

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 915

By: Howard and Hall of the
Senate

and

Caldwell (Trey) of the
House

CONFERENCE COMMITTEE SUBSTITUTE

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.

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:

1 A. As used in this section:

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

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

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

21 3. "Eligible Oklahoma venture capital company" means a lawfully
22 recognized business entity the primary business purpose of which is
23 to accumulate funds for making investments in lawful for profit
24

1 business entities and which is organized in any of the following
2 forms:

- 3 a. general partnership,
- 4 b. limited partnership,
- 5 c. limited liability partnership,
- 6 d. limited liability company,
- 7 e. corporation, or
- 8 f. other lawfully recognized business entity;

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

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

16 5. "Qualified equity investment" means a transfer of cash or
17 its equivalent by an accredited investor to an eligible Oklahoma
18 venture capital company and for purposes of the deduction authorized
19 by this section in an amount not in excess of Twenty-five Million
20 Dollars (\$25,000,000.00) by an accredited investor during a taxable
21 year.

22 B. For tax years 2022 through 2026, there shall be allowed a
23 deduction from Oklahoma taxable income or Oklahoma adjusted gross
24 income as determined pursuant to Section 2358 of Title 68 of the

1 Oklahoma Statutes equal to the amount of qualified equity investment
2 in an eligible Oklahoma venture capital entity made by an accredited
3 investor.

4 C. The maximum amount of qualified equity investment made by an
5 accredited investor for purposes of the deduction authorized by this
6 section shall not exceed Twenty-five Million Dollars
7 (\$25,000,000.00) for any taxable year of the investor.

8 D. Any qualified equity investment made for purposes of the
9 deduction authorized by this section shall be documented by the
10 issuance of shares of stock, membership interest or other evidence
11 of the equity interest acquired by the accredited investor. Such
12 evidence may take the form of physical shares or the electronic
13 equivalent of physical shares.

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

19 F. A qualified equity investment made by an accredited investor
20 for purposes of the deduction authorized by this section shall not
21 be returned by the eligible Oklahoma venture capital company to the
22 accredited investor, if the accredited investor is a natural person,
23 or to any person related to such natural person within the third
24 degree of consanguinity or affinity, for a period of three (3) years

1 from the date of the qualified equity investment unless the return
2 is in the form of a dividend or other payment agreed to prior to or
3 simultaneously with the equity investment transfer from the
4 accredited investor to the eligible Oklahoma venture capital company
5 and only if the return of some part of the qualified equity
6 investment is based on the financial performance of either the
7 eligible Oklahoma venture capital company or the financial
8 performance of one or more for profit business entities in which the
9 accumulated equity funds of the eligible Oklahoma venture capital
10 company are further invested or both such measures of financial
11 performance.

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

1 of the qualified equity investment is based on the financial
2 performance of either the eligible Oklahoma venture capital company
3 or the financial performance of one or more for profit business
4 entities in which the accumulated equity funds of the eligible
5 Oklahoma venture capital company are further invested or both such
6 measures of financial performance.

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

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

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

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

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