section 2355 of this title ~~or Section 624 or 628 of Title~~  
5 ~~36 of the Oklahoma Statutes. The credit may be used in the payment~~  
6 ~~of estimated tax payments for the tax imposed by Section 624 or 628~~  
7 ~~of Title 36 of the Oklahoma Statutes.~~ The credit shall be in the  
8 amount as set forth in subsection F or subsection G of this section.

9 B. The amount of the credit shall be freely transferable to  
10 subsequent transferees.

11 C. As used in this section:

12 1. "Capitalization commitment" means a commitment by a local  
13 governmental entity or the beneficiary thereof or a private entity,  
14 whether by contract, letter agreement, terms sheet, resolution,  
15 ordinance or indenture, to provide funds, personal property or real  
16 property. "Capitalization commitment" shall also mean, in  
17 circumstances limited to local governmental entities or the  
18 beneficiaries thereof, a moral obligation to provide future funds,  
19 personal property or real property. To provide funds, personal  
20 property or real property shall include but not be limited to  
21 providing funds, personal property or real property in the form of  
22 security or collateral to a financial lending institution in support  
23 of a revenue bond, financial obligation or other evidence of  
24 indebtedness issued by a local governmental entity;

1        2. "Consideration" means, but is not limited to, funds,  
2 personal property or real property and a capitalization commitment.  
3 The source of the funds or other consideration for the investment by  
4 one or more investors, whether borrowed or otherwise, is irrelevant  
5 to the determination of investment. The fact that the source of  
6 funds is from a financial lending institution is also irrelevant;

7        3. "Eligible investment" means an investment made during a  
8 period not earlier than January 1, 1999, and not later than December  
9 31, 2002, in an establishment that:

10        a. is headquartered in this state or is ultimately  
11            controlled by an entity headquartered in this state,  
12            and

13        b. has been certified by the Tax Commission as meeting  
14            the following minimum qualifications:

15            (1) is included within the definition of "basic  
16            industry" as set forth in division (7) of  
17            subparagraph a of paragraph 1 of subsection A of  
18            Section 3603 of this title and has been  
19            preapproved by the Oklahoma Department of  
20            Commerce to receive incentive payments pursuant  
21            to the Oklahoma Quality Jobs Program Act. The  
22            Department shall establish a process for  
23            preapproval of applicants for the Oklahoma  
24            Quality Jobs Program Act for purposes of this



1 division. The establishment shall agree to  
2 submit such information as may be required under  
3 this section and the Oklahoma Quality Jobs  
4 Program Act to allow the Tax Commission to  
5 determine the amount of the tax credit allowed  
6 pursuant to the provisions of this section and  
7 the amount of incentive payments allowed pursuant  
8 to the Oklahoma Quality Jobs Program Act for  
9 purposes of subsection K of this section,

10 (2) can demonstrate commitments from not fewer than  
11 twenty entities doing business in this state,  
12 with such entities having in the aggregate not  
13 fewer than two thousand (2,000) employees in this  
14 state, to utilize the services of the  
15 establishment in providing nonstop air  
16 transportation from this state to either the west  
17 coast or the east coast of the continental United  
18 States, or both. Such commitments, at a minimum,  
19 may be in the form of letters of intent from  
20 authorized officers of such entities which  
21 demonstrate a best efforts intention to utilize  
22 such air transportation, and

23 (3) has received, or its parent has received, in  
24 calendar year 2000, a capitalization commitment

1 in the amount of Fifteen Million Dollars  
2 (\$15,000,000.00) or more from a local  
3 governmental entity, including, but not limited  
4 to, proceeds from the issuance of revenue bonds,  
5 financial obligations or other evidences of  
6 indebtedness. For purposes of this section and  
7 notwithstanding the provisions of Section 5063.4  
8 of Title 74 of the Oklahoma Statutes or any other  
9 laws to the contrary, credit enhancement by the  
10 Oklahoma Development Finance Authority through  
11 the Oklahoma Credit Enhancement Reserve Fund up  
12 to a maximum of Ten Million Dollars  
13 (\$10,000,000.00) is hereby authorized, subject to  
14 the approval of the Executive and Legislative  
15 Bond Oversight Commissions pursuant to Section  
16 695.8 of Title 62 of the Oklahoma Statutes.

