

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 412

By: Loveless

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6 AS INTRODUCED

7 An Act relating to income tax credits; creating
8 Ignite Oklahoma Act; defining terms; authorizing tax
9 credit for qualified investment in qualified start-up
10 business; specifying amount of, and criteria for,
11 credits which may be claimed; providing for
12 carryforward of unused credit; amending 74 O.S. 2011,
13 Section 5060.9, as amended by Section 44, Chapter
14 227, O.S.L. 2013 (74 O.S. Supp. 2016, Section
15 5060.9), which relates to powers and duties of
16 Oklahoma Science and Technology Research and
17 Development Board; providing for codification; and
18 providing an effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2357.404 of Title 68, unless
22 there is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Ignite Oklahoma
24 Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2357.405 of Title 68, unless
there is created a duplication in numbering, reads as follows:

As used in the "Ignite Oklahoma Act":

1 1. "Eligibility statement" means a statement authorized and
2 issued by the Oklahoma Science and Technology Research and
3 Development Board that a specified investment into a start-up
4 business meets applicable criteria and therefore qualifies for tax
5 credits authorized pursuant to this section. The Board shall
6 promulgate rules establishing criteria and procedures pursuant to
7 this act and shall determine eligibility.

8 2. "Equity and near-equity security" means common stock,
9 preferred stock, warrants or other rights to subscribe to stock or
10 its equivalent, or an interest in a limited liability company,
11 partnership, or subordinated debt that is convertible into, or
12 entitles the holder to receive upon its exercise, common stock,
13 preferred stock, a royalty or net profits interest, or an interest
14 in a limited liability company or partnership;

15 3. "Investor" means a taxpayer subject to the tax imposed by
16 Section 2355 of Title 68 of the Oklahoma Statutes who meets the
17 definition of an accredited investor pursuant to Regulation D of 17
18 C.F.R. § 230.500 et seq. of the Securities Act of 1933; provided, no
19 taxpayer shall qualify as an investor if the taxpayer is an entity
20 which is a trust or estate or if such taxpayer is an individual who
21 is an active employee, manager, director, board member or operator
22 of the entity into which the investment is being made;

23 4. "Qualified investment" means a nonrefundable investment by
24 an investor of at least Ten Thousand Dollars (\$10,000.00) for a

1 single round in an offering which is qualified under Rule 506 of
2 Regulation D of 17 C.F.R. § 230.500 et seq. of the Securities Act of
3 1933 and where the total capital raise equals or exceeds Three
4 Hundred Thousand Dollars (\$300,000.00) and the post-money valuation
5 does not exceed Ten Million Dollars (\$10,000,000.00). For purposes
6 of this section, "nonrefundable investment" means funds which are
7 held and do not expire for at least thirty-six (36) months from the
8 date of the transfer of funds, except in the event of an initial
9 public offering or merger or acquisition and "post-money valuation"
10 means the value of a qualified start-up business immediately after a
11 total capital raise, calculated by dividing the total amount
12 invested by the percentage ownership in the business received by
13 each investor.

14 5. "Qualified start up business" means a business which, at the
15 time of the taxpayer's initial investment:

- 16 a. has been operational for less than thirty-six (36)
17 months,
- 18 b. has generated, during the preceding tax year, annual
19 revenue in an amount less than Three Million Dollars
20 (\$3,000,000.00) which would otherwise be subject to
21 the provisions of Section 2355 of Title 68 of the
22 Oklahoma Statutes,
- 23 c. is not a holding company of any other entity,

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- 1 d. employs a majority of its employees and contractors in
2 this state,
- 3 e. is making an offering of equity or near-equity
4 security and has been determined by the Oklahoma
5 Science and Technology Research and Development Board
6 as eligible,
- 7 f. is not engaged in the business of oil and gas
8 exploration, real estate development or sales, retail
9 sales of food or clothing, farming, ranching, banking
10 or lending, or investment of funds in other
11 businesses; provided, this exclusion shall not apply
12 to an otherwise qualified start-up business which
13 provides goods or services including but not limited
14 to new technology, equipment or techniques to excluded
15 businesses, and
- 16 g. makes a reasonable effort to maintain its principal
17 location in the state for no less than thirty-six (36)
18 months.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2357.406 of Title 68, unless
21 there is created a duplication in numbering, reads as follows:

22 A. For taxable years beginning on or after January 1, 2018,
23 there shall be allowed a credit against the tax imposed by Section
24 2355 of Title 68 of the Oklahoma Statutes for a qualified investment

1 in a qualified start-up business for which an eligibility statement
2 has been issued by the Oklahoma Science and Technology Research and
3 Development Board.

