

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 378

By: Hall

AS INTRODUCED

An Act relating to income tax; amending 68 O.S. 2021, Section 2358.110, which relates to deduction for qualified equity investments; modifying definition; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2021, Section 2358.110, is amended to read as follows:

Section 2358.110. A. As used in this section:

1. "Accredited investor" means a person or entity as defined pursuant to Section 230.501 of Title 17 of the Code of Federal Regulations;

2. "Eligible Oklahoma business venture" means a lawful business entity that is determined by the Oklahoma Department of Commerce for receipt of an equity investment by an eligible Oklahoma venture capital company. In determining whether an investment is a qualified equity investment, the Department shall consider the

1 potential impact the investment would have on the local and state  
2 economy and shall consider the following factors:

- 3 a. the primary location of the entity,
- 4 b. the number of employees located or to be located in  
5 this state,
- 6 c. state and local revenues generated from the  
7 investment,
- 8 d. the economic benefits to the state,
- 9 e. the type and amount of the investment,
- 10 f. the current capitalization level and strategy, and
- 11 g. the industry classification of the entity;

12 3. "Eligible Oklahoma venture capital company" means a lawfully  
13 recognized business entity the primary business purpose of which is  
14 to accumulate funds for making investments in lawful for profit  
15 business entities and which is organized in any of the following  
16 forms:

- 17 a. general partnership,
- 18 b. limited partnership,
- 19 c. limited liability partnership,
- 20 d. limited liability company,
- 21 e. corporation, or
- 22 f. other lawfully recognized business entity;

23 4. "Lawful business entity" means the following:

- 24 a. a person,

- b. a general partnership,
- c. a limited partnership,
- d. a limited liability partnership,
- e. a limited liability company, or
- f. a corporation; and

5. "Qualified equity investment" means a transfer of cash or its equivalent by an accredited investor to an eligible Oklahoma venture capital company that is invested with an eligible Oklahoma business venture and for purposes of the deduction authorized by this section in an amount not in excess of Twenty-five Million Dollars (\$25,000,000.00) by an accredited investor during a taxable year.

B. For tax years 2022 through 2026, there shall be allowed a deduction from Oklahoma taxable income or Oklahoma adjusted gross income as determined pursuant to Section 2358 of Title 68 of the Oklahoma Statutes equal to the amount of qualified equity investment in an eligible Oklahoma venture capital entity made by an accredited investor.

C. The maximum amount of qualified equity investment made by an accredited investor for purposes of the deduction authorized by this section shall not exceed Twenty-five Million Dollars (\$25,000,000.00) for any taxable year of the investor.

D. Any qualified equity investment made for purposes of the deduction authorized by this section shall be documented by the

1 issuance of shares of stock, membership interest or other evidence  
2 of the equity interest acquired by the accredited investor. Such  
3 evidence may take the form of physical shares or the electronic  
4 equivalent of physical shares.

5 E. Records of the equity interest acquired by an accredited  
6 investor shall be maintained by the accredited investor and the  
7 eligible Oklahoma venture capital company for a period of at least  
8 five (5) years from the date the equity investment is made by an  
9 accredited investor.

10 F. A qualified equity investment made by an accredited investor  
11 for purposes of the deduction authorized by this section shall not  
12 be returned by the eligible Oklahoma venture capital company to the  
13 accredited investor, if the accredited investor is a natural person,  
14 or to any person related to such natural person within the third  
15 degree of consanguinity or affinity, for a period of three (3) years  
16 from the date of the qualified equity investment unless the return  
17 is in the form of a dividend or other payment agreed to prior to or  
18 simultaneously with the equity investment transfer from the  
19 accredited investor to the eligible Oklahoma venture capital company  
20 and only if the return of some part of the qualified equity  
21 investment is based on the financial performance of either the  
22 eligible Oklahoma venture capital company or the financial  
23 performance of one or more for profit business entities in which the  
24 accumulated equity funds of the eligible Oklahoma venture capital

1 company are further invested or both such measures of financial  
2 performance.

3 G. A qualified equity investment made by an accredited investor  
4 for purposes of the deduction authorized by this section shall not  
5 be returned by the eligible Oklahoma venture capital company to the  
6 accredited investor if the accredited investor is a lawful business  
7 entity, or to any entity which owns ~~fifty-one~~ fifty-one percent  
8 (51%) or more of the voting equity interest of the accredited  
9 investor or to any lawful business entity with respect to which the  
10 accredited investor owns ~~fifty-one~~ fifty-one percent (51%) or more  
11 of the voting equity interest, within a period of five (5) years  
12 from the date of the equity investment unless the return is in the  
13 form of a dividend or other payment agreed to prior to or  
14 simultaneously with the equity investment transfer from the  
15 accredited investor to the eligible Oklahoma venture capital company  
16 and only if the return of some part of the qualified equity  
17 investment is based on the financial performance of either the  
18 eligible Oklahoma venture capital company or the financial  
19 performance of one or more for profit business entities in which the  
20 accumulated equity funds of the eligible Oklahoma venture capital  
21 company are further invested or both such measures of financial  
22 performance.

23 H. The deduction authorized by the provisions of this section  
24 shall not be used to reduce the Oklahoma taxable income amount or  
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1 the Oklahoma adjusted gross income amount to less than zero (0).  
2 There shall not be any carryover with respect to a deduction  
3 authorized by the provisions of this section.

4 I. If the Oklahoma Tax Commission determines, either from  
5 information accompanying any applicable income tax return or  
6 schedule, form or supporting documentation filed in order to claim  
7 the deduction authorized by this section, that the requirements of  
8 this section were not fulfilled, the Oklahoma Tax Commission shall  
9 notify the taxpayer claiming the deduction that the deduction has  
10 been disallowed and the income tax liability for the taxpayer shall  
11 be recalculated. The taxpayer shall retain all rights authorized  
12 pursuant to the provisions of the Uniform Tax Procedure Code and the  
13 Oklahoma Income Tax Code in order to contest the disallowance of  
14 part or all of such deductions.

15 J. The Department may promulgate rules to enforce the  
16 provisions of this act. The Department shall annually publish a  
17 report on the program created in this section.

18 SECTION 2. This act shall become effective November 1, 2023.

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