17 The tax credit provided for in this section shall not be allowed  
18 or, if already claimed, shall be subject to recapture as to the  
19 initial investor or investors, with respect to any amount of an  
20 eligible investment made which is subsequently refunded or returned  
21 to any such investor. Any such recapture shall only apply as to  
22 that part of the tax credit as is associated with the investment  
23 refunded or returned.

1 Nothing in this subsection is intended to preclude an  
2 establishment from utilizing a wholly owned operating subsidiary to  
3 perform its flight and related operations to meet the requirements  
4 of this subsection;

5 4. "Financial lending institution" means a bank, credit union,  
6 savings and loan association, commercial finance company,  
7 governmental agency, including a local governmental entity, or other  
8 entity principally engaged in investment, finance or the extension  
9 of credit;

10 5. "Investment" means:

11 a. consideration in exchange for "equity and near-equity",  
12 which means common stock, preferred stock, warrants or  
13 other rights to subscribe to stock or its equivalent,  
14 or an interest in a partnership, or debt that is  
15 convertible into or entitles the holder to receive upon  
16 its exercise, common stock, preferred stock, royalty  
17 interest, or an interest in a partnership,

18 b. consideration in exchange for "subordinated debt",  
19 which means indebtedness that is subordinated to other  
20 indebtedness of the issuer that has been issued or is  
21 to be issued by a financial lending institution, or

22 c. in the event of a capitalization commitment in  
23 accordance with the provisions of division (3) of  
24 subparagraph b of paragraph 3 of this subsection, where

1 a local governmental entity is issuing revenue bonds,  
2 financial obligations or other evidences of  
3 indebtedness, the receipt of the proceeds of revenue  
4 bonds, financial obligations or other evidences of  
5 indebtedness issued by a local governmental entity by a  
6 parent and the subsequent transfer of such proceeds to  
7 a subsidiary.

8 Actions of the establishment to use such investment as security  
9 for indebtedness, even as security for that of another party, or  
10 other uses, in compliance with loan covenants as may be part of the  
11 issuance of revenue bonds, financial obligations or other evidences  
12 of indebtedness, shall not affect its determination as investment.  
13 For purposes of this section, investment in an establishment which  
14 has, prior to February 1, 2002, been certified as an eligible  
15 establishment by the Oklahoma Tax Commission shall be treated as an  
16 eligible investment in such establishment for the purposes of this  
17 section with respect to investment made at any time prior to  
18 December 31, 2002;

19 6. "Investor" means one or more persons or entities making an  
20 investment and may include one or more persons or entities which  
21 wholly or partially own the establishment;

22 7. "Local governmental entity" includes, but is not limited to,  
23 a county, municipality or public authority or trust created pursuant  
24 to the provisions of Title 60 of the Oklahoma Statutes of which the

1 state or a county or municipality or combination thereof, is a  
2 beneficiary, or a state public authority or trust;

3 8. "Parent" means an entity owning fifty-one percent (51%) or  
4 more of the establishment and providing fifty-one percent (51%) or  
5 more of the investment in the establishment; and

6 9. "Subsequently refunded or returned", when used in reference  
7 to an eligible investment, means an actual redemption by the  
8 establishment of the securities or other indicia of ownership in the  
9 establishment received by the investor from the investor's  
10 investment. The failure to allow the tax credits or the recapture  
11 of the tax credits shall not affect the validity of the tax credits  
12 in the hands of a transferee of the initial investor or subsequent  
13 transferees. Provided, an investor to whom an eligible investment,  
14 or portion thereof, is subsequently refunded or returned shall  
15 reimburse the Tax Commission the amount of any credits claimed by a  
16 transferee with respect to any such amount.

17 D. The Oklahoma Tax Commission shall:

18 1. Certify, upon request of an authorized agent or  
19 representative of an establishment described by paragraph 3 of  
20 subsection C of this section, that the establishment for which the  
21 certification is sought meets the qualifications prescribed by  
22 subparagraphs a and b of paragraph 3 of subsection C of this  
23 section. The certification shall be in writing and signed by an  
24 authorized representative of the Tax Commission and, for purposes of

1 determining qualifications of an establishment in which an  
2 investment may be eligible for the credit authorized by this  
3 section, shall be binding upon the Tax Commission; and

4       2. Issue a certificate to an investor that provides adequate  
5 documentation of qualification for the credit authorized by this  
6 section even if the credit may not be claimed until after the date  
7 upon which the certificate is requested. Upon issuance, the  
8 certificate shall be evidence that an investor or a transferee of  
9 the original tax credit claimant submitting the certificate, or a  
10 certified copy thereof, with the relevant tax return or other form,  
11 has the legal right to exercise the credit in order to reduce the  
12 relevant tax liability for the period authorized by this section.