4 B. The credit provided for in subsection A of this section
5 shall be equal to fifty-five percent (55%) of the amount of the
6 investment, subject to the following criteria:

7 1. Credits may only be claimed to offset tax liability
8 generated by a specific qualified investment for which the credits
9 are being claimed and not any tax liability generated from other
10 income of the taxpayer;

11 2. Credits shall apply only to income not otherwise exempt
12 under the Oklahoma Tax Code; and

13 3. No taxpayer may claim in excess of Five Hundred Fifty
14 Thousand Dollars (\$550,000.00) in total credits for a single tax
15 year, provided; the total amount claimed by a taxpayer may be from a
16 single investment or multiple investments.

17 C. Any credit claimed but not used in a taxable year may be
18 carried forward to each of the twenty (20) subsequent taxable years.

19 SECTION 4. AMENDATORY 74 O.S. 2011, Section 5060.9, as
20 amended by Section 44, Chapter 227, O.S.L. 2013 (74 O.S. Supp. 2016,
21 Section 5060.9), is amended to read as follows:

22 Section 5060.9. A. The Oklahoma Science and Technology
23 Research and Development Board shall have the power to:

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- 1 1. Make, amend and repeal bylaws for the management of the
2 Center;
- 3 2. Sue and be sued;
- 4 3. Make contracts and execute all instruments necessary or
5 convenient for carrying out the business of the Center;
- 6 4. Acquire, own, hold, dispose of and encumber real or personal
7 property of any nature, including tangible, intangible, commercial
8 or intellectual, or any interest therein;
- 9 5. Enter into agreements or other transactions with any
10 federal, state, county or municipal agency, authority or other
11 governmental entity and with any individual, corporation,
12 enterprise, association or any other entity involving research and
13 technology;
- 14 6. Acquire real property or an interest therein, by purchase or
15 foreclosure, where such acquisition is necessary or appropriate to
16 protect or secure any investment or loan in which the Center has an
17 interest;
- 18 7. Sell, transfer and convey any such property to a buyer, and
19 in the event such sale, transfer or conveyance cannot be effected
20 with reasonable promptness or at a reasonable price, to lease such
21 property to a tenant;
- 22 8. Invest any funds provided by the state and held in reserve
23 in funds not required for immediate disbursement and invest funds
24 received from gifts, grants, donations and other operations of the

1 Center in such investments as would be lawful for a private
2 corporation having purposes similar to the Center;

3 9. Borrow money and give guaranties, provided that the
4 indebtedness and other obligations of the Center shall be payable
5 solely out of the resources of the Center and shall not constitute a
6 pledge of the full faith and credit of the state or any of its
7 revenues;

8 10. Appoint officers, consultants, agents and advisors, and
9 prescribe their duties and compensation;

10 11. Appear on its own behalf or on behalf of the Center before
11 boards, commissions, departments or other agencies of municipal,
12 county or state government or federal government;

13 12. Procure insurance against any losses in connection with its
14 properties in such amounts from such insurers as may be necessary or
15 desirable;

16 13. Consent, subject to the provisions of any contract with
17 note-holders, whenever it considers it necessary or desirable in the
18 fulfillment of the goals and purposes of the Center, to the
19 modifications, with respect to the rate of interest, time payment or
20 of any installment, of principal and interest or any terms of any
21 contract or agreement of any kind to which the Center is a party;

22 14. Accept any and all donations, grants, bequests and devises,
23 conditional and otherwise, of money, property, services or other
24 things of value which may be received from the United States or any

1 agency thereof, any governmental agency, or any institution, person,
2 firm or corporation, public or private, to be held, used or applied
3 for any or all of the goals and purposes of the Center, in
4 accordance with the terms and conditions of any such grant;

5 15. Trade, buy or sell qualified securities;

6 16. Own, possess and take license in, patents, copyrights and
7 proprietary processes and negotiate and enter into contracts and
8 establish charges for the use of such patents, copyrights and
9 proprietary processes when such patents and licenses for innovation
10 or inventions result from research sponsored by the Center in a
11 private enterprise or when the Center finances a product developed
12 by a private enterprise;

13 17. Establish policies governing royalty payments to the Center
14 on patents and licenses for innovations or inventions arising in the
15 course of research sponsored by the Center at institutions of higher
16 education and nonprofit research foundations; such royalty policies
17 should reflect an appropriate sharing of legal risk as well as
18 financial return between the Center and such institution or
19 foundation; such patents and licenses shall be in keeping with the
20 patent policies of such institutions or foundations;

21 18. Conduct studies which are related to economic development,
22 involving product or process innovations;

