

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4085

By: Wallace and **Dempsey** of the
House

and

Howard of the Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to revenue and taxation; creating the
13 Oklahoma Rural Jobs Act; defining terms; establishing
14 requirements; establishing application process;
15 providing for a tax credit; establishing an
16 authorization amount limit; establishing investment
17 requirements; allowing for lapse in certification
18 creating a credit; allowing for transfer of credit;
19 providing for recapture of credits; determining how
20 recaptured credits are to be allocated; creating a
21 program exit process; creating ownership limitations;
22 creating reporting requirements; establishing a
23 sunset date; providing for codification; and
24 providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3930 of Title 68, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Rural
2 Jobs Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3931 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in this act:

7 1. "Affiliate" means an entity that directly, or indirectly
8 through one or more intermediaries, controls, or is controlled by,
9 or is under the common control with another entity. An entity is
10 controlled by another entity if the controlling entity holds,
11 directly or indirectly, the majority of voting or ownership interest
12 in the controlled entity or has control over day-to-day operations
13 of the controlled entity by contract or by law;

14 2. "Applicable percentage" means zero percent (0%) for the
15 first two credit allowance dates, and fifteen percent (15%) for the
16 next four credit allowance dates;

17 3. "Capital investment" means any equity investment in a rural
18 fund by a rural investor which:

19 a. is acquired after the effective date of this act at
20 its original issuance solely in exchange for cash,

21 b. has one hundred percent (100%) of its cash purchase
22 price used by the rural fund to make qualified
23 investments in eligible businesses located in this
24

1 state by the third anniversary of the initial credit
2 allowance date, and

3 c. is designated by the rural fund as a capital
4 investment under this act and is certified by the Tax
5 Commission under the provisions of Section 3 of this
6 act. This shall include any capital investment that
7 does not meet the provisions of paragraph 1 of
8 subsection A of Section 3 of this act, if such
9 investment was a capital investment in the hands of a
10 prior holder;

11 4. "Commission" means the Oklahoma Tax Commission;

12 5. "Credit allowance date" means the date on which the Tax
13 Commission certifies a rural fund's capital investment and each of
14 the five anniversary dates of such date thereafter;

15 6. "Eligible business" means a business that, at the time of
16 the initial qualified investment in the business:

17 a. has fewer than two hundred fifty (250) employees, and

18 b. has its principal business operations in the state.

19 Any business which is classified as an eligible business at the
20 time of the initial investment in such business by a rural fund
21 shall remain classified as an eligible business and may receive
22 follow-on investments from any rural fund, and such follow-on
23 investments shall be qualified investments even though such business
24

1 may not meet the definition of an eligible business at the time of
2 such follow-on investment;

3 7. "Principal business operations" means the location where at
4 least sixty percent (60%) of a business's employees work or where
5 employees who are paid at least sixty percent (60%) of such
6 business's payroll work if a majority of such employees reside in
7 Oklahoma during such employment. A business that has agreed to
8 relocate employees using the proceeds of a qualified investment to
9 establish its principal business operations in a new location shall
10 be deemed to have its principal business operations in such new
11 location if it satisfied the requirements of this paragraph no later
12 than one hundred eighty (180) days after receiving a qualified
13 investment;

14 8. "Purchase price" means the amount paid to the rural fund
15 that issues a capital investment which shall not exceed the amount
16 of capital investment authority certified under the provisions of
17 Section 3 of this act;

18 9. "Qualified investment" means any investment in an eligible
19 business or any loan to an eligible business with a stated maturity
20 date of at least one (1) year after the date of issuance, excluding
21 revolving lines of credit and senior-secured debt unless the chief
22 executive or similar officer of the eligible business certifies that
23 the eligible business sought and was denied similar financing from a
24 depository institution, by a rural fund; provided that, with respect

1 to any one eligible business, the maximum amount of investments made
2 in such business by one or more rural funds, on a collective basis
3 with all of the businesses' affiliates, with the proceeds of the
4 capital investments shall be the greater of twenty percent (20%) of
5 the rural fund's capital investment authority or Six Million Five
6 Hundred Thousand Dollars (\$6,500,000.00), exclusive of investments
7 made with repaid or redeemed investments or interest or profits
8 realized thereon;

9 10. "Rural area" means any county of this state that has a
10 population of less than seventy-five thousand (75,000) or any city
11 or town of this state that has a population not to exceed seven
12 thousand (7,000) according to the 2020 Federal Decennial Census of
13 the United States;

14 11. "Rural fund" means an entity certified by the Tax
15 Commission under the provisions of Section 3 of this act;

16 12. "Rural investor" means an entity that makes a capital
17 investment in a rural fund;

18 13. "Senior-secured debt" means any loan that is secured by a
19 first mortgage on real estate with a loan-to-value ratio of less
20 than eighty percent (80%); and