13       E. Except as otherwise provided by subsection G of this  
14 section, the maximum amount of all eligible investments for which  
15 tax credits may be claimed under this section shall be Thirty  
16 Million Dollars (\$30,000,000.00). If more than one establishment  
17 has been certified by the Tax Commission pursuant to the provisions  
18 of subsection D of this section, the investors in the first such  
19 approved establishment shall be entitled to a credit based on their  
20 investment of the lesser of their eligible investment or Thirty  
21 Million Dollars (\$30,000,000.00). The investors in the second such  
22 approved establishment shall then be entitled to a credit based on  
23 their investment of the lesser of their eligible investment or the  
24 difference between the total eligible investments in previously

1 approved establishments and Thirty Million Dollars (\$30,000,000.00).  
2 This same procedure will apply for all subsequently approved  
3 establishments. If the amount of eligible investments exceeds the  
4 amount upon which the tax credit may be claimed as provided herein,  
5 investors shall be allowed a share of the amount of the available  
6 tax credit in order of the dates of receipt of certification  
7 therefor by the Tax Commission pursuant to the provisions of  
8 paragraph 1 of subsection D of this section.

9 F. Except as otherwise provided by subsection G of this  
10 section, the amount of the tax credit allowed pursuant to the  
11 provisions of subsection A of this section shall be deemed fully  
12 earned as of the date of the investment and shall be fully  
13 redeemable as follows:

14 <u>Period for Which</u>	
15 <u>Tax Liability Determined</u>	15 <u>Credit Allowed</u>
16 Tax year subsequent	
17 to year of eligible investment	10.6% of eligible
18	investment
19 Second tax year subsequent to	
20 year of eligible investment	11.236% of eligible
21	investment
22 Third tax year subsequent to	
23 year of eligible investment	11.910% of eligible
24	investment

1 Fourth tax year subsequent to  
2 year of eligible investment 12.624% of eligible  
3 investment

4 Fifth tax year subsequent to  
5 year of eligible investment 13.381% of eligible  
6 investment

7 G. An investor or investors in an establishment that has been  
8 approved for eligible investment before February 1, 2002, pursuant  
9 to this section may receive tax credits for additional eligible  
10 investment in such establishment during the period February 1, 2002,  
11 to December 31, 2002. The maximum amount of such additional tax  
12 credits shall be Nine Million Dollars (\$9,000,000.00) with One  
13 Dollar (\$1.00) of tax credit for each dollar of eligible investment.  
14 The tax credits authorized by this subsection may not be used as to  
15 any tax obligation that is due and payable before July 1, 2003. For  
16 the fiscal year that begins July 1, 2003, and the fiscal years that  
17 begin July 1, 2004, and July 1, 2005, the amount of tax credits  
18 authorized by this subsection which may be used during each such  
19 fiscal year shall not exceed Three Million Dollars (\$3,000,000.00).

20 H. The amount of a tax credit allowed pursuant to the  
21 provisions of this section not used in payment of taxes due in the  
22 year in which such credit is allowed pursuant to subsection F or  
23 subsection G of this section may be used as a credit against  
24 subsequent tax liability of the investor or a subsequent transferee



1 for a period not to exceed three (3) years from the year in which  
2 such credit is originally allowed.

3 I. The Tax Commission shall develop and issue appropriate forms  
4 and instructions to enable investors to claim the tax credit  
5 provided for in this section.

6 J. An establishment in which an eligible investment qualifies  
7 for a credit authorized by this section shall maintain a record of  
8 investment made in the establishment for the period beginning  
9 January 1, 1999, and ending December 31, 2002. The establishment  
10 shall notify the Tax Commission not later than January 31, 2003, of  
11 the total investment amount for such period. Any such establishment  
12 which refunds or returns any amount of an eligible investment to the  
13 investor shall notify the Tax Commission in writing of the amount  
14 and recipient of such refunds or returns. The Tax Commission shall  
15 compute the maximum amount of credits available pursuant to this  
16 section based upon notification of the investment amount transmitted  
17 to the Tax Commission by the establishment.

