

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 50. Income [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the Second Regular Session of the 51st Legislature (2008).

Section 710:50-9-8 has been amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

New Section 710:50-15-34 has been added to implement the provisions of House Bill 2693 which provides for an income tax exemption for death benefits paid upon the death of an Emergency Medical Technician killed in the line of duty. **[68:2358]**

Section 710:50-15-81 has been amended to implement the provisions of Senate Bill 1558 which extends the sunset provisions of the clean-burning motor vehicle fuel property conversion credit to December 31, 2009, and clarify policy regarding the one-time credit. **[68:2357.22]**

Sections 710:50-15-86, 710:50-15-86.1, 710:50-15-87 and 710:50-15-87.1 have been amended to reflect the provisions of Senate Bill 2129 which amends the definition of "Oklahoma business venture", "Oklahoma small business venture" and "Oklahoma rural small business venture" to include working capital (i.e., payroll, rent and utilities) as a qualified expense to meet the 50% expenditure requirement; requires that a shareholder, partner or member to whom a credit is allocated from an investment made with borrowed funds, must have an "unlimited and continuing" legal obligation to repay the borrowed funds; amends the recapture provisions to allow working capital to be included as a qualified expense to meet the 50% expenditure requirement; and amends the definition of "market-based liquidity event" to include a repayment by the Oklahoma business venture of indebtedness from net income or from proceeds of the sale of assets in the ordinary course of business.

Section 710:50-15-95 has been amended to implement the provisions of House Bill 1387 which extends the poultry litter credit in its current form to December 31, 2009 and amends the calculation of the credit for years 2010 through 2013. **[68:2357.100]**

Section 710:50-15-98 has been amended to implement the provisions of Senate Bill 1956 which amends the Biodiesel Facilities Credit to permit any allowed but unused credit to be carried over for five (5) additional years after the initial five (5) year period. **[68:2357.67]**

Section 710:50-15-100 has been amended to implement the provisions of Senate Bill 2129 which extends the sunset provisions for certain capital expenditures, qualified wages, and training expenses of a qualified business enterprise primarily engaged in data processing, computer systems design, or computer related services. **[68:2357.201]**

Section 710:50-15-103, pertaining to the income tax credit for railroad modernization, has been amended to implement the provisions of Senate Bill 1799 which allows a taxpayer to elect to claim three (3) times the credit specified for tax year 2008 for qualified expenditures made. **[68:2357.104]**

Section 710:50-15-108 has been amended to implement the provisions of Senate Bill 1956 which amends the existing income tax credit for rehabilitation expenditures on certain historic

properties by modifying procedures for transferring credits, requiring the Tax Commission to track transferred credits and limiting the tax liability of subsequent transferees under certain circumstances. **[68:2357.41]**

New Section 710:50-15-109 has been added to implement the provisions of House Bill 3239 which provides for an income tax credit for qualified aerospace employers for compensation paid to qualified aerospace employees. **[68:2357.303]**

Section 710:50-17-51 has been amended to implement the provisions of Senate Bill 2034 and Oklahoma Tax Commission Order No. 2008-02-19-02 which pertains to the calculation of the Oklahoma accrued tax deduction for corporations.

New Section 710:50-17-52 has been added to implement the provisions of Senate Bill 2034 which prohibits the deduction of rent or interest paid to a capital real estate investment trust. **[68:2358]**

AUTHORITY:

68 O.S. §§ 203; 2357.41(F); 2357.67(F); 2357.104(C); 2357.201; 2358;

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., February 24, 2009, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 521-3133.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing are as follows: February 25, 2009, 9:00 a.m. in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat McDonald at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors' building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at www.oktax.state.ok.us or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after January 30, 2009, from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

CHAPTER 50. INCOME

SUBCHAPTER 9. REFUNDS

710:50-9-8. Reissued vouchers for deceased taxpayer refunds or lost, stolen or forged vouchers

- (a) Income tax refunds which are issued in the name of a deceased taxpayer who is not represented by an executor or executrix may be returned to the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division for reissuance in the name of the claimant, upon a determination that the claimant is the proper recipient. OTC Form 507, along with a ~~A~~ separate letter setting out the facts and signed by the claimant, must accompany any such claim.
- (b) Claims for refunds that have been lost in the clearing process may be submitted to the State Treasurer's Office for reissue. Upon notification by the State Treasurer, the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division will reissue the voucher in the name of the taxpayer and forward to the holder in due course.
- (c) Refund vouchers which have become lost, stolen or forged will be reissued by the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division after the taxpayer has properly executed an affidavit setting out the facts, and upon approval by the State Treasurer's office.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-34. Exemption for death benefits of Emergency Medical Technicians

In taxable years beginning after December 31, 2008, death benefits received as a result of the death of an Emergency Medical Technician are exempt from Oklahoma income tax.

