



June 3, 2009

Mr. J. Christian Guzzy
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102

Re: Our file number LR-09-061
MB Holdings, LLC

Dear Mr. Guzzy:

This letter ruling is in response to your inquiry dated April 20, 2009 wherein you posed a series of ruling requests relating to the Rural Venture Capital Formation Incentive Act (68 Okla. Stat. §2357.70 et seq.). Based upon the facts outlined in your letter, the Tax Policy and Research Division of the Oklahoma Tax Commission issues the following rulings:

MB Holdings LLC is an Oklahoma limited liability company that is being formed as an "Oklahoma rural small business venture" as defined in Tit. 68 O.S. § 2357.72(6) (the "Venture"). The Venture intends to organize another Oklahoma limited liability company, MB Investment Fund, LLC (the "Fund") for the purpose of allowing investors and lending institutions to make investments through the Fund into either (i) a "qualified rural small business capital company" as defined in Tit. 68 O.S. § 2357.72(8), which will in turn invest such funds into the Venture, or (ii) directly into the Venture. It is intended for all investment proceeds contributed to the Fund to qualify for the Oklahoma tax credits provided in the Rural Venture Capital Formation Incentive Act, Tit. 68 O.S. § 2357.71 et. seq. (the "RVCA" and the "State Credits" when referring to the credits generated). A portion of the investment proceeds contributed to the Fund will also qualify for federal tax credits provided under the New Market Tax Credit Program (the "NMTC Program" and the "NMTC Credits" when referring to the credits generated).

Statement of Facts:

1. The Fund will be formed as an Oklahoma limited liability company. The purpose of the Fund is to raise investment capital from accredited Oklahoma investors

LR-09-061
Page 2 of 6

(the "Investors") as well as to obtain loans (each a "Loan" and collectively, the "Loans") from one or more lending institutions (collectively, the "Lender"). MB Management LLC, an Oklahoma limited liability company ("Management"), shall be the non-member manager of the Fund.

2. The Investors will be issued 100% of all outstanding equity interests in the Fund and shall be entitled to distributions of all cash and property from the Fund. The Operating agreement for the Fund shall provide that all State Credits and NMTC Credits generated by virtue of investment made in the Fund (collectively, the "Tax Credits") shall be allocated to each Investor based on that Investor's pro rata equity share of the Fund and that no investor's allocation of Tax Credits shall exceed the Investor's pro rata equity share of the Fund.

3. The Fund intends to transfer all or a portion of the capital it raises, less organizational expenses, to one or more entities which qualify as a "qualified rural small business capital company" as defined in Tit. 68 O.S. § 2357.72(7) (each, a "SBC" and collectively, the "SBCs") in return for at least 99.99% of the outstanding units of the preferred series of units of each SBC designated for this transaction (the "SBC Equity Investments").

4. The SBCs will use 100% of the proceeds from the SBC Equity Investments to make loans to the Venture (each an "SBC Loan" and collectively, the "SBC Loans"). Each SBC Loan shall have a maturity date of not less than five years and such loan shall be subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution. Furthermore, each SBC Loan shall not have a repayment schedule, or any right to repayment that would allow for a repayment schedule, that is faster than a level principal amortization over five years. More specifically, debt service payments under each SBC Loan during the first five years following issuance of the SBC Loan shall be either; (i) interest-only, or (ii) interest plus no more than 15% principal repayment during such initial five-year period. Each SBC Loan shall constitute a contractual obligation owed by the Venture directly to the applicable SBC.

5. Any net investment proceeds remaining in the Fund (i.e., from the Loans and from Investors less the amount of the SBC Equity Investments) shall be loaned directly to the Venture (the "Side Loan"). The principal economic terms and conditions, including the interest rate charged and repayment obligations, of the Side Loan shall be identical to the terms and conditions of a paired SBC Loan for at least a period of five (5) years following issuance of the Side Loan. Furthermore, the dollar amount of the Side Loan shall be less than 200% of the paired SBC Loan. The Side Loan shall constitute a contractual obligation owed by the Venture directly to the Fund.

6. The Venture shall be required to pay a one-time fee to each SBC of not more than 7.5% of the total amount of the SBC Loan made by that SBC. The debt service obligations of the Venture to the Fund under the Side Loan may or may not include a similar loan origination fee calculated as a percentage of the total amount of the

LR-09-061
Page 3 of 6

Side Loan. In the event such a fee is required under the Side Loan, the percentage used to calculate that fee will be equal to or less than the percentage used to calculate the loan origination fee under the paired SBC Loan.

7. The Loans to the Fund will be directly collateralized by: (i) all of the Fund's rights under the Side Loan; (ii) the Fund's pledge of all of its interest in the SBCs; (iii) a pledge of Management's rights as the manager of the Fund; (iv) full guaranty from Management and the principals of Management; (v) a possible third-party guaranty; and (vi) a full and unlimited guaranty from each Investor which is subordinate in terms of the Bank's right of recourse to all other collateral and all other guaranties given to the Bank in connection with the Loans.

