

SHORT TITLE: Revenue and taxation; Oklahoma Angel Capital Company Investment Tax Credit Act; definitions; tax credits; reporting requirements; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 587

By: Gustafson

AS INTRODUCED

An Act relating to revenue and taxation; creating Oklahoma Angel Capital Company Investment Tax Credit Act; providing short title; defining terms; allowing credit against income tax for investments made in or in conjunction with qualified angel capital companies; providing limitations and qualifications; specifying amount of credit; granting certain authority to Oklahoma Capital Investment Board and providing for certain certification; allowing fee to be charged for certification; allowing amount of tax credit not used to be carried forward for certain time period; prohibiting credit from being claimed for investments prior to effective date of act; prohibiting credit from being claimed for certain investments; requiring certain reports and statements and specifying contents thereof; providing penalty for refusal or failure to comply with certain provisions; specifying certain duties of Oklahoma Tax Commission; requiring annual report be filed with President Pro Tempore of the Senate and Speaker of the House of Representatives and specifying contents thereof; providing for codification; and 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 2357.60 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act may be known and shall be cited as the "Oklahoma Angel Capital Company Investment Tax Credit Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.61 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Qualified angel capital company" means a C corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of debt and equity funds to companies within this state for the purpose of establishing or expanding the development of business and industry within Oklahoma,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00),
- d. the corporation, limited liability company or partnership has a purpose and objective of investing at least ninety percent (90%) of its capitalization in

equity or near-equity of Oklahoma business ventures. Investment capital received by such angel capital company shall be invested pursuant to said objective within five (5) years after receipt of such capital. The temporary investment of funds by a qualified angel capital company in obligations of the United States, state and municipal bonds, bank certificates of deposit, or money market securities pending investment in Oklahoma business ventures is hereby authorized, and

- e. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its funds in any one company; and

2. "Oklahoma business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified angel capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. is not primarily engaged in oil and gas exploration, real estate development, real estate sales or rentals, retail sales of food or clothing, farming, ranching, banking, or lending or investing funds in other businesses. Provided, however, businesses which provide or intend to provide goods or services, including, but not limited to, goods or services involving new technology, equipment, or techniques to the businesses listed in this subparagraph, and investments in the development of tourism facilities

in the form of amusement parks, entertainment parks, theme parks, golf courses, or museums shall not be considered to be primarily engaged in the business listed in this subparagraph, and

- d. qualifies as a small business as defined by the federal Small Business Administration.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.62 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1996, and before January 1, 2005, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for investments in qualified angel capital companies.

B. The credit provided for in subsection A of this section shall be ten percent (10%) of the cash amount invested in qualified angel capital companies. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed five (5) taxable years. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a qualified angel capital company and to certify an entity to be a qualifying Oklahoma business venture. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service.

C. No taxpayer may claim the credit provided for in this section for investments in qualified angel capital companies made prior to the effective date of this act.

D. The credit provided for in this section shall not be allowed for any investment guaranteed by the Oklahoma Capital Investment Board.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1996, and before January 1, 2005, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for qualified investments made in Oklahoma business ventures in conjunction with investments in such ventures made by a qualified angel capital company.

B. The credit provided for in this section shall be ten percent (10%) of the cash amount of qualified investments made in Oklahoma business ventures in conjunction with investments in such ventures made by a qualified angel capital company. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed five (5) taxable years. To qualify, an investment shall be:

1. Made by a shareholder or partner in a qualified angel capital company;

2. Invested in the purchase of equity or near-equity in an Oklahoma business venture;

3. Made under the same terms and conditions as the investment made by the qualified angel capital company; and

4. Limited to two hundred percent (200%) of any investment by the taxpayer in the qualified angel capital company.

The Oklahoma Capital Investment Board shall have the authority to determine if an investment is qualified pursuant to the

provisions of this section. Such determination shall be binding on the Oklahoma Tax Commission.

C. No taxpayer may claim the credit provided for in this section for investments made prior to the effective date of this act.

D. The credit provided for in this section shall not be allowed for any investment guaranteed by the Oklahoma Capital Investment Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.64 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each qualified angel capital company shall file an annual report with the Oklahoma Tax Commission no later than April 30 of each year which lists all funds invested in or in conjunction with such company which may qualify for the tax credit allowed by Section 3 or Section 4 of this act. The report shall state the amount of funds invested in or in conjunction with such company during the taxable year by persons, partnerships or corporations and the Social Security number of such person or the federal identification number of such partnership or corporation making such investments. The report shall also include a schedule listing the type and amount of investments made by or in conjunction with the angel capital company and such other information as the Tax Commission may prescribe.

B. Each qualified angel capital company shall furnish to each person, partnership or corporation which made an investment in or in conjunction with such company during the preceding year a written statement showing the name of the angel capital company, the name of the investor, the total amount of investments in or in conjunction with the company made by such person, partnership or corporation and such other information as the Tax Commission may require. The statement shall be attached to the income tax return of such person,

partnership or corporation in order to qualify for the tax credit allowed by Section 3 or Section 4 of this act.

C. Any qualified angel capital company who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible to be a qualified angel capital company for purposes of this act. If an angel capital company does not invest its funds in Oklahoma business ventures as provided for in subparagraph d of paragraph 1 of Section 2 of this act within five (5) years after receipt of capital, the angel capital company shall pay to the Tax Commission a penalty equal to the aggregate amount of tax credit provided to investors in or in conjunction with such angel capital company multiplied by a fraction, the numerator of which is a percentage equal to the difference between ninety percent (90%) and the percentage of funds invested in Oklahoma business ventures calculated in accordance with subparagraph d of paragraph 1 of Section 2 of this act and the denominator of which is ninety percent (90%). Provided, to the extent that the penalty cannot be collected from the angel capital company, the penalty shall be collected from the taxpayers to whom the tax credits have been granted.

D. Any taxpayer who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible for the tax credits granted in Sections 3 and 4 of this act.

E. The Tax Commission is directed to immediately develop a system for registration of any income tax credits issued pursuant to Sections 3 and 4 of this act and a system which permits verification that any tax credit claimed upon an income tax return is validly issued and properly taken in the year of claim.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.65 of Title 68, unless there is created a duplication in numbering, reads as follows:

On or before November 1 of each year subsequent to the effective date of this act, the Oklahoma Tax Commission shall file a report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of this act and the amount of credits likely to be claimed and allowed pursuant to this act for the following year.

SECTION 7. This act shall become effective November 1, 1997.

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