

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 378

By: Hall of the Senate

and

Boatman of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to income tax; amending 68 O.S. 2021,
12 Section 2358.110, which relates to deduction for
13 qualified equity investments; modifying definitions;
14 changing certain dollar amount; requiring maintenance
15 of certain records; requiring filing of certain
16 annual report; providing for confidentiality;
17 authorizing certain filing fee; updating statutory
18 language; and providing an effective date.

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

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

22 Section 2358.110 A. As used in this section:

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

1 2. "Eligible Oklahoma business venture" means a lawful business
2 entity that is ~~determined by the Oklahoma Department of Commerce for~~
3 ~~receipt of an equity investment by an eligible Oklahoma venture~~
4 ~~capital company. In determining whether an investment is a~~
5 ~~qualified equity investment, the Department shall consider the~~
6 ~~potential impact the investment would have on the local and state~~
7 ~~economy and shall consider the following factors:~~

- 8 a. ~~the primary location of the entity,~~
9 b. ~~the number of employees located or to be located in~~
10 ~~this state,~~
11 c. ~~state and local revenues generated from the~~
12 ~~investment,~~
13 d. ~~the economic benefits to the state,~~
14 e. ~~the type and amount of the investment,~~
15 f. ~~the current capitalization level and strategy, and~~
16 g. ~~the industry classification of the entity at the time~~
17 the initial qualified investment is made by an
18 eligible Oklahoma venture capital company:

- 19 a. has a net worth of Five Million Dollars
20 (\$5,000,000.00) or less or net income after federal
21 income taxes for each of the two preceding fiscal
22 years of Three Million Dollars (\$3,000,000.00) or
23 less;

1 b. is actively and principally engaged in a qualified
2 activity within the State of Oklahoma, or will be
3 actively and principally engaged in a qualified
4 activity with the State of Oklahoma after receipt of
5 the qualified investment by an eligible Oklahoma
6 venture capital company;

7 c. has no more than one hundred (100) employees; and

8 d. has more than fifty percent (50%) of its assets,
9 operations, and employees in the State of Oklahoma.

10 An eligible Oklahoma business venture that ceases to be an
11 eligible Oklahoma business venture solely because it exceeds the
12 limits set forth in subparagraphs a or c of this paragraph shall
13 continue to qualify as an eligible Oklahoma business venture solely
14 with respect to eligible Oklahoma venture capital companies that
15 invested in such eligible Oklahoma business venture when it met all
16 the qualifications set forth in subparagraphs a through d of this
17 paragraph;

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

23 ~~a. general partnership,~~

24 ~~b. limited partnership,~~

- 1 e. ~~limited liability partnership,~~
- 2 d. ~~limited liability company,~~
- 3 e. ~~corporation, or~~
- 4 f. ~~other lawfully recognized business entity~~ that meets
5 the definition of "venture capital fund" set forth in
6 17 CFR Section 275.203(1)-1 and which:
- 7 a. has five (5) or more investors, and no investor,
8 including their closely related family members and
9 affiliates may own or have a capital interest in more
10 than forty percent (40%) of the eligible Oklahoma
11 venture capital company's capitalization. As used in
12 this section, "closely related" means any of the
13 following in relation to the investor or the
14 investor's spouse:
- 15 (1) parents or grandparents,
- 16 (2) children, grandchildren or their spouses, or
- 17 (3) siblings or their spouses and their children,
- 18 b. has either:
- 19 (1) its principal place of business in the State of
20 Oklahoma, or
- 21 (2) has more than fifty percent (50%) of its assets,
22 operations, and employees in the State of
23 Oklahoma, and
- 24

1 c. is approved by the Oklahoma Department of Commerce as
2 an eligible Oklahoma venture capital company.