PART 7. CREDITS AGAINST TAX

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property

- (a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "**motor vehicle**" includes forklifts and other similar self-propelled vehicles. "**Vehicle**" shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.
- (b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S.Supp.1993, §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]
- (c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, the credit shall also be available for qualified electric vehicle property. "**Qualified electric vehicle property**" means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property"

propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other motor vehicles which are manufactured principally for use off the streets and highways.

(d) **Sunset date.** This credit will only be available through tax years beginning before January 1, 2010.

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars (\$1,000,000.00). [See: 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. §2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the ~~cash amount invested~~ qualified investment in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of ~~funds~~ the qualified investment which is subsequently invested in an Oklahoma small business venture by the qualified Small Business Capital Company. ~~so invested.~~

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available 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. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after 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. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the ~~cash amount invested~~ qualified investment in an Oklahoma Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carryover provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder, member or a partner of the qualified Small Business Capital Company that has ~~invested funds~~ made a qualified investment in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of ~~Two Hundred~~ two hundred percent (200%) of the ~~taxpayer~~ taxpayer's qualified investment in the qualified Small Business Capital Company or ~~Two Hundred~~ two hundred percent (200%) of the qualified investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *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 if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act. [68 O.S. § 2357.63A]*

710:50-15-86.1. Letter rulings pursuant to the Small Business Capital Formation Incentive Act

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Small Business Capital Formation Incentive Act (68 O.S. §§2357.61 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified small business capital company:

(A) *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;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state; (D) The capitalization of the capital company is not less than One Million Dollars (\$1,000,000.00); and

(E) No more than twenty percent (20%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.61(7)(a)-(d)]

(2) A qualified small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma small business venture". The capital company must give sufficient information to show the small business venture meets the following requirements:

(A) 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 the business's employees or assets are in the state of 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:*

(i) *Major Group 1 of Division A, and*

(ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration; and*

(E) Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of paragraph 2 was made. [68 O.S. Supp 2006, §2357.61(5)(a)-(e)]

(3) A person or entity may request whether a transfer of funds meets the definition of a "qualified investment" under the Small Business Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S. §2357.63D]

(5) All other requests for rulings with respect to the Small Business Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to OAC 710:1-3-73.

710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars (\$500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the ~~cash amount invested~~ qualified investment in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of ~~funds so invested~~ the qualified investment which is subsequently invested in an Oklahoma rural small business venture by the qualified Rural Small Business Capital Company, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.

(b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after 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. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to thirty percent (30%) of the ~~cash amount~~ invested qualified investment in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Rural Small Business Venture.

(2) **Credit non-refundable, nontransferable; carryover provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:

(A) The investment must be made by a shareholder, member or a partner of the qualified Rural Small Business Capital Company that has ~~invested funds~~ made a qualified investment in an Oklahoma Rural Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in the Rural Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of ~~Two Hundred~~ two hundred percent (200%) of the ~~taxpayer~~ taxpayer's qualified investment in the qualified Rural Small Business Capital Company, or ~~Two Hundred~~ two hundred percent (200%) of the qualified investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural Venture Capital Company shall also make a written information report available to all investors in the qualified Rural Venture Capital Company. This information report shall show the name of the qualified Rural Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation*

710:50-15-87.1. Letter rulings pursuant to the Rural Venture Capital Formation Incentive Act

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Rural Venture Capital Formation Incentive Act (68 O.S. §§ 2357.71 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified rural small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified rural small business capital company:

(A) *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;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than Five Hundred Thousand Dollars (\$500,000.00); and

(E) No more than twenty-five percent (25%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.72(8)(a)-(d)]

(2) A qualified rural small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma rural small business venture". The capital company must give sufficient information to show the rural small business venture meets the following requirements:

(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 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:*

(i) *Major Group 1 of Division A, and*

(ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration;*

(E) *Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of this paragraph 2 was made, and*

(F) *Has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual*

revenue from a nonmetropolitan area of the state. [68 O.S. Supp 2006, §2357.72(6)(a)-(f)]

(3) A person or entity may request whether a transfer of funds meets the definition of a "qualified investment" under the Rural Venture Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S.2357.74D]

(5) All other requests for rulings with respect to the Rural Venture Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to *OAC 710:1-3-73*.