8. The Side Loan and the SBC Loans (collectively, the "Subsequent Loans") will be collateralized by the Venture's assets, including its real estate, equipment and receivables. The Loans and the Subsequent Loans will be cross collateralized.

9. The Venture will be formed as an Oklahoma limited liability company. In exchange for a capital contribution made directly to the Venture, Management shall receive all outstanding ownership interests in the Venture and shall have the exclusive right to elect persons to the governing board of the Venture (the "Board of Managers"). The Board of Managers shall have the exclusive powers and duties to manage and control all business and affairs of the Venture and to make all decisions for and on behalf of the Venture.

10. The SBC shall not own, directly or indirectly, any voting interest entitled to elect any person to the Board of Managers.

11. The Venture will issue the subordinated debt instruments representing the Subsequent Loans within 30 days of the Venture's receipt of the funding to be provided by those loans.

12. The Venture will maintain a principal place of business and conduct 100% of its operations within the city limits of Mangum, Greer County, Oklahoma. The Venture will be formed as a special purpose entity for the acquisition of land, building, equipment and certain other assets and supplies from various third parties, which such assets and supplies shall comprise a brick manufacturing business. Therefore, the Venture will be engaged in business activity classified under Major Group Number 32 of Division D of the Standard Industrial Classification Manual. The Venture will have, within 180 days after receipt of each of the Subsequent Loans, at least 50% of its employees or assets located in Oklahoma. The Venture shall qualify as a "small business" as defined by the federal Small Business Administration and the Venture needs financial assistance in order to commence business and provide the products and services as described above to the public. Furthermore, with respect to the Subsequent Loans, the Venture will expend within 18 months after receipt of each such source of funding at least 50% of the respective funding for the acquisition of tangible or intangible assets to be used in the active conduct of the Venture's business.

LR-09-061
Page 4 of 6

13. Each SBC shall satisfy all of the requirements set forth in Tit. 68 O.S. § 2357.72(8) for qualification as a "qualified rural small business capital company" and will also comply with the provisions of Tit. 68 O.S. § 2357.74A (A)(2) & (4).

14. Any offering materials involving the solicitation of the any of the investments to be made in the Fund shall include the disclaimer set forth in Tit. 68 O.S. § 2357.74A(F).

15. Each of the Venture, each SBC and the Fund will elect, or have already elected, to be classified as a "partnership" for federal and state income tax purposes and shall always be operated in a manner consistent with such classification.

16. Contractual provisions shall be included in the applicable documents (i.e., the Operating Agreements for the Venture, the Certificate of Designation for each preferred series of units of each SBC designated for this transaction, and the Loan Agreements for the Subsequent Loans) which shall provide that the Subsequent Loans shall not be transferred, withdrawn or otherwise returned within five (5) years of the closing of the transaction contemplated hereunder.

17. Management will enter into contractual agreements with the Investors whereby Management will be entitled to purchase the ownership interests of the Investors in the Fund at any time after expiration of the seven-year compliance period under the NMTC Program provided that the Investors have received cash distributions from the Fund equal to a one-time, cumulative return on the Investors' capital contributions of between ten and twenty percent (10% - 20%).

Rulings Requested:

Based on these facts, the Venture respectfully requests a letter ruling from the Tax Policy and Research Division of the Oklahoma Tax Commission that:

1. The SBC Equity Investments made by the Fund in the SBC followed by the SBC Loan to the Venture will qualify for the State Credits.

Yes. When borrowed funds are used to make an investment in an Oklahoma small business venture or Oklahoma rural small business venture, the investment will qualify for the credits against tax provided in 68 O.S. §2357.63 and §2357.73 so long as the investors' guarantees of the loans are equal to the investors' pro rata equity share of the Fund.

2. The calculation of the amount of State Credits attributable to the SBC Equity Investments shall be based on the amount of the SBC Equity Investments that are subsequently invested by the SBCs in the Venture as part of the SEC Loans, and shall not be diminished by the 7.5% fees subsequently paid to the SBCs.

LR-09-061
Page 5 of 6

Yes. The credit in 68 O.S. § 2357.73 is for qualified investments which are actually invested in an Oklahoma rural small business venture and used in pursuit of a legitimate business purpose. Fees are a reasonable and a legitimate expense of the venture. However, this expense is not a "qualified investment for the acquisition of tangible or intangible assets or for working capital" [Section 2357.72(6)(f)] and will not be included in the 50% expenditure requirement.

3. The Side Loan made directly by the Fund to the Venture will qualify for the State Credits pursuant to Tit. 68 O.S. § 2357.74(B) and the calculation of the amount of State Credits attributable to the Side Loan shall be based on the amount of the Side Loan, and shall not be diminished by any fees described herein which are subsequently paid to the Fund.

Yes.

4. All of the State Credits attributable to the SBC Equity Investments and the Side Loan as described in Paragraphs 1-3 above will pass through to the Investors.

The Tax Policy Division agrees that shareholders, partners or members of pass-through entities that are entitled to a credit under §§2357.73 and 2357.74 of Title 68 may receive an allocation of the credits from the pass-through entity provided the legal obligation to repay any borrowed funds must be equal to or greater than the member's pro rata equity share of the pass-through entity and the allocation may not exceed the member's pro-rata equity share of the pass-through entity.