3 "Eligible Oklahoma venture capital company" shall also include
4 any special purpose vehicle created and managed by an eligible
5 Oklahoma venture capital company for the sole purpose of investing
6 in a single eligible Oklahoma business venture;

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

- 8 a. a person,
- 9 b. a general partnership,
- 10 c. a limited partnership,
- 11 d. a limited liability partnership,
- 12 e. a limited liability company, or
- 13 f. a corporation; ~~and~~

14 5. "Qualified activity" means activity in any fields having
15 long-term economic or commercial value to the State of Oklahoma,
16 which shall include, but is not be limited to:

- 17 a. biotechnology,
- 18 b. environmental technology,
- 19 c. energy technology,
- 20 d. agricultural technology,
- 21 e. health care technology,
- 22 f. information technology and communications,
- 23 g. materials science and advanced manufacturing, and

1 h. any other activity identified by the Oklahoma
2 Department of Commerce.

3 When designating additional qualified activities, the Oklahoma
4 Department of Commerce shall consider the potential impact an
5 investment in those activities would have on the local and state
6 economy and shall consider the following factors:

- 7 (1) the number of employees located or to be located
8 in this state,
9 (2) state and local revenues generated from the
10 activity,
11 (3) the economic benefits to the state, and
12 (4) the type and amount of the investment the
13 activity is likely to generate.

14 "Qualified activities" do not include any activity principally
15 engaged in by financial institutions, commercial development
16 companies, credit companies, financial or investment advisors,
17 brokerage or financial firms, other investment funds or investment
18 fund managers, charitable and religious institutions, oil and gas
19 exploration companies, insurance companies, residential or
20 commercial real estate investment companies or developers; and

21 6. "Qualified equity investment" means a transfer of at least
22 One Thousand Dollars (\$1,000.00) cash or its equivalent by an
23 accredited investor to an eligible Oklahoma venture capital company
24 and for purposes of the deduction authorized by this section in an

1 ~~amount not in excess of Twenty-five Million Dollars (\$25,000,000.00)~~
2 ~~by an accredited investor during a taxable year~~ that has at least
3 sixty-five percent (65%) of its investments invested in eligible
4 Oklahoma business ventures.

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

11 C. The maximum amount of qualified equity investment made by an
12 accredited investor for purposes of the deduction authorized by this
13 section shall not exceed ~~Twenty-five Million Dollars~~
14 ~~(\$25,000,000.00)~~ Fifteen Million Dollars (\$15,000,000.00) for any
15 taxable year of the investor.

16 D. Any qualified equity investment made for purposes of the
17 deduction authorized by this section shall be documented by the
18 issuance of shares of stock, membership interest or other evidence
19 of the equity interest acquired by the accredited investor. Such
20 evidence may take the form of physical shares or the electronic
21 equivalent of physical shares.

22 E. Records of the ~~equity interest acquired by an accredited~~
23 ~~investor~~ qualified investment into the eligible Oklahoma venture
24 capital company shall be maintained by the accredited investor and

1 the eligible Oklahoma venture capital company for a period of at
2 least five (5) years from the date the ~~equity~~ qualified investment
3 is made by an accredited investor. Records of the eligible Oklahoma
4 venture capital company's investment into an eligible Oklahoma
5 business venture shall be maintained by the eligible Oklahoma
6 venture capital company for a period of at least five (5) years from
7 the date of such investment.

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 closely related to such natural person ~~within the~~
13 ~~third degree of consanguinity or affinity,~~ for a period of three (3)
14 years from the date of the qualified equity investment unless the
15 return is in the form of a dividend or other payment agreed to prior
16 to or simultaneously with the ~~equity~~ qualified investment ~~transfer~~
17 from the accredited investor to the eligible Oklahoma venture
18 capital company and only if the return of some part of the qualified
19 equity investment is based on the financial performance of either
20 the eligible Oklahoma venture capital company or the financial
21 performance of one or more ~~for-profit~~ eligible Oklahoma business
22 ~~entities~~ ventures in which the ~~accumulated equity funds of the~~
23 eligible Oklahoma venture capital company ~~are further invested~~
24 invests or both such measures of financial 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~~ qualified investment unless the return
11 is in the form of a dividend or other payment agreed to prior to or
12 simultaneously with the ~~equity~~ qualified investment transfer from
13 the accredited investor to the eligible Oklahoma venture capital
14 company 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~~ eligible Oklahoma business
18 ~~entities~~ ventures in which the ~~accumulated equity funds of the~~
19 eligible Oklahoma venture capital company ~~are further invested~~
20 invests or both such measures of financial 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).

