

1 **SENATE FLOOR VERSION**

2 February 13, 2023

3 SENATE BILL NO. 378

By: Hall

4
5
6 An Act relating to income tax; amending 68 O.S. 2021,
7 Section 2358.110, which relates to deduction for
8 qualified equity investments; modifying definition;
9 updating statutory language; and providing an
10 effective date.

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

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

14 Section 2358.110. A. As used in this section:

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

18 2. "Eligible Oklahoma business venture" means a lawful business
19 entity that is determined by the Oklahoma Department of Commerce for
20 receipt of an equity investment by an eligible Oklahoma venture
21 capital company. In determining whether an investment is a
22 qualified equity investment, the Department shall consider the
23 potential impact the investment would have on the local and state
24 economy and shall consider the following factors:

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

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

- a. general partnership,
- b. limited partnership,
- c. limited liability partnership,
- d. limited liability company,
- e. corporation, or
- f. other lawfully recognized business entity;

4. "Lawful business entity" means the following:

- a. a person,
- b. a general partnership,
- c. a limited partnership,

1 d. a limited liability partnership,

2 e. a limited liability company, or

3 f. a corporation; and

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

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

17 C. The maximum amount of qualified equity investment made by an
18 accredited investor for purposes of the deduction authorized by this
19 section shall not exceed Twenty-five Million Dollars
20 (\$25,000,000.00) for any taxable year of the investor.

21 D. Any qualified equity investment made for purposes of the
22 deduction authorized by this section shall be documented by the
23 issuance of shares of stock, membership interest or other evidence
24 of the equity interest acquired by the accredited investor. Such

1 evidence may take the form of physical shares or the electronic
2 equivalent of physical shares.

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

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

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

21 H. The deduction authorized by the provisions of this section
22 shall not be used to reduce the Oklahoma taxable income amount or
23 the Oklahoma adjusted gross income amount to less than zero (0).

24

1 There shall not be any carryover with respect to a deduction
2 authorized by the provisions of this section.

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
19 February 13, 2023 - DO PASS
20
21
22
23
24