710:50-15-95. Poultry litter credit

(a) **General provisions.** Effective for tax year beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.

(b) **Qualification.** In order to qualify for the credit the poultry litter must:

(1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient-limited watershed;

(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,

(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.

(c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.

710:50-15-98. Credits for biodiesel production

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Biodiesel**" is any diesel-equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) "**Biodiesel facility**" is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) "**Name plate design capacity**" means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** 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 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced for the first sixty (60) months provided 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. The credit of twenty cents (\$0.20) per gallon of biodiesel produced expires for production after December 31, 2013.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit 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 July 1, 2005 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, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 a biodiesel facility may receive an income tax credit 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.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, 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, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is 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. No credits are 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, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant 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 basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(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 credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) 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 to ascertain the validity of the credit outlined in this section.

(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.

710:50-15-100. Credit for qualified wages, capital expenditures, and training expenses

(a) **General provisions.** A refundable credit is available for qualified capital expenditures, wages and training expenses incurred by a business enterprise whose principal activity is either:

(1) data processing services, computer systems design services or other computer related

services; or

(2) the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products.

(b) **Credit for data processing services, computer systems design services and other computer related services.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, ~~2009~~ 2014 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 580.

(1) **Definitions.** The following words and terms, when used regarding the credit for data processing services and other computer related services, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Qualified business enterprise"** means an entity (or affiliated group of entities electing to file a consolidated Oklahoma income tax return):

(i) that is organized as either a corporation, partnership, limited liability company or other entity having limited liability pursuant to the laws of the state of Oklahoma or the laws of another state, if the entity is registered to do business within the state of Oklahoma, and

(ii) the principal business activities are described by the North American Industry Classification System (1997 edition) by Industry No. 514210, 541512 or 541519, and

(iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act, and

(iv) that is a high-speed processing facility located in the state of Oklahoma that utilizes systems such as TPF, zTPF or other advanced technical systems, and

(v) maintained an Oklahoma annual payroll of at least \$85,000,000.00 and an Oklahoma labor force of 1,000 or more persons on July 1, 2005.

(B) **"Qualified capital expenditures"** are those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed. Capital expenditures as used in this section, also includes costs incurred to refurbish, repair or maintain any existing personal property located within the state.

(C) **"Qualified wages"** are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma.

(D) **"Qualified training expenses"** are those costs incurred to locate, interview, hire and educate an employee of the enterprise who has not previously been employed by the enterprise and who is a resident of the state.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30, 2007 is Three Hundred Fifty Thousand Dollars (\$350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2008 is Three Hundred Fifty Thousand Dollars (\$350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2009 and for all subsequent fiscal years ending before June 30, 2013 is Three Hundred Fifty Thousand Dollars (\$350,000.00) per fiscal year. No additional credits are allowed after ~~this time period~~ the Fiscal Year ending June 30, 2013.

(c) **Credit for aircraft parts and auxiliary equipment manufacturers.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2009 the credit is equal to

fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 581.

(1) **Definitions.** The following words and terms, when used regarding the credit for aircraft parts and auxiliary equipment manufacturers shall have the following meaning, unless the context clearly indicates otherwise:

(A) "**Qualified business enterprise**" means an entity:

(i) organized as a corporation, partnership, limited partnership, limited liability company, business trust or other entity, if such entity is registered to do business within the state, or is otherwise lawfully conducting business within the state, and

(ii) whose principal business activity in Oklahoma is described by the North American Industry Classification System (1997 edition) by Industry No. 336413 and is engaged in the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products, and

(iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act.

(B) "**Qualified expenditures**" means:

(i) those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed, or

(ii) any costs incurred during the taxable year to refurbish, repair or maintain any existing personal property located within the state whether or not such costs are capitalized by the taxpayer.

(C) "**Qualified wages**" are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma as of the time the services for which such qualified wages are received or are performed.