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

3 I. Each eligible Oklahoma venture capital company shall file an
4 annual report with the Oklahoma Department of Commerce and with the
5 Authority, on or before February 15 of each year during which it
6 qualifies as an eligible Oklahoma venture capital company. This
7 report shall include information that the Oklahoma Department of
8 Commerce prescribes from time to time, including but not limited to
9 the following:

10 1. For each eligible Oklahoma business venture in which
11 qualified investments are made by the eligible Oklahoma venture
12 capital company during the reporting period, the name and address of
13 the eligible Oklahoma business venture, the amount of qualified
14 investments made by the eligible Oklahoma venture capital company,
15 the job creation anticipated and achieved by the eligible Oklahoma
16 business venture, and new products and technologies being developed
17 by the eligible Oklahoma business venture;

18 2. An affidavit prepared by the eligible Oklahoma venture
19 capital company that states:

20 a. at the time of each qualified investment, each
21 eligible Oklahoma business venture qualifies as a
22 eligible Oklahoma business venture under the
23 provisions of paragraph 2 of subsection A of this
24 section,

1 b. the name and address of each investor, and the amount
2 of cash contribution to the eligible Oklahoma venture
3 capital company of each investor who is entitled to
4 the deduction, and

5 c. the continued compliance by the eligible Oklahoma
6 venture capital company and the manager of the
7 eligible Oklahoma venture capital company with all
8 applicable state and federal securities laws and
9 regulations.

10 The Oklahoma Department of Commerce shall provide an annual
11 written status report to the Legislative Office of Fiscal
12 Transparency concerning the activities of all eligible Oklahoma
13 venture capital companies for each fiscal year. On or before
14 November 1 of each year, the Oklahoma Department of Commerce shall
15 make an annual report for the preceding fiscal year to the Governor
16 and the Legislative Office of Fiscal Transparency. The annual
17 report shall include but not be limited to the following
18 information:

19 d. the total number of investors and the aggregate amount
20 of committed cash contributions to all eligible
21 Oklahoma venture capital companies, categorized by the
22 types of business entities through which investors
23 conduct business and the geographical distribution of
24 investors,

- 1 e. the total number and amounts of qualified investments
2 made by each eligible Oklahoma venture capital
3 companies to eligible Oklahoma business venture,
4 categorized by type of businesses, amount of
5 investment, job creation anticipated and achieved,
6 geographical distribution, and new products and
7 technologies developed, and
8 f. the total amount of deductions granted to investors.

9 The contents of the annual reports from eligible Oklahoma
10 venture capital companies to the Oklahoma Department of Commerce
11 described in subsection I of this section shall be treated by the
12 Oklahoma Department of Commerce as confidential, and shall not be
13 considered a public record under the Oklahoma Open Record Act. The
14 Oklahoma Department of Commerce may charge a fee for the
15 administration and processing of an annual report made by an
16 eligible Oklahoma venture capital company.

17 J. If the Oklahoma Tax Commission determines, either from
18 information accompanying any applicable income tax return or
19 schedule, form or supporting documentation filed in order to claim
20 the deduction authorized by this section, that the requirements of
21 this section were not fulfilled, the Oklahoma Tax Commission shall
22 notify the taxpayer claiming the deduction that the deduction has
23 been disallowed and the income tax liability for the taxpayer shall
24 be recalculated. The taxpayer shall retain all rights authorized

1 pursuant to the provisions of the Uniform Tax Procedure Code and the
2 Oklahoma Income Tax Code in order to contest the disallowance of
3 part or all of such deductions.

4 ~~J. K.~~ The Oklahoma Department of Commerce may promulgate rules
5 to enforce the provisions of this act. ~~The Department shall~~
6 ~~annually publish a report on the program created in this section.~~

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

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9 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
10 04/13/2023 - DO PASS, As Amended.

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