5. Upon issuance and funding of both the Side Loan and the SBC Loans, the Investors may immediately use the State Credits resulting from the Side Loan and the SBC Loans to offset various Oklahoma tax liability for the same year in which the such loans are made, including Oklahoma income taxes, estimated income taxes, bank privilege taxes and insurance company premium taxes when due.

Shareholders, partners or members of pass-through entities that are entitled to a credit under §§2357.73 and 2357.74 of Title 68 may receive an allocation of the credits from the pass-through entity. Once allocated to the shareholders, partners or members, the credits may immediately be used to offset various Oklahoma tax liability for the same year in which the investment was made, including Oklahoma income taxes, bank privilege taxes and insurance company premium taxes when due.

6. The Venture will qualify as an "Oklahoma rural small business venture" under Tit. 68 O.S. § 2357.72(6).

Yes. It is the ruling of the Tax Policy Division that MB Holdings, LLC meets the definition of an "Oklahoma rural small business venture" within the meaning of §2357.72(6) based on the following representations:

a. MB Holdings, LLC will have at least 50% of its assets or employees located in Oklahoma within 180 days after a qualified investment is made;

LR-09-061
Page 6 of 6

b. MB Holdings, LLC needs financial assistance in order to acquire land, buildings, and equipment;

c. At least seventy-five percent (75%) of MB Holdings, LLC's gross annual revenues will be a result of activities conducted in Mangum, Greer County, in an area deemed to be a non-metropolitan area;

d. MB Holdings, LLC is engaged in a lawful business activity under Division D of the Standard Industrial Classification Manual; and

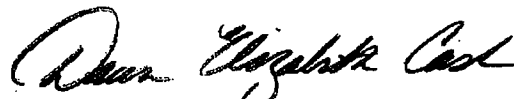
e. MB Holdings, LLC meets the definition of a small business by the federal Small Business Administration.

This response applies only to the circumstances set out in your request dated April 20, 2009. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued and its investors, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

Sincerely,

Oklahoma Tax Commission



Dawn Elizabeth Cash, Director
Tax Policy & Research Division



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Section	Top Of Index	This Point in Index	Citationize	Next Section	Print Only

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.62 - Tax Credit for Qualified Investment in Qualified Small Business Capital

Companies - Pass-Through Entities

Cite as: O.S. §, __ __

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

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

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

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

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

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

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

excess of such pro-rata share of such borrowed funds. For purposes of the Small Business Capital Formation Incentive Act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

Historical Data

Added by Laws 1997, HB 1253, c. 167, § 3, eff. January 1, 1998; Amended by Laws 1998, HB 3205, c. 226, § 3, emerg. eff. May 20, 1998 (superseded document available); Amended by Laws 2000, SB 1324, c. 241, § 1, eff. July 1, 2001 (effective date repealed by Laws 2001, HB 1904, c. 382, § 10, emerg. eff. June 4, 2001) (superseded document available); Amended by Laws 2001, HB 1904, c. 382, § 5, emerg. eff. June 4, 2001 (superseded document available); Amended by Laws 2004, HB 2124, c. 508, § 2, emerg. eff. June 9, 2004 (superseded document available); Amended by Laws 2005, HB 1680, c. 299, § 3, eff. July 1, 2006 (superseded document available); Amended by Laws 2006, SB 1577, c. 281, § 8, emerg. eff. June 7, 2006 (superseded document available); Amended by Laws 2008, SB 2129, c. 440, § 4 (superseded document available).

Citationizer® Summary of Documents Citing This Document

Cite Name	Level
Oklahoma Court of Civil Appeals Cases	
Cite	Name
2007 OK CIV APP 32, 159 P.3d 1142,	IN RE: PROTEST TO DENIAL OF APPLIC. OF OKLA. METAFUND COMMUNITY DEVELOPMENT CORP.
	Level
	Discussed

Citationizer: Table of Authority

Cite Name	Level
Title 68. Revenue and Taxation	
Cite	Name
68 O.S. 2357.62,	Credit Against Tax for Qualified Investment in Qualified Small Business Capital Companies
	Level
	Cited
68 O.S. 2357.62,	Credit Against Tax for Qualified Investment in Qualified Small Business Capital Companies
	Level
	Cited
68 O.S. 2357.62,	Credit Against Tax for Qualified Investment in Qualified Small Business Capital Companies
	Level
	Cited
68 O.S. 2357.62,	Credit Against Tax for Qualified Investment in Qualified Small Business Capital Companies
	Level
	Cited



Home	Courts	Court Dockets	Legal Research	Calendar	Help	
Previous Section	Top Of Index	This Point in Index	Citationize	Next Section	Print Only	