18 K. An establishment in which eligible investments qualify for  
19 the tax credit authorized by this section shall not receive  
20 incentive payments pursuant to the Oklahoma Quality Jobs Program Act  
21 until the total of such incentive payments the establishment would  
22 otherwise receive exceeds the total amount of the credit authorized  
23 by this section as computed by the Tax Commission pursuant to  
24 subsection J of this section. The amount of incentive payments for

1 any year which would otherwise be paid to the establishment shall be  
2 distributed as follows:

3 1. If the amount of such incentive payments equals or exceeds  
4 the amount of the tax credit for the year, the amount of such  
5 payments which is equal to the amount of the tax credit shall be  
6 apportioned as if collected from the tax imposed by Section 2355 of  
7 this title ~~or Section 624 or 628 of Title 36 of the Oklahoma~~  
8 ~~Statutes~~ according to which tax the credit was claimed against. The  
9 amount of such payments which is in excess of the amount of the tax  
10 credit shall be retained by the Tax Commission to be paid as  
11 provided for in this paragraph for subsequent years for which the  
12 tax credit is allowed to the establishment;

13 2. If the amount of such incentive payments and any amount  
14 retained by the Tax Commission pursuant to the provisions of  
15 paragraph 1 of this subsection is less than the amount of the tax  
16 credit for the year, notwithstanding the provisions of Section 1727  
17 of Title 69 of the Oklahoma Statutes, the Tax Commission shall  
18 withhold a portion of the taxes levied and collected pursuant to the  
19 provisions of paragraph 1 of subsection A of Section 500.4 of this  
20 title which would otherwise be paid over to the Department of  
21 Transportation by the Oklahoma Turnpike Authority pursuant to the  
22 provisions of paragraph (2) of subsection (d) of Section 1730 of  
23 Title 69 of the Oklahoma Statutes equal to the amount of the  
24 deficit. The Tax Commission shall apportion all funds collected

1 pursuant to the provisions of this paragraph as if collected from  
2 the tax imposed by Section 2355 of this title ~~or Section 624 or 628~~  
3 ~~of Title 36 of the Oklahoma Statutes~~ according to the tax against  
4 which the credit was claimed; and

5       3. If any amount is withheld by or paid to the Tax Commission  
6 pursuant to the provisions of paragraph 2 of this subsection, the  
7 amount of incentive payments to be subsequently paid to the  
8 establishment shall be apportioned by the Tax Commission to the  
9 Department of Transportation until such time as all amounts paid  
10 pursuant to the provisions of paragraph 2 of this subsection are  
11 repaid.

12       L. No establishment in which investments qualify for the credit  
13 allowed by this section shall be entitled to payment of any  
14 incentive payments accrued prior to the date authorized for the  
15 initial eligible investments as provided by this subsection.

16       M. Notwithstanding the provisions of this section, an  
17 establishment may, prior to the issuance of a tax credit with  
18 respect to the establishment pursuant to the provisions of this  
19 section, elect to receive incentive payments pursuant to the  
20 provisions of the Oklahoma Quality Jobs Program Act in lieu of  
21 allowing the tax credit provided for herein, in which case it shall  
22 so notify the Tax Commission in writing and the provisions of this  
23 section shall not be applicable.

24

1 N. Except as provided by subsection M of this section, no  
2 establishment defined by this section which would otherwise qualify  
3 for incentive payments pursuant to the provisions of the Oklahoma  
4 Quality Jobs Program Act may receive such incentive payments prior  
5 to January 1, 2001.

6 O. No establishment defined by this section which has made  
7 application to the Oklahoma Department of Commerce or which has  
8 executed any agreement with the Oklahoma Department of Commerce with  
9 respect to the receipt of incentive payments pursuant to the  
10 provisions of the Oklahoma Quality Jobs Program Act or which has  
11 received any incentive payment pursuant to the Oklahoma Quality Jobs  
12 Program Act prior to June 9, 1999, may be certified as an  
13 establishment for purposes of determining eligibility for the credit  
14 authorized by this section.

