

An Act

ENROLLED SENATE
BILL NO. 915

By: Howard and Hall of the
Senate

and

Caldwell (Trey) of the
House

An Act relating to income tax deduction; defining terms; providing deduction from taxable income for certain equity investment; setting limit; requiring documentation of investment; requiring the retention of records by certain entities for certain period; prohibiting return of certain investment for certain time; providing exception; prohibiting use of deduction to reduce liability to less than zero; requiring the Oklahoma Tax Commission to disallow deduction upon certain determination; providing retention of certain right of taxpayer to contest; authorizing the Oklahoma Department of Commerce to promulgate rules; requiring the Department to publish report; providing for codification; and providing an effective date.

SUBJECT: Income tax deduction

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 2358.110 of Title 68, unless there is created a duplication in numbering, reads as follows:

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 potential impact the investment would have on the local and state 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,
- 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 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 issuance of shares of stock, membership interest or other evidence of the equity interest acquired by the accredited investor. Such

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

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

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

G. A qualified equity investment made by an accredited investor for purposes of the deduction authorized by this section shall not be returned by the eligible Oklahoma venture capital company to the accredited investor if the accredited investor is a lawful business entity, or to any entity which owns fifty one percent (51%) or more of the voting equity interest of the accredited investor or to any lawful business entity with respect to which the accredited investor owns fifty one percent (51%) or more of the voting equity interest, within a period of five (5) years from the date of the equity investment unless the return is in the form of a dividend or other payment agreed to prior to or simultaneously with the equity investment transfer from the accredited investor to the eligible Oklahoma venture capital company and only if the return of some part of the qualified equity investment is based on the financial performance of either the eligible Oklahoma venture capital company

or the financial performance of one or more for profit business entities in which the accumulated equity funds of the eligible Oklahoma venture capital company are further invested or both such measures of financial performance.

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

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

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

SECTION 2. This act shall become effective November 1, 2021.

Passed the Senate the 24th day of May, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____