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.61 - Definitions

Cite as: O.S. §. __ __

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 used in the Small Business Capital Formation Incentive Act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;
2. "Capitalization" means the amount of:
 - a. any funds that have actually been contributed to the qualified small business capital company,
 - b. any contractual commitment to provide funds to the qualified small business capital company to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
 - c. any allocation of tax credit authority awarded to the qualified small business capital company by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the qualified small business capital company as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;
3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a limited liability company, partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, a royalty or net profits interest, or an interest in a limited liability company or partnership;
4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;
5. "Oklahoma small business venture" means a business, incorporated or unincorporated, which:
 - a. has or will have, within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
 - b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,

c. is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:

(1) Major Group 1 of Division A, and

(2) Major Group 2 of Division A,

d. qualifies as a small business as defined by the federal Small Business Administration, and

e. expends within eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph d of this paragraph was made. For purposes of this subparagraph, "working capital" shall not include consulting, brokerage or transaction fees. Provided, that the Oklahoma Tax Commission, upon request and demonstration of need by a qualified small business capital company or an Oklahoma small business venture, or an investor or an authorized agent of any such entities, may extend the 18-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma small business venture shall otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture, and "intangible assets" shall be limited to computer software, licenses, patents, copyrights and similar items;

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

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

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

b. the principal place of business of the corporation, limited liability company or partnership is located within this state,

c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and

d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year of the corporation, limited liability company or partnership; and

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

Historical Data

Added by Laws 1997, HB 1253, c. 167, § 2, eff. January 1, 1998; Amended by Laws 2004, HB 2124, c. 508, § 1, emerg. eff. June 9, 2004 (superseded document available); Amended by Laws 2005, SB 905, c. 479, § 18, emerg. eff. July 1, 2005 (superseded document available); Amended by Laws 2006, SB 1577, c. 281, § 7, emerg. eff. June 7, 2006 (superseded document available); Amended by Laws 2008, SB 2129, c. 440, § 3 (superseded document available).

Citationizer® Summary of Documents Citing This Document

Cite Name	Level	
Oklahoma Court of Civil Appeals Cases		
Cite	Name	Level
<u>2007 OK CIV APP 32, 159 P.3d 1142,</u>	<u>IN RE: PROTEST TO DENIAL OF APPLIC. OF OKLA. METAFUND COMMUNITY DEVELOPMENT CORP.</u>	Discussed at Length

Citationizer: Table of Authority

Cite Name	Level	
Title 68. Revenue and Taxation		
Cite	Name	Level
<u>68 O.S. 2357.61,</u>	<u>Definitions</u>	Cited
<u>68 O.S. 2357.61,</u>	<u>Definitions</u>	Cited
<u>68 O.S. 2357.61,</u>	<u>Terms Defined</u>	Cited



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Section	Top Of Index	This Point in Index	Citationize	Next Section	Print Only

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.63 - Tax Credit for Qualified Investments in Oklahoma Small Business Ventures -

Pass-Through Entities

Cite as: O.S. §, __ __

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

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

1. Made by a shareholder, member or partner of a qualified small business capital company that has made a qualified investment in an Oklahoma small business venture;
2. Invested in the purchase of equity or near-equity in an Oklahoma small business venture;
3. Made under the same terms and conditions as the qualified investment made by the qualified small business capital company; and
4. Limited to the lesser of:
 - a. two hundred percent (200%) of any qualified investment by the taxpayer in the qualified small business capital company, or
 - b. two hundred percent (200%) of the qualified investment made by the qualified small business capital company in the Oklahoma small business venture.

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

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

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

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

Historical Data

Added by Laws 1997, HB 1253, c. 167, § 4, eff. January 1, 1998; Amended by Laws 1998, HB 3205, c. 226, § 4, emerg. eff. May 20, 1998 (superseded document available); Amended by Laws 2000, SB 1324, c. 241, § 2, eff. July 1, 2001 (effective date repealed by Laws 2001, HB 1904, c. 382, § 10, emerg. eff. June 4, 2001) (superseded document available); Amended by Laws 2001, HB 1904, c. 382, § 6, emerg. eff. June 4, 2001 (superseded document available); Amended by Laws 2004, HB 2124, c. 508, § 3, emerg. eff. June 9, 2004 (superseded document available); Amended by Laws 2005, HB 1680, c. 299, § 4, eff. July 1, 2006 (superseded document available); Amended by Laws 2006, SB 1577, c. 281, § 9, emerg. eff. June 7, 2006 (superseded document available); Amended by Laws 2008, SB 2129, c. 440, § 5 (superseded document available).