21 14. "State tax liability" means any liability incurred by any
22 entity subject to the state income tax imposed under Title 68 of the
23 Oklahoma Statutes or an insurance company paying an annual tax on
24 its gross premium receipts, including retaliatory tax, or other

1 financial institution paying taxes to the state or any political
2 subdivision of the state under provisions of Title 68 or Title 19 of
3 the Oklahoma Statutes.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3932 of Title 68, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A rural fund that seeks to have an equity investment
8 certified as a capital investment eligible for credits authorized
9 under the provisions of this act shall apply to the Tax Commission.
10 The Commission shall begin accepting applications within ninety (90)
11 days of the effective date of this act. The application shall
12 include:

- 13 1. The amount of capital investment requested;
- 14 2. A copy of the applicant's or an affiliate of the applicant's
15 licenses as a rural business investment company under 7 U.S.C.,
16 Section 2009cc or as a small business investment company under 15
17 U.S.C., Section 681, and a certificate executed by an executive
18 officer of the applicant attesting that such license remains in
19 effect and has not been revoked;
- 20 3. Evidence that, as of the date the application is submitted,
21 the applicant or affiliates of the applicant have invested at least
22 One Hundred Million Dollars (\$100,000,000.00) in nonpublic companies
23 located in counties within the United States with a population of
24

1 less than seventy-five thousand (75,000) according to the 2010
2 Federal Decennial Census of the United States;

3 4. A business plan that includes a revenue-impact assessment
4 projecting state and local tax revenue to be generated by the
5 applicant's proposed qualified investments, prepared by a nationally
6 recognized, third-party, independent economic forecasting firm using
7 a dynamic economic forecasting model that analyzes the applicant's
8 business plan over the ten (10) years following the date the
9 application is submitted to the Tax Commission. Such plan shall
10 include an estimate of the number of jobs created and jobs retained
11 in this state as a result of the applicant's qualified investments;
12 and

13 5. A nonrefundable application fee of Five Thousand Dollars
14 (\$5,000.00) payable to the Tax Commission.

15 B. Within thirty (30) days after the receipt of a completed
16 application, the Tax Commission shall grant or deny the application
17 in full or in part. The Tax Commission shall deny the application
18 if:

19 1. The applicant does not satisfy all the criteria provided
20 under subsection A of this section;

21 2. The revenue-impact assessment submitted with the application
22 does not demonstrate that the applicant's business plan will result
23 in a positive fiscal impact on the state over a ten-year period that
24

1 exceeds the cumulative amount of tax credits that would be issued to
2 the applicant if the application was approved; or

3 3. The Tax Commission has already approved the maximum amount
4 of capital investment authority under Section 4 of this act.

5 C. If the Tax Commission denies any part of the application, it
6 shall inform the applicant of the grounds for such denial. If the
7 applicant provides any additional information required by the
8 Commission or otherwise completes its application within fifteen
9 (15) days of the notice of denial, the application shall be
10 considered complete as of the original date of submission. If the
11 applicant fails to provide the information or fails to complete its
12 application within the fifteen-day period, the application shall
13 remain denied and must be resubmitted with a new submission date and
14 a new application fee.

15 D. Upon approval of an application, the Tax Commission shall
16 certify the proposed equity investment as a capital investment
17 eligible for credits under this act, subject to limitations laid out
18 in Section 4 of this act. The Tax Commission shall provide written
19 notice of the certification to the applicant which shall include the
20 amount of the applicant's capital investment authority. The Tax
21 Commission shall certify capital investments in the order that the
22 applications are received by the Commission. Applications received
23 on the same day shall be deemed to have been received
24 simultaneously. For applications that are complete and received on

1 the same day, the Tax Commission shall certify applications in
2 proportionate percentages based upon the ratio of the amount of
3 capital investment authority requested in all applications.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3933 of Title 68, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Tax Commission shall certify capital investment
8 authority under the provisions of this act in amounts that would not
9 authorize more than Fifteen Million Dollars (\$15,000,000.00) in
10 state tax credits to be claimed against state tax liability in any
11 fiscal year, excluding any credit amounts carried forward as
12 provided under subsection A of Section 5 of this act. Within ninety
13 (90) days of the applicant receiving notice of certification, the
14 rural fund shall issue the capital investment to, and receive cash
15 in the amount of the certified amount from a rural investor. At
16 least ten percent (10%) of the rural investor's capital investment
17 shall be composed of capital raised by the rural investor directly
18 or indirectly from sources, including directors, members, employees,
19 officers, and affiliates of the rural investor, other than the
20 amount invested by the allocatee claiming the tax credits in
21 exchange for such allocation of tax credits. The rural fund shall
22 provide the Tax Commission with evidence of the receipt of the cash
23 investment within ninety-five (95) days of the applicant receiving
24 notice of certification.