15 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.41, as  
16 last amended by Section 4, Chapter 436, O.S.L. 2008 (68 O.S. Supp.  
17 2009, Section 2357.41), is amended to read as follows:

18 Section 2357.41 A. For tax years beginning after December 31,  
19 2000, there shall be allowed a credit against the tax imposed by  
20 ~~Sections Section 2355 and 2370 of this title or that portion of the~~  
21 ~~tax imposed by Section 624 or 628 of Title 36 of the Oklahoma~~  
22 ~~Statutes that would otherwise have been apportioned to the General~~  
23 ~~Revenue Fund~~ for qualified rehabilitation expenditures incurred in  
24 connection with any certified historic hotel or historic newspaper

1 plant building located in an increment or incentive district created  
2 pursuant to the Local Development Act or for qualified  
3 rehabilitation expenditures incurred after January 1, 2006, in  
4 connection with any certified historic structure.

5 B. The amount of the credit shall be one hundred percent (100%)  
6 of the federal rehabilitation credit provided for in Section 47 of  
7 Title 26 of the United States Code. The credit authorized by this  
8 section may be claimed at any time after the relevant local  
9 governmental body responsible for doing so issues a certificate of  
10 occupancy or other document that is a precondition for the  
11 applicable use of the building or structure that is the basis upon  
12 which the credit authorized by this section is claimed.

13 C. All requirements with respect to qualification for the  
14 credit authorized by Section 47 of Title 26 of the United States  
15 Code shall be applicable to the credit authorized by this section.

16 D. If the credit allowed pursuant to this section exceeds the  
17 amount of income taxes due or if there are no state income taxes due  
18 on the income of the taxpayer, the amount of the credit allowed but  
19 not used in any taxable year may be carried forward as a credit  
20 against subsequent income tax liability for a period not exceeding  
21 ten (10) years following the qualified expenditures.

22 E. All rehabilitation work to which the credit may be applied  
23 shall be reviewed by the State Historic Preservation Office which  
24 will in turn forward the information to the National Park Service

1 for certification in accordance with 36 C.F.R., Part 67. A  
2 certified historic structure may be rehabilitated for any lawful use  
3 or uses, including without limitation mixed uses and still retain  
4 eligibility for the credit provided for in this section.

5 F. The amount of the credit allowed for any credit claimed for  
6 a certified historic hotel or historic newspaper plant building or  
7 any certified historic structure, but not used, shall be freely  
8 transferable, in whole or in part, to subsequent transferees at any  
9 time during the five (5) years following the year of qualification.  
10 Any person to whom or to which a tax credit is transferred shall  
11 have only such rights to claim and use the credit under the terms  
12 that would have applied to the entity by whom or by which the tax  
13 credit was transferred. The provisions of this subsection shall not  
14 limit the ability of a tax credit transferee to reduce the tax  
15 liability of the transferee regardless of the actual tax liability  
16 of the tax credit transferor for the relevant taxable period. The  
17 transferor of the credit and the transferee shall jointly file a  
18 copy of the written credit transfer agreement with the Oklahoma Tax  
19 Commission within thirty (30) days of the transfer. Such filing of  
20 the written credit transfer agreement with the Oklahoma Tax  
21 Commission shall perfect such transfer. The written agreement shall  
22 contain the name, address and taxpayer identification number of the  
23 parties to the transfer, the amount of credit being transferred, the  
24 year the credit was originally allowed to the transferor, the tax

1 year or years for which the credit may be claimed, and a  
2 representation by the transferor that the transferor has neither  
3 claimed for its own behalf nor conveyed such credits to any other  
4 transferee. The Tax Commission shall develop a standard form for  
5 use by subsequent transferees of the credit demonstrating  
6 eligibility for the transferee to reduce its applicable tax  
7 liabilities resulting from ownership of the credit. The Tax  
8 Commission shall develop a system to record and track the transfers  
9 of the credit and certify the ownership of the credit and may  
10 promulgate rules to permit verification of the validity and  
11 timeliness of a tax credit claimed upon a tax return pursuant to  
12 this subsection but shall not promulgate any rules which unduly  
13 restrict or hinder the transfers of such tax credit.

14 G. Notwithstanding any other provisions in this section, on or  
15 after January 1, 2009, if a credit allowed pursuant to this section  
16 which has been transferred is subsequently reduced as the result of  
17 an adjustment by the Internal Revenue Service, Tax Commission, or  
18 any other applicable government agency, only the transferor  
19 originally allowed the credit and not any subsequent transferee of  
20 the credit, shall be held liable to repay any amount of disallowed  
21 credit.

22 H. As used in this section:

23 1. "Certified historic hotel or historic newspaper plant  
24 building" means a hotel or newspaper plant building that is listed

1 on the National Register of Historic Places within thirty (30)  
2 months of taking the credit pursuant to this section.