Citationizer® Summary of Documents Citing This Document

Cite Name	Level
Oklahoma Court of Civil Appeals Cases	
Cite	Name
2007 OK CIV APP 32, 159 P.3d 1142,	IN RE: PROTEST TO DENIAL OF APPLIC. OF OKLA. METAFUND COMMUNITY DEVELOPMENT CORP.
	Level
	Cited

Citationizer: Table of Authority

Cite Name	Level
Title 68. Revenue and Taxation	
Cite	Name
68 O.S. 2357.63,	Credit against Tax for Qualified Investments in Oklahoma Small Business Ventures
68 O.S. 2357.63,	Credit Against Tax for Qualified Investments in Oklahoma Small Business Ventures
68 O.S. 2357.63,	Credit against Tax for Qualified Investments in Oklahoma Small Business Ventures
	Level
	Cited
	Cited
	Cited



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#)
[Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

📁 Oklahoma Statutes Citationized

📁 Title 68. Revenue and Taxation

📁 Chapter 1 - Tax Codes

📁 Small Business Capital Formation Incentive Act

📁 Article Article 23 - Income Tax

📄 Section 2357.63A - Requirements to Claim Tax Credits - Recapture - Subordinated Debt

Cite as: O.S. §, ___ __

A. For purposes of claiming any tax credits authorized by Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes, any funds invested in an Oklahoma small business venture shall be subject to the following requirements:

1. The Oklahoma small business venture must issue its equity securities or subordinated debt instruments in exchange for a qualified investment within thirty (30) days of the date as of which the investment occurs;
2. The qualified small business capital company or any entity making an investment in conjunction with investment by a qualified small business capital company pursuant to Section 2357.63 of this title must reflect the documented qualified investment in the Oklahoma small business venture as an asset in its accounting system;
3. The qualified small business capital company shall not make a qualified investment in an Oklahoma small business venture in which it has, at any time, more than fifty percent (50%) ownership, whether directly or indirectly, of the voting interest entitled to elect the governing board of any Oklahoma small business venture;
4. The qualified small business capital company cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment by the Oklahoma small business venture to the qualified small business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the date the qualified investment is made available to the Oklahoma small business venture; and
5. The Oklahoma small business venture cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment to the qualified small business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the time the qualified investment is made available to the Oklahoma small business venture.

B. The Oklahoma Tax Commission shall have the authority to make an independent determination that any proposed use of monies, assets, funds or other things of value which are to be used for purposes of claiming any credits authorized by Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes are for a legitimate business purpose of the Oklahoma small business venture and not for the primary purpose of obtaining the tax credits authorized by such sections on the basis of activity which does not have substantial economic profit-based potential.

C. The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes according to the provisions of Section 11 of this act if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act.

D. The provisions of this section shall not prohibit a qualified small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.61 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma small business venture directly to the qualified small business capital company and if the agreement governing the obligation complies with all of the other requirements of this section.

E. The provisions of this section shall not prohibit the shareholders or partners of a qualified small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.61 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma small business venture directly to a shareholder or partner of a qualified small business capital company that has invested funds in an Oklahoma small business venture pursuant to Section 2357.63 of Title 68 of the Oklahoma Statutes and if the agreement governing the obligation complies with all of the other requirements of this section.

F. Any offering material involving the solicitation of qualified investments in exchange for equity securities or subordinated debt instruments of the qualified small business capital company shall include the following statement:

"Any favorable determination letter obtained from the Oklahoma Tax Commission does not guarantee the granting of tax credits under the provisions of the Small Business Capital Formation Incentive Act. In the event applicable provisions of the Small Business Capital Formation Incentive Act are violated, the Tax Commission may require forfeiture of unused tax credits and recapture or repayment of tax credits as provided by law."

Historical Data

Added by Laws 2006, SB 1577, c. 281, § 10, emerg. eff. June 7, 2006.

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
None Found.		



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#) | [Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.63B - Recapture Event

Cite as: O.S. §, __ __

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

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

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

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

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

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

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

c. makes an amortization payment under the terms of a subordinated debt instrument, or

d. repays indebtedness from net income as determined in accordance with generally accepted accounting principles or proceeds of the sale of assets in the ordinary course of business; or

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

B. If a recapture event occurs with respect to a qualified investment for which a credit authorized by either Section

2357.62 or Section 2357.63 of this title was claimed, the tax imposed pursuant to the applicable provisions of Title 36 or this title of the Oklahoma Statutes shall be increased to the extent of the recaptured credit amount.

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

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

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

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

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

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

Historical Data

Added by Laws 2006, SB 1577, c. 281, § 11, emerg. eff. June 7, 2006; Amended by Laws 2008, SB 2129, c. 440, § 6 ([superseded document available](#)).

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
------	------	-------

None Found.

Citationizer: Table of Authority

Cite	Name	Level
------	------	-------

None Found.



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Section	Top Of Index	This Point in Index	Citationize	Next Section	Print Only

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.63C - Required Records

Cite as: O.S. §, __ __

A. Each qualified small business capital company shall prepare and maintain on a current basis the following records and make them available to the Oklahoma Tax Commission upon request:

1. Files for each director and principal of the capital company including the name, address, social security number or federal identification number and such other identifying information as the Tax Commission may require;
2. Records concerning all securities and subordinated debt issued by the capital company which include:
 - a. the type of the security and subordinated debt issued,
 - b. the name, address and telephone number of the investor,
 - c. the date of the transaction, and
 - d. the total amount of the qualified investment;
3. Records relating to each person making a qualified investment which shall include the social security number or federal tax identification number of each investor;
4. Records relating to each Oklahoma small business venture in which the capital company made a qualified investment which includes:
 - a. the name of the business,
 - b. location of the headquarters and principal business operations of the business,
 - c. a description of the type of business in which engaged,
 - d. evidence that the venture meets the definition of an Oklahoma small business venture,
 - e. a copy of any contractual agreement entered into between the capital company and the venture,
 - f. the amount of qualified investment in the venture,
 - g. the type of investment along with supporting documentation,
 - h. the date of the investment, and

i. the source of funds invested;