1 B. If the rural fund does not receive the cash investment and
2 issue the capital investment within such time period following
3 receipt of the certificate notice, the certification shall lapse and
4 the rural fund shall not issue the capital investment without
5 reapplying to the Tax Commission for certification. Lapsed
6 certifications shall revert to the Tax Commission and shall be
7 reissued pro rata to applicants whose capital investment allocations
8 were reduced in accordance with the application process provided
9 under subsection D of Section 3 of this act.

10 C. A rural fund, before making a qualified investment, may
11 request from the Tax Commission a written opinion as to whether the
12 business in which it proposes to invest is an eligible business.
13 The Commission, no later than twenty (20) days after the date of
14 receipt of such request, shall notify the rural fund of its
15 determination. If the Tax Commission fails to notify the rural fund
16 of its determination by the thirtieth business day, the business in
17 which the rural fund proposes to invest shall be deemed an eligible
18 business.

19 D. For tax years beginning on or after January 1, 2023, the
20 total amount of credits authorized by this section used to offset
21 tax shall be adjusted annually to limit the annual amount of credits
22 to Fifteen Million Dollars (\$15,000,000.00). The Tax Commission
23 shall annually calculate and publish a percentage by which the
24 credits authorized by this section shall be reduced so the total

1 amount of credits used to offset tax does not exceed Fifteen Million
2 Dollars (\$15,000,000.00) per year. The formula to be used for the
3 percentage adjustment shall be Fifteen Million Dollars
4 (\$15,000,000.00) divided by the credits used to offset tax in the
5 second preceding year.

6 E. Pursuant to subsection D of this section, in the event the
7 total tax credits authorized by this section exceed Fifteen Million
8 Dollars (\$15,000,000.00) in any calendar year, the Tax Commission
9 shall permit any excess over Fifteen Million Dollars
10 (\$15,000,000.00) but shall factor such excess into the percentage
11 adjustment formula for subsequent years.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3934 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Upon making a capital investment in a rural fund, a rural
16 investor shall have a credit against such entity's state tax
17 liability that may be utilized on each credit allowance date of such
18 capital investment in an amount equal to the applicable percentage
19 for such credit allowance date multiplied by the purchase price paid
20 to the rural fund for the capital investment. The amount of the
21 credit claimed by a rural investor shall not exceed the amount of
22 such entity's state tax liability for the tax year for which the
23 credit is claimed. Any amount of credit that a rural investor is
24 prohibited from claiming in a tax year as a result of this section

1 may be carried forward for use in any of the five (5) subsequent tax
2 years, but shall not be carried back to prior tax years. It is the
3 intent of this act that a rural investor claiming a credit under
4 this act is not required to pay any additional tax that may arise as
5 a result of claiming such credit.

6 B. No credit claimed under the provisions of this act shall be
7 refundable or saleable on the open market. Credits earned by or
8 allocated to a partnership, limited liability company, or S-
9 corporation may be allocated to the partners, members, or
10 shareholders of such entity for their direct use in accordance with
11 the provisions of any agreement among such partners, members, or
12 shareholders, and a rural fund shall notify the Tax Commission of
13 the names of the entities that are eligible to utilize transfer of a
14 capital investment upon such allocation, change or transfer. Such
15 allocation shall not be considered a sale for the purpose of this
16 section.

17 C. The Oklahoma Tax Commission shall recapture credits from a
18 taxpayer that claimed a credit authorized under this section if:

19 1. The rural fund does not invest sixty percent (60%) of its
20 capital investment authority in qualified investments in this state
21 within two (2) years of the credit allowance date, and one hundred
22 percent (100%) of its capital investment authority in qualified
23 investments in this state within three (3) years of the credit
24 allowance date; provided that at least seventy percent (70%) of

1 these initial qualified investments must be made in eligible
2 businesses located in rural areas;

3 2. The rural fund fails to maintain qualified investments equal
4 to ninety percent (90%) of its capital investment authority from the
5 third anniversary until the sixth anniversary of the credit
6 allowance date, with seventy percent (70%) of such investments
7 maintained in eligible businesses located in rural areas. For each
8 year the rural fund fails to maintain such investments, the Tax
9 Commission shall recapture an amount of such year's allowed credits
10 equal to the percentage difference between ninety percent (90%) of a
11 rural fund's capital investment authority and the actual amount of
12 qualified investments maintained for such year. For the purposes of
13 this subsection, a qualified investment is considered even if the
14 qualified investment was sold or repaid so long as the rural fund
15 reinvests an amount equal to the capital returned or recovered or
16 repaid by the rural fund from the original investment, exclusive of
17 any profits realized, in other qualified investments in this state
18 within twelve (12) months of receipt of such capital. Amounts
19 received periodically by a rural fund shall be treated as
20 continually invested in qualified investments if the amounts are
21 reinvested in one or more qualified investments by the end of the
22 following calendar year. A rural fund shall not be required to
23 reinvest capital returned from qualified investments after the fifth
24 anniversary of the credit allowance date, and such qualified