3 2. "Certified historic structure" means a building that is  
4 listed on the National Register of Historic Places within thirty  
5 (30) months of taking the credit pursuant to this section or a  
6 building located in Oklahoma which is certified by the State  
7 Historic Preservation Office as contributing to the historic  
8 significance of a certified historic district listed on the National  
9 Register of Historic Places, or a local district that has been  
10 certified by the State Historic Preservation Office as eligible for  
11 listing in the National Register of Historic Places; and

12 3. "Qualified rehabilitation expenditures" means capital  
13 expenditures that qualify for the federal rehabilitation credit  
14 provided in Section 47 of Title 26 of the United States Code and  
15 that were paid after December 31, 2000. Qualified rehabilitation  
16 expenditures do not include capital expenditures for nonhistoric  
17 additions except an addition that is required by state or federal  
18 regulations that relate to safety or accessibility. In addition,  
19 qualified rehabilitation expenditures do not include expenditures  
20 related to the cost of acquisition of the property.

21 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.62, as  
22 last amended by Section 4, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
23 2009, Section 2357.62), is amended to read as follows:

24



1 Section 2357.62 A. For taxable years beginning after December  
2 31, 1997, and before January 1, 2012, there shall be allowed a  
3 credit against the tax imposed by Section 2355 ~~or, effective January~~  
4 ~~1, 2001, Section 2370~~ of this title ~~or, effective July 1, 2001,~~  
5 ~~against the tax imposed by Section 624 or 628 of Title 36 of the~~  
6 ~~Oklahoma Statutes,~~ for qualified investment in qualified small  
7 business capital companies.

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

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

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

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

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

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

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

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

12 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.63, as  
13 last amended by Section 5, Chapter 440, O.S.L. 2008 (68 O.S. Supp.  
14 2009, Section 2357.63), is amended to read as follows:

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

23 B. The credit provided for in this section shall be twenty  
24 percent (20%) of the qualified investment made in Oklahoma small

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

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

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

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

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

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

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 2357.73 or 2357.74 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 only 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 Oklahoma Small Business Capital  
19 Formation Incentive Act, "pass-through entity" means a corporation  
20 that for the applicable tax years is treated as an S corporation  
21 under the Internal Revenue Code, general partnership, limited  
22 partnership, limited liability partnership, trust, or limited  
23 liability company that for the applicable tax year is not taxed as a  
24 corporation for federal income tax purposes.

1 SECTION 7. AMENDATORY Section 1, Chapter 385, O.S.L.  
2 2003, as last amended by Section 1, Chapter 252, O.S.L. 2007 (68  
3 O.S. Supp. 2009, Section 2357.66), is amended to read as follows:  
4 Section 2357.66 A. For tax years beginning after December 31,  
5 2003, and before January 1, 2013, there shall be allowed a credit  
6 against the tax imposed by Section 2355 of this title,~~and against~~  
7 ~~the tax imposed by Section 2370 of this title, and against the taxes~~  
8 ~~imposed by Sections 624 and 628 of Title 36 of the Oklahoma Statutes~~  
9 and actually paid to and placed into the General Revenue Fund for  
10 any ethanol facility which is in production at the rate of at least  
11 twenty-five percent (25%) of its name plate design capacity for the  
12 production of ethanol, before denaturing, on or before December 31,  
13 2010. The completion of the construction of such facilities must be  
14 after July 1, 2003. The credit shall be in the amount of twenty  
15 cents (\$0.20) per gallon of ethanol produced and shall be allowed  
16 for up to sixty (60) months beginning with the first month for which  
17 the facility is eligible to receive such credit and ending not later  
18 than December 31, 2012. The credit may only be claimed if the  
19 ethanol facility maintains an average production rate of at least  
20 twenty-five percent (25%) of its name plate design capacity for at  
21 least six (6) months after the first month for which it is eligible  
22 to receive such credit.

23 B. As used in this section:  
24

1        1. "Ethanol facility" means a plant or facility primarily  
2 engaged in the production of ethanol or ethyl alcohol derived from  
3 grain components, coproducts, or byproducts; and

4        2. "Name plate design capacity" means the original designed  
5 capacity of an ethanol facility. Capacity may be specified as  
6 bushels of grain ground or gallons of ethanol produced per year.