5. Organizational documents of the qualified small business capital company and any additional documents relating to the organization or operation of the capital company as requested by the Tax Commission;

6. Records relating to all capitalization of the capital company which is not invested in Oklahoma small business ventures;

7. Records relating to all distributions made by the capital company which includes the date of the distribution, the amount of the distribution, to whom the distribution was paid, and the purpose of the distribution; and

8. All other records that may be requested by the Tax Commission.

B. All records required by this section shall be preserved for a period of ten (10) years.

Historical Data

Added by Laws 2006, SB 1577, c. 281, § 12, emerg. eff. June 7, 2006.

Citationizer® Summary of Documents Citing This Document

Cite **Name Level**

None Found.

Citationizer: Table of Authority

Cite **Name Level**

None Found.



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#) | [Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.63D - Determination Letters

Cite as: O.S. §, ___

The Oklahoma Tax Commission shall promulgate rules establishing procedures under which:

1. A qualified small business capital company may, prior to making an investment in an Oklahoma small business venture, request a determination letter from the Tax Commission that a business in which it proposes to invest is an "Oklahoma small business venture";
2. A person or entity may request a determination letter that a company meets the definition of a "qualified small business capital company"; and
3. A person or entity may request a determination letter that a transfer of funds meets the definition of a "qualified investment".

Historical Data

Added by Laws 2006, SB 1577, c. 281, § 13, emerg. eff. June 7, 2006.

Citationizer® Summary of Documents Citing This Document

Cite **Name Level**

None Found.

Citationizer: Table of Authority

Cite **Name Level**

None Found.



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#)

[Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.63E - Timing

Cite as: O.S. §, __ __

A. Any person or entity that has obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize any of the tax credits authorized pursuant to the provisions of Section 2357.62 or 2357.63 of Title 68 of the Oklahoma Statutes shall not be subject to the amendments to the Small Business Venture Capital Formation Incentive Act made by this legislative measure to qualify for the tax credits authorized pursuant to the provisions of Section 2357.62 or 2357.63 of this title except as provided in this section. Notwithstanding any determination letter issued with respect to such investment, no credit shall be allowed unless:

1. Such qualified investment is made prior to November 1, 2006, to satisfy a legitimate business purpose of the entity receiving such investment which is consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the business venture;
2. The investor's funds were at risk; and
3. The investment was not made chiefly for the purpose of reducing tax liability.

B. Any investment in a qualified small business capital company or an Oklahoma small business venture that occurs on or after November 1, 2006, shall be subject to all of the provisions of the Small Business Capital Formation Incentive Act as amended by the provisions of this legislative measure.

Historical Data

Added by Laws 2006, SB 1577, c. 281, § 14, emerg. eff. June 7, 2006.

Citationizer® Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name Level

None Found.



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#) | [Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.64 - Required Reports - Financial Statements - Penalties

Cite as: O.S. §, __ __

A. Each qualified small business capital company shall file an annual report with the Oklahoma Tax Commission no later than April 30 of each year which lists all qualified investments in or in conjunction with such company which may qualify for the tax credit allowed by Section 2357.62 or Section 2357.63 of this title. The report shall state the amount of qualified investments in or in conjunction with such company during the taxable year by persons, partnerships or corporations and the social security number of such person or the federal identification number of such partnership or corporation making such qualified investments. The report shall also include a schedule listing the type and amount of qualified investment made by or in conjunction with the small business capital company and such other information as the Tax Commission may prescribe.

B. Each qualified small business capital company shall furnish to each person, partnership or corporation which made a qualified investment in or in conjunction with such company during the preceding year a written statement showing the name of the small business capital company, the name of the investor, the total amount of qualified investment in or in conjunction with the company made by such person, partnership or corporation, the amount of the qualified investment which was subsequently invested by the capital company in a small business venture, the date of such investment and the name of the business venture invested in and such other information as the Tax Commission may require. The statement shall be attached to the income tax return or other applicable tax report or return of such person, partnership or corporation in order to qualify for the tax credit allowed by Section 2357.62 or Section 2357.63 of this title.

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

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

1. The investment in an Oklahoma small business venture is transferred, withdrawn or otherwise returned; or
2. An occurrence upon which an investment is contingent has taken place.

If the qualified investment is held in the Oklahoma small business venture for less than five (5) years, the Tax Commission shall revoke the verification of tax credits and take action to recapture the tax credits pursuant to Section 11 of this act to the extent such credits were authorized based upon an amount of qualified investment

that was transferred, withdrawn or otherwise returned.

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

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

G. The Tax Commission is directed to immediately develop a system for reporting of any income tax credits issued pursuant to Sections 2357.62 and 2357.63 of this title and a system which requires the filing of informational reports on how the qualified investments were used, economic benchmarks achieved, implementation of a business plan for the Oklahoma small business venture, commercialization success, additional investments in the business by other investors and job creation that has taken place.