(D) "**Qualified training expenses**" are those costs incurred during the taxable year to locate, interview, hire and train employees and prospective employees of the qualified business enterprise who have not previously been employed as employees by the qualified business enterprise either full-time or part-time, at any time within the five prior taxable years and are full-time residents of the state as of the end of the taxable year for which the credit is claimed. The cost does not have to be deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30 2007 is One Hundred Fifty Thousand Dollars (\$150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2008 is One Hundred Fifty Thousand Dollars (\$150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2009 is One Hundred Fifty Thousand Dollars (\$150,000.00). No additional credits are allowed after this time period.

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after 12/31/05 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified

railroad reconstruction or replacement expenditures.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Eligible taxpayer**" means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) "**Qualified railroad reconstruction or replacement expenditures**" means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.** The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 ~~and beyond~~ and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) "**Eligible transferee**" defined. For purposes of this subsection, an "**eligible transferee**" shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

710:50-15-108. Credit for qualified rehabilitation expenditures

(a) **General Provisions.** The Credit for Qualified Rehabilitation Expenditures is one hundred percent (100%) of the allowable federal rehabilitation credit provided for in Section 47 of Title 26 of the United States Code. All rehabilitation work to which the Credit for Qualified Rehabilitation Expenditures may be applied must be reviewed by the State Historic Preservation Office. The State Historic Preservation Office will forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

(b) **Definitions.**

(1) "**Certified historic hotel or historic newspaper plant building**" means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to 68 O.S. § 2357.41.

(2) "**Certified historic structure**" means a building that is listed on the National Register of

Historic Places within thirty (30) months of taking the credit pursuant to this section or a building located in Oklahoma which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the State Historic Preservation Office as eligible for listing in the National Register of Historic Places.

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

(c) **Provisions for tax years beginning after December 31, 2000 and ending before January 1, 2006.** Only certified historic hotel or historic newspaper plant buildings located in an increment or incentive district created pursuant to the Local Development Act (62 O.S. §§ 850 et. seq.) are eligible for the Credit for Qualified Rehabilitation Expenditures.

(d) **Provisions for tax years beginning on or after before January 1, 2006.** The Credit for Qualified Rehabilitation Expenditures is available for qualified rehabilitation expenditures incurred after January 1, 2006 in connection with any certified historic structure.

(e) **Provisions for claiming the credit.** Generally, the first year the Credit for Qualified Rehabilitation Expenditures is eligible to be claimed is the first tax year that the federal rehabilitation credit, provided for in Section 47 of Title 26 of the United States Code, is eligible to be claimed. For carryover of the credit, see carryover provisions below. Further the Credit for Qualified Rehabilitation Expenditures may only be claimed after the relevant local governmental body responsible for doing so issues a certificate of occupancy or other document that is a precondition for the applicable use of the building or structure that is the basis upon which the credit is claimed. All requirements with respect to qualification for the credit authorized by Section 47 of Title 26 of the United States Code shall be applicable to the Credit for Qualified Rehabilitation Expenditures.

(f) **Carryover.** If the Credit for Qualified Rehabilitation Expenditures exceeds the amount of income taxes due or if there are no state income taxes due, the amount of the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years following the qualified expenditures.

(g) **Transferability.** The Credit for Qualified Rehabilitation Expenditures allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(h) **Written transfer agreement requirements.** The entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. Subsequent transfers will require the transferor and transferee to jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed as well as a representation by the transferor that the transferor has neither claimed such credits for its own behalf nor conveyed said credits to any other transferee. Such filing of the written credit transfer agreement with the Oklahoma Tax Commission will perfect said transfer.

(i) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(j) **Repayment of disallowed credit.** Effective January 1, 2009, if the Credit for Qualified Rehabilitation Expenditures has been transferred and is subsequently reduced as the result of an adjustment by the Internal Revenue Service, the Oklahoma Tax Commission, or any other applicable government agency, only the transferor originally allowed the credit will be held liable to repay any amount of disallowed credit. Any subsequent transferee of the credit is not liable to repay the amount of disallowed credit.

710:50-15-109. Credit for qualified employers and employees of the aerospace sector

(a) **General provisions.** For tax years beginning after December 21, 2008 three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

- (1) Credit for tuition reimbursement.
- (2) Credit for compensation paid.
- (3) Credit for new hires.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "Aerospace sector" is a private or public organization that is:
 - (A) a manufacturer of aerospace or defense hardware and/or software;
 - (B) provides aerospace maintenance, repair or overhaul;
 - (C) supplies parts to the aerospace industry;
 - (D) provides services and/or support relating to the aerospace industry;
 - (F) provides research and development of aerospace technology and systems, or
 - (G) provides education or training of aerospace personnel.