1 investments shall be considered held continuously by the rural fund
2 through the sixth anniversary of the credit allowance date;

3 3. Prior to the earlier of a) exiting the program in accordance
4 with this act or b) thirty (30) days after the sixth anniversary of
5 the credit allowance date, the rural fund makes a distribution or
6 payment that results in the rural fund having less than one hundred
7 percent (100%) of its capital investment authority invested in
8 qualified investments in the state or held in cash or other
9 marketable securities; or

10 4. The rural fund violates the provisions of Section 6 of this
11 act, in which case the Tax Commission shall recapture an amount
12 equal to the amount of the rural fund's capital investment authority
13 found to be in violation of such provisions.

14 For the purposes of meeting and maintaining the objectives
15 established for investment in paragraphs 1 and 2 of this subsection,
16 a rural fund's qualified investments shall be multiplied by a factor
17 of one and one-quarter (1 1/4) in counties with less than thirty
18 thousand (30,000) in population and more than thirteen thousand
19 (13,000) in population and shall be multiplied by a factor of one
20 and one-half (1 1/2) in counties with a population of thirteen
21 thousand (13,000) or less.

22 D. Recaptured credits and related capital investment authority
23 shall revert to the Tax Commission and shall be reissued pro rata to
24 applicants whose capital investment allocations were reduced in

1 accordance with the application process provided under subsection D
2 of Section 3 of this act.

3 E. No recapture shall occur until the rural fund has been given
4 notice of noncompliance and afforded six (6) months from the date of
5 such notice to cure the noncompliance.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3935 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A. No eligible business that receives a qualified investment
10 under the provisions of act, or any affiliates or such eligible
11 business, shall directly or indirectly:

12 1. Own or have the right to acquire an ownership interest in a
13 rural fund or member or affiliate of a rural fund, including, but
14 not limited to, a holder of a capital investment issued by a rural
15 fund; or

16 2. Loan to or invest in a rural fund or any member or affiliate
17 of a rural fund, including but not limited to, a holder of capital
18 investment issued by a rural fund, where the proceeds of such loan
19 or investment are directly or indirectly used to fund or refinance
20 the purchase of capital investments under this act.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3936 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Rural funds shall submit a report to the Tax Commission
2 within the first fifteen (15) business days after the second and
3 third anniversary of the initial credit allowance date. The report
4 following the second anniversary shall provide documentation as to
5 the investment of sixty percent (60%) of the purchase price of such
6 capital investment in qualified investments. The report following
7 the third anniversary shall provide documentation as to the
8 investment of one hundred percent (100%) of the purchase price of
9 such capital investment in qualified investments. Unless previously
10 reported pursuant to this subsection, such reports shall also
11 include:

12 1. The name and location of each eligible business receiving a
13 qualified investment;

14 2. Bank statements of such rural fund evidencing each qualified
15 investment;

16 3. A copy of the written opinion of the Tax Commission, as
17 provided in subsection C of Section 4 of this act, or evidence that
18 such business was an eligible business at the time of such qualified
19 investment, as applicable;

20 4. The number of jobs created and jobs retained as a result of
21 each qualified investment;

22 5. The average salary of positions described in paragraph 4 of
23 this paragraph; and

24 6. Such other information as required by the Tax Commission.

1 B. For all subsequent years, rural funds shall submit an annual
2 report to the Tax Commission within ninety (90) days of the
3 beginning of the calendar year during the compliance period. The
4 report shall include, but is not limited to the following:

5 1. The number of jobs created and jobs retained as a result of
6 qualified investments;

7 2. The average annual salary of positions described in
8 paragraph 1 of this subsection; and

9 3. Such other information as required by the Tax Commission.

10 C. On or after the sixth anniversary of the credit allowance
11 date, a rural fund may apply to the Tax Commission to exit the
12 program and no longer be subject to the regulation hereunder. The
13 Tax Commission shall respond to the exit application within fifteen
14 (15) days of receipt. In evaluating the exit application, the fact
15 that no credits have been recaptured and that the rural fund has not
16 received a notice of recapture that has not been cured pursuant to
17 subsection E of Section 5 of this act shall be sufficient evidence
18 to prove that the rural fund is eligible for exit. The Tax
19 Commission shall not unreasonably deny an exit application submitted
20 under this section. If an exit application is denied, the notice
21 shall include the reasons for the determination.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3937 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 The Tax Commission shall not accept new applications for tax
2 credits authorized under this act after December 1, 2032.

3 SECTION 9. This act shall become effective November 1, 2022.
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5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
6 03/03/2022 - DO PASS, As Amended and Coauthored.
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