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1 19. Solicit, study and assist in the preparation of business
2 plans and proposals of new or established enterprises of special
3 importance to the Oklahoma economy;

4 20. Prepare, publish and distribute such technological studies,
5 reports, bulletins and other materials as it considers appropriate,
6 subject only to the maintenance and responsibility for
7 confidentiality of the client proprietary information, and encourage
8 institutions of higher education to develop and disseminate similar
9 materials;

10 21. Sponsor, or co-sponsor with both private industry and
11 higher education institutions, special institutes, conferences and
12 demonstrations relating to the stimulation of innovation, science
13 and technologically oriented enterprises;

14 22. Participate with any state agency or institution of higher
15 education in developing specific goals, programs and performance
16 monitoring systems to assist in the development of basic research,
17 applied research and technology transfer of special importance to
18 the Oklahoma economy;

19 23. Provide scientific and technological data and information
20 required by the Governor, the Legislature, or its committees, and to
21 state agencies, institutions of higher education and cities, towns,
22 counties and school districts and to private citizens and groups,
23 within the limitations of the resources available to the Center;

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1 24. Provide training and practical experience for Oklahoma
2 researchers in the preparation of applications for peer-reviewed
3 grant competitions;

4 25. Facilitate public/private partnerships that will support
5 the creation of endowed chairs, scholarships, research grants, and
6 business opportunities;

7 26. Develop policies and procedures for partnering with and/or
8 between universities offering engineering or technology degrees in
9 Oklahoma to facilitate joint public/private technology research and
10 development projects using resources and facilities of such public
11 higher education institutions or private entities; provided that,
12 the Board shall utilize, and accord lead status to, Rogers State
13 University for coordinating and delivering higher education distance
14 learning opportunities initiated or developed by the Board;

15 27. Advertise for, accept, and fund proposals from
16 universities, private industries, towns, counties, municipalities,
17 and individuals to achieve its goals and purposes;

18 28. Collaborate with the various entities to develop
19 initiatives which foster economic development through technological
20 advancement;

21 29. Create institutes or centers with world-class research
22 teams that support the state's primary economic development thrusts;
23 and
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1 30. Exercise any other powers necessary for the operation and
2 functioning of the Center within the purposes authorized in this
3 act; and

4 31. Establish a program to determine whether or not a specified
5 investment into a start-up business meets the criteria of the Ignite
6 Oklahoma Act pursuant to Sections 1, 2 and 3 of this act. Such
7 program shall provide for the issuance of an eligibility statement
8 by the Oklahoma Science and Technology Research and Development
9 Board for investments which meet the applicable criteria.

10 B. The Center shall be exempt from all franchise, corporate
11 business and income taxes levied by the state. The manufacture or
12 sale of any products or processes which are the subject of any
13 agreement made by the Center, or any person entering into any
14 agreement with the Center shall not be exempt from any such taxes or
15 taxes applicable to such manufacture or sale.

16 C. The Center shall include in the annual business plan
17 appropriate administrative policies, including but not limited to
18 policies governing the classification, employment, promotion,
19 suspension, disciplinary action or dismissal of Center employees,
20 purchasing, travel, and reimbursement of employees. All actions
21 governed by said administrative policies shall be examined annually
22 in the independent audit required by Section 5060.22 of this title.
23 The Center shall not be subject to state purchasing laws, except
24 with respect to purchases required for the administrative expenses

1 of the Board, or laws concerning travel or reimbursement of state
2 employees. Professional service contracts executed by the Center
3 shall not be subject to any requirement of law relating to
4 competitive bidding.

5 Because many of the powers and duties of the Center involve
6 working closely with the private sector, certain employee positions
7 of the Center must be governed, classified and compensated in a
8 manner that compares equally to similar positions in the private
9 sector. Therefore, in the annual business plan, the Board shall
10 list, describe and justify all such positions and their compensation
11 and shall designate and place them in unclassified status, exempt
12 from the provisions of the Oklahoma Personnel Act. All other
13 employees and positions shall be classified and subject to the
14 provisions of the Merit System of Personnel Administration as
15 provided in the Oklahoma Personnel Act. Provided, nothing in this
16 section shall be construed to limit the authority of the Legislature
17 to specify the status of positions otherwise by law. Neither shall
18 the Board have the authority to circumvent, disregard or otherwise
19 disobey specific provisions of law regarding positions in the
20 Center.

21 D. Upon approval of the Board, the Center shall have the
22 authority to exercise the powers enumerated in subsection A of this
23 section.

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1 SECTION 5. This act shall become effective November 1, 2017.

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