7        C. Any ethanol facility eligible for a tax credit under  
8 subsection A of this section shall also receive a credit against the  
9 tax imposed by Section 2355 of this title in the amount of twenty  
10 cents (\$0.20) per gallon of ethanol produced in excess of the  
11 original name plate design capacity which results from expansion of  
12 the facility completed on or after July 1, 2003, and before December  
13 31, 2008. Such tax credit shall be allowed for up to sixty (60)  
14 months beginning with the first month for which production from the  
15 expanded facility is eligible to receive such tax credit and ending  
16 not later than December 31, 2012.

17        D. 1. Beginning January 1, 2013, an ethanol facility shall  
18 receive a credit against the tax imposed by Section 2355 of this  
19 title in the amount of seven and one-half cents (\$0.075) per gallon  
20 of ethanol, before denaturing, for new production for a period not  
21 to exceed thirty-six (36) consecutive months.

22        2. For purposes of this subsection, "new production" means  
23 production which results from a new facility, a facility which has  
24 not received credits prior to January 1, 2013, or the expansion of

1 the capacity of an existing facility by at least two million  
2 (2,000,000) gallons first placed into service after January 1, 2013,  
3 as certified by the design engineer of the facility to the Oklahoma  
4 Tax Commission.

5 3. For expansion of the capacity of an existing facility, "new  
6 production" means annual production in excess of twelve times the  
7 monthly average of the highest three (3) months of ethanol  
8 production at an ethanol facility during the twenty-four-month  
9 period immediately preceding certification of the facility by the  
10 design engineer.

11 4. No credits shall be allowed under this subsection for  
12 expansion of the capacity of an existing facility until production  
13 is in excess of twelve times the three-month average amount  
14 determined under this subsection during any twelve-consecutive-month  
15 period beginning no sooner than January 1, 2013.

16 5. The amount of a credit granted pursuant to this section  
17 based on new production shall be approved by the Tax Commission  
18 based on such ethanol production records as may be necessary to  
19 reasonably determine the level of new production.

20 E. 1. The credits described in this section shall be given  
21 only for ethanol produced at a plant in this state at which all  
22 fermentation, distillation, and dehydration takes place. No credit  
23 shall be given on ethanol produced or sold for use in the production  
24 of distilled spirits.



1        2. Not more than twenty-five million (25,000,000) gallons of  
2 ethanol produced annually at any single ethanol facility nor more  
3 than seventy-five million (75,000,000) gallons of ethanol produced  
4 annually at all ethanol facilities in this state shall be eligible  
5 for the credits in subsections A and C of this section, and the  
6 credits may only be claimed by a producer for the periods specified  
7 in subsections A and C of this section.

8        3. Not more than ten million (10,000,000) gallons of ethanol  
9 produced during any twelve-consecutive-month period at any single  
10 ethanol facility nor more than thirty million (30,000,000) gallons  
11 of ethanol produced annually at all ethanol facilities in this state  
12 shall be eligible for the credit described in subsection D of this  
13 section, and the credit may only be claimed by a producer for the  
14 periods specified in subsection D of this section.

15        4. Not more than one hundred twenty-five million (125,000,000)  
16 gallons of ethanol produced at an ethanol facility by the end of the  
17 sixty-month period set forth in subsection A or C of this section  
18 shall be eligible for the credit under such subsection. An ethanol  
19 facility which receives a credit for ethanol produced under  
20 subsection A or C of this section shall not receive a credit under  
21 subsection D of this section until its eligibility to receive a  
22 credit under subsection A or C of this section has been completed.

23        F. The Tax Commission shall prescribe an application form and  
24 promulgate rules for claiming credits under this section.

1 G. For purposes of ascertaining the correctness of any  
2 application for claiming a credit provided in this section, the Tax  
3 Commission may examine or cause to have examined, by any agent or  
4 representative designated for that purpose, any books, papers,  
5 records, or memoranda bearing upon such matters.

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

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

16 B. The credit provided for in subsection A of this section  
17 shall be thirty percent (30%) of the amount of a qualified  
18 investment in qualified rural small business capital companies which  
19 is subsequently invested in an Oklahoma rural small business venture  
20 by the qualified rural small business capital company and may only  
21 be claimed for a taxable year during which the qualified rural small  
22 business capital company makes the qualified investment in an  
23 Oklahoma rural small business venture if the funds are used in  
24 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.

23

24

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.

23

24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SECTION 9. This act shall become effective January 1, 2011.

52-2-8509           CJB           01/04/10