Historical Data

Added by Laws 1997, HB 1253, c. 167, § 5, eff. January 1, 1998; Amended by Laws 2006, SB 1577, c. 281, § 15, emerg. eff. June 7, 2006 ([superseded document available](#)).

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
------	------	-------

None Found.

Citationizer: Table of Authority

Cite	Name	Level
------	------	-------

None Found.



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#) | [Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

📁 Oklahoma Statutes Citationized

📁 Title 68. Revenue and Taxation

📁 Chapter 1 - Tax Codes

📁 Small Business Capital Formation Incentive Act

📁 Article Article 23 - Income Tax

📄 Section 2357.65 - Report of Credits Claimed and Allowed

Cite as: O.S. §, ___

On or before November 1 of each year subsequent to the effective date of this act, the Oklahoma Tax Commission shall file a report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of this act during the previous calendar year, statistical information on the qualified investments made by qualified small business capital companies during the previous year, an estimate of the number of jobs created in this state during the previous year, and such other information as the Tax Commission may deem relevant.

Historical Data

Added by Laws 1997, HB 1253, c. 167, § 6, eff. January 1, 1998; Amended by Laws 2006, SB 1577, c. 281, § 16, emerg. eff. June 7, 2006 (superseded document available).

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
None Found.		



Home	Courts	Court Dockets	Legal Research	Calendar	Help
Previous Section	Top Of Index	This Point in Index	Citationize	Next Section	Print Only

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Small Business Capital Formation Incentive Act

Article Article 23 - Income Tax

Section 2357.65A - Federally Regulated Investment Companies Duties to the State - Tax Reporting

Cite as: O.S. §, ___

A. As used in this section:

1. "Federally regulated investment company" means a qualified small business capital company as defined by Section 2357.61 of Title 68 of the Oklahoma Statutes and that is licensed by the United States Small Business Administration or the United States Department of Agriculture and which qualifies as one of the following types of entities:

- a. a Small Business Investment Company, or
- b. a Specialized Small Business Investment Company, or
- c. a Rural Business Investment Company, or
- d. a Community Development Entity as defined by Section 45D of the Internal Revenue Code of 1986, as amended; and

2. "Qualified small business capital company" means an entity meeting the requirements of Section 2357.61 of Title 68 of the Oklahoma Statutes.

B. Federally regulated investment companies shall be exempt from the reporting requirements of subsections C and G of Section 2357.64 of Title 68 of the Oklahoma Statutes.

C. As a condition of the exemption authorized by this section, the federally regulated investment company shall provide to the Oklahoma Tax Commission not later than March 15 each year:

- 1. A copy of the federal license issued by the applicable federal regulatory entity;
- 2. A copy of all reports and compliance documents required by the federal regulators; and
- 3. A copy of the annual financial audit of the federally regulated investment company.

D. A federally regulated investment company shall also prepare an annual summary report that discloses:

- 1. All investments made in for-profit business entities during the preceding calendar year;
- 2. The primary business address of each for-profit business entity in which any investment was made;

3. A statement of the business activity of each of the for-profit business entities described in paragraphs 1 and 2 of this subsection;

4. The type of investment instrument used to make the investment; and

5. A status report of all investments made by the federally regulated investment company.

E. The federally regulated investment company shall transmit a copy of the annual summary prescribed by subsection D of this section to the committees or subcommittees of the Oklahoma House of Representatives and the Oklahoma State Senate having primary jurisdiction over the Small Business Capital Formation Incentive Act, the State Treasurer, the State Auditor and Inspector, the Director of the Office of State Finance and the Oklahoma Tax Commission.

F. The report required by subsection D of this section shall be prepared and submitted until all of the monies available to the federally regulated investment fund have been fully invested, all of the investments have been completed and the proceeds from the investment have been disbursed to the equity investors.

Historical Data

Added by Laws 2007, SB 806, c. 353, § 8, eff. November 1, 2007.

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
None Found.		



[Home](#) [Courts](#) [Court Dockets](#) [Legal Research](#) [Calendar](#) [Help](#)
[Previous Section](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Section](#) [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Article Article 23 - Income Tax

Section 2357.66 - Tax Credit - Ethanol Facility - Requirements - Definitions

Cite as: 68 O.S. § 2357.66 (OSCN 2009)

A. For tax years beginning after December 31, 2003, and before January 1, 2013, there shall be allowed a credit against the tax imposed by Section 2355 of this title, and against the tax imposed by Section 2370 of this title, and against the taxes imposed by Sections 624 and 628 of Title 36 of the Oklahoma Statutes and actually paid to and placed into the General Revenue Fund for any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, before denaturing, on or before December 31, 2010. The completion of the construction of such facilities must be after July 1, 2003. The credit shall be in the amount of twenty cents (\$0.20) per gallon of ethanol produced and shall be allowed for up to sixty (60) months beginning with the first month for which the facility is eligible to receive such credit and ending not later than December 31, 2012. The credit may only be claimed if the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. As used in this section:

1. "Ethanol facility" means a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts; and
2. "Name plate design capacity" means the original designed capacity of an ethanol facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year.