(2) "Compensation" includes salary or other remuneration, wages subject to withholding tax paid to either a part-time employee or full-time employee, payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid, however, compensation does not include any employer-provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.

(3) "Institution" is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.

(4) "Qualified employer" is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.

(5) "Qualified employee" is any person newly employed by or contracting with a qualified employer on or after January 1, 2009 employed in Oklahoma. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employees do not include person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

(6) "Qualified program" is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET)

(7) "Tuition" is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(c) Credit for tuition reimbursement.

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The maximum amount of this credit is fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) Credit for compensation paid

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

- (ii) Foreign Income Taxes, and
 - (iii) some Franchise Taxes that are based on or measured by income.
- (2) **Federal income taxes.** Federal Income Taxes are not deductible.
- (3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.
- (4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.
- (A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]
- (i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.
 - (I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;
 - (II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;
 - (III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;
 - (IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and
 - (V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.
 - (ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.
- (B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:
- (i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)
 - (ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.
- (5) **Oklahoma accrued income tax.**
- (A) Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been

acquired by transfer. Oklahoma income tax credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Oklahoma tax credits that can be acquired by transfer are limited to the following:

(i) Venture Capital Credit authorized under 68 O.S. § 2357.7.

(ii) Coal Credit authorized under 68 O.S. § 2357.11.

(iii) Credit for Nonstop Air Service from Oklahoma to the Coast authorized under 68 O.S. § 2357.28.

(iv) Credit for Space Transportation Vehicle Provider authorized under 68 O.S. § 2357.42.

(v) Credit for Qualified Rehabilitation Expenditures authorized under 68 O.S. § 2357.41.

(vi) Credit for Electricity Generated by Zero-Emission Facilities authorized under 68 O.S. § 2357.32A.

(vii) Credit for Manufacturers of Small Wind Turbines authorized under 68 O.S. § 2357.32B.

(viii) Credit for the Construction of Energy Efficient Homes authorized under 68 O.S. § 2357.46.

(ix) Credit for Railroad Modernization authorized under 68 O.S. § 2357.104.

(B) Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) Expenses allocated to nontaxable income. 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)]

(7) Interest income.

(A) U.S. obligations. Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) Other interest income.

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) Dividends. Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(9) Domestic International Sales Corporation (DISC) and Foreign Sales Corporation

(FSC) Commission Expense. Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002* or the provisions of the federal *Economic Stimulus Act of 2008*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002* or the federal *Economic Stimulus Act of 2008*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

710:50-17-52. Payment of rents and interest to a captive Real Estate Investment Trust (REIT)

(a) General Provisions. Taxpayers that make rent or interest payments to a captive real estate investment trust (REIT) must add back those expenses to arrive at Oklahoma taxable income. For purposes of this subsection, the constructive ownership rules of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, will apply in determining the ownership of stock, assets, or net profits of any person.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Real estate investment trust" or "REIT" is any entity as defined in Section 856 of the Internal Revenue Code of 1986, as amended, as a real estate investment trust.

(2) "Captive real estate investment trust" is any real estate investment trust that has shares or beneficial interests that are not regularly traded on an established securities market and in which more than 50% of the voting power or value of the beneficial interests or shares are owned or controlled, either directly or indirectly, by a single entity treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended, and is not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended. "Captive real estate investment trust" does not include real estate investment trusts that are intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of Section 856(h)(2) of the Internal Revenue Code.

(4) "Association taxable as a corporation" does not include the following entities:

(A) real estate investment trusts as defined in subsection (b)(1) other than a "captive real estate investment trust";

(B) qualified real estate investment trust subsidiaries defined under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a "captive real estate investment trust";

(C) Listed Australian Property Trusts (meaning an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or entities organized as a trusts, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust;

(D) Qualified Foreign Entities, including corporations, trusts, associations or partnerships organized outside the laws of the United States and which satisfy the following criteria:

(i) at least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and U.S. Government securities,

(ii) the entity receives a dividend-paid deduction comparable to Section 561 of the Internal Revenue Code of 1986, as amended, or is exempt from entity level tax,

(iii) the entity is required to distribute at least eighty-five percent (85%) of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis,

(iv) not more than ten percent (10%) of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market, and,

(v) the entity is organized in a country which has a tax treaty with the United States.