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

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

2. For purposes of this subsection, "new production" means production which results from a new facility, a facility which has not received credits prior to January 1, 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2013, as certified by the design engineer of the facility to the Oklahoma Tax Commission.

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

- 4. No credits shall be allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2013.
- 5. The amount of a credit granted pursuant to this section based on new production shall be approved by the Tax Commission based on such ethanol production records as may be necessary to reasonably determine the level of new production.
- E. 1. The credits described in this section shall be given only for ethanol produced at a plant in this state at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced or sold for use in the production of distilled spirits.
- 2. Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities in this state shall be eligible for the credits in subsections A and C of this section, and the credits may only be claimed by a producer for the periods specified in subsections A and C of this section.
- 3. Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at any single ethanol facility nor more than thirty million (30,000,000) gallons of ethanol produced annually at all ethanol facilities in this state shall be eligible for the credit described in subsection D of this section, and the credit may only be claimed by a producer for the periods specified in subsection D of this section.
- 4. Not more than one hundred twenty-five million (125,000,000) gallons of ethanol produced at an ethanol facility by the end of the sixty-month period set forth in subsection A or C of this section shall be eligible for the credit under such subsection. An ethanol facility which receives a credit for ethanol produced under subsection A or C of this section shall not receive a credit under subsection D of this section until its eligibility to receive a credit under subsection A or C of this section has been completed.
- F. The Tax Commission shall prescribe an application form and promulgate rules for claiming credits under this section.
- G. For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters.

Historical Data

Added by Laws 2003, SB 429, c. 385, § 1, emerg. eff. July 1, 2003; Amended by Laws 2005, HB 1556, c. 294, § 1, eff. January 1, 2006 ([superseded document available](#)); Amended by Laws 2007, HB 1513, c. 252, § 1, eff. November 1, 2007 ([superseded document available](#)).

Citationizer® Summary of Documents Citing This Document

Cite Name Level
None Found.

Citationizer: Table of Authority

Cite Name	Level
Title 68. Revenue and Taxation	
Cite	Name Level
68 O.S. 2357.66,	Tax Credit - Ethanol Facility - Requirements - Definitions Cited



[Home](#) | [Courts](#) | [Court Dockets](#) | [Legal Research](#) | [Calendar](#) | [Help](#)
[Previous Section](#) | [Top Of Index](#) | [This Point in Index](#) | [Citationize](#) | [Next Section](#) | [Print Only](#)

Title 68. Revenue and Taxation

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 1 - Tax Codes

Article Article 23 - Income Tax

Section 2357.67 - Tax Credit for Eligible Biodiesel Facility

Cite as: 68 O.S. § 2357.67 (OSCN 2009)

A. For tax years beginning after December 31, 2004, and before January 1, 2013, there shall be allowed a credit against the tax imposed by Section 2355 of this title for any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2008. The completion of the construction of such facilities must be after the date of this act. The credit shall be in the amount of twenty cents (\$0.20) per gallon of biodiesel produced and shall be allowed for sixty (60) months beginning with the first month for which the facility is eligible to receive such credit and ending not later than December 31, 2012. The credit may only be claimed if the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. As used in this section:

1. "Biodiesel facility" means a plant or facility located within the State of Oklahoma and primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts; and
2. "Name plate design capacity" means the original designed capacity of a biodiesel facility. Capacity may be specified as gallons of biodiesel produced per year.

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

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

2. For purposes of this subsection, "new production" means production which results from a new facility, a facility which has not received credits prior to January 1, 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2013, as certified by the design engineer of the facility to the Oklahoma Tax Commission.

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

4. No credits shall be allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during

any twelve-consecutive-month period beginning no sooner than January 1, 2013.

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

E. 1. The credits described in this section shall be given only for biodiesel produced at a plant in this state at which all biodiesel esterification takes place.

2. Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the credits in subsections A and C of this section, and the credits may only be claimed by a producer for the periods specified in subsections A and C of this section.

3. Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for the credit described in subsection D of this section, and the credit may only be claimed by a producer for the periods specified in subsection D of this section.

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

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

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

H. If the credit allowed pursuant to this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit allowed but not used in any tax year may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years.

Historical Data

Added by Laws 2005, HB 1398, c. 287, § 1, emerg. eff. July 1, 2005; Amended by Laws 2007, HB 1513, c. 252, § 2, eff. November 1, 2007 ([superseded document available](#)); Amended by Laws 2007, HB 1916, c. 267, § 3, eff. January 1, 2008 (repealed by Laws 2008, SB 1830, c. 3, § 36, emerg. eff. February 28, 2008) ([superseded document available](#)); Laws 2007, HB 1916, c. 267, § 3 repealed by Laws 2008, SB 1830, c. 3, § 36, emerg. eff. February 28, 2008 ([superseded document available](#)); Amended by Laws 2008, SB 1956, c. 436, § 5, eff. July 1, 2009 ([superseded document available](#)).

Citationizer® Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
None Found.		