

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 378 By: Hall of the Senate
3 and
4 Boatman of the House
5
6

7 An Act relating to income tax; amending 68 O.S. 2021,
8 Section 2358.110, which relates to deduction for
9 qualified equity investments; modifying definition;
updating statutory language; and providing an
effective date.

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AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
and insert:

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

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

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

4 Section 2358.110 A. As used in this section:

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

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

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

4 a. has a net worth of Five Million Dollars
5 (\$5,000,000.00) or less or net income after federal
6 income taxes for each of the two preceding fiscal
7 years of Three Million Dollars (\$3,000,000.00) or
8 less,

9 b. is actively and principally engaged in a qualified
10 activity within the State of Oklahoma, or will be
11 actively and principally engaged in a qualified
12 activity with the State of Oklahoma after receipt of
13 the qualified investment by an eligible Oklahoma
14 venture capital company,

15 c. has no more than one hundred (100) employees, and

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

18 An eligible Oklahoma business venture that ceases to be an
19 eligible Oklahoma business venture solely because it exceeds the
20 limits set forth in subparagraph a or c of this paragraph shall
21 continue to qualify as an eligible Oklahoma business venture solely
22 with respect to eligible Oklahoma venture capital companies that
23 invested in such eligible Oklahoma business venture when it met all
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1 the qualifications set forth in subparagraphs a through d of this
2 paragraph;

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

8 a. ~~general partnership,~~

9 b. ~~limited partnership,~~

10 c. ~~limited liability partnership,~~

11 d. ~~limited liability company,~~

12 e. ~~corporation, or~~

13 f. ~~other lawfully recognized business entity that meets~~
14 the definition of "venture capital fund" set forth in
15 17 CFR Section 275.203(1)-1 and which:

16 a. has five (5) or more investors, and no investor,
17 including their closely related family members and
18 affiliates, may own or have a capital interest in more
19 than forty percent (40%) of the eligible Oklahoma
20 venture capital company's capitalization. As used in
21 this section, "closely related" means any of the
22 following in relation to the investor or the
23 investor's spouse:

24 (1) parents or grandparents,

1 (2) children, grandchildren or their spouses, or

2 (3) siblings or their spouses and their children,

3 b. has either:

4 (1) its principal place of business in the State of
5 Oklahoma, or

6 (2) has more than fifty percent (50%) of its assets,
7 operations, and employees in the State of
8 Oklahoma, and

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

11 Eligible Oklahoma venture capital company shall also include any
12 special purpose vehicle created and managed by an eligible Oklahoma
13 venture capital company for the sole purpose of investing in a
14 single eligible Oklahoma business venture;

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

16 a. a person,

17 b. a general partnership,

18 c. a limited partnership,

19 d. a limited liability partnership,

20 e. a limited liability company, or

21 f. a corporation; ~~and~~

22 5. a. "Qualified activity" means activity in any fields
23 having long-term economic or commercial value to the
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1 State of Oklahoma, which shall include, but is not
2 limited to:

3 (1) biotechnology,

4 (2) environmental technology,

5 (3) energy technology,

6 (4) agricultural technology,

7 (5) health care technology,

8 (6) information technology and communications,

9 (7) materials science and advanced manufacturing, and

10 (8) any other activity identified by the Oklahoma
11 Department of Commerce.

12 b. When designating additional qualified activities, the
13 Oklahoma Department of Commerce shall consider the
14 potential impact an investment in those activities
15 would have on the local and state economy and shall
16 consider the following factors:

17 (1) the number of employees located or to be located
18 in this state,

19 (2) state and local revenues generated from the
20 activity,

21 (3) the economic benefits to the state, and

22 (4) the type and amount of the investment the
23 activity is likely to generate.

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1 c. Qualified activities do not include any activity
2 principally engaged in by financial institutions,
3 commercial development companies, credit companies,
4 financial or investment advisors, brokerage or
5 financial firms, other investment funds or investment
6 fund managers, charitable and religious institutions,
7 oil and gas exploration companies, insurance
8 companies, residential or commercial real estate
9 investment companies or developers; and

10 6. "Qualified equity investment" means a transfer of at least
11 One Thousand Dollars (\$1,000.00) cash or its equivalent by an
12 accredited investor to an eligible Oklahoma venture capital company
13 and for purposes of the deduction authorized by this section in an
14 amount not in excess of Twenty-five Million Dollars (\$25,000,000.00)
15 by an accredited investor during a taxable year that has at least
16 sixty-five percent (65%) of its investments invested in eligible
17 Oklahoma business ventures.

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

1 C. The maximum amount of qualified equity investment made by an
2 accredited investor for purposes of the deduction authorized by this
3 section shall not exceed ~~Twenty-five Million Dollars~~
4 ~~(\$25,000,000.00)~~ Fifteen Million Dollars (\$15,000,000.00) for any
5 taxable year of the investor.

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

12 E. Records of the ~~equity interest acquired by an accredited~~
13 ~~investor~~ qualified investment into the eligible Oklahoma venture
14 capital company shall be maintained by the accredited investor and
15 the eligible Oklahoma venture capital company for a period of at
16 least five (5) years from the date the ~~equity~~ qualified investment
17 is made by an accredited investor. Records of the eligible Oklahoma
18 venture capital company's investment into an eligible Oklahoma
19 business venture shall be maintained by the eligible Oklahoma
20 venture capital company for a period of at least five (5) years from
21 the date of such investment.

22 F. A qualified equity investment made by an accredited investor
23 for purposes of the deduction authorized by this section shall not
24 be returned by the eligible Oklahoma venture capital company to the

1 accredited investor, if the accredited investor is a natural person,
2 or to any person closely related to such natural person ~~within the~~
3 ~~third degree of consanguinity or affinity~~, for a period of three (3)
4 years from the date of the qualified equity investment unless the
5 return is in the form of a dividend or other payment agreed to prior
6 to or simultaneously with the ~~equity~~ qualified investment ~~transfer~~
7 from the accredited investor to the eligible Oklahoma venture
8 capital company and only if the return of some part of the qualified
9 equity investment is based on the financial performance of either
10 the eligible Oklahoma venture capital company or the financial
11 performance of one or more ~~for profit~~ eligible Oklahoma business
12 ~~entities~~ ventures in which the ~~accumulated equity funds of the~~
13 eligible Oklahoma venture capital company ~~are further invested~~
14 invests or both such measures of financial performance.

15 G. A qualified equity investment made by an accredited investor
16 for purposes of the deduction authorized by this section shall not
17 be returned by the eligible Oklahoma venture capital company to the
18 accredited investor if the accredited investor is a lawful business
19 entity, or to any entity which owns ~~fifty-one~~ fifty-one percent
20 (51%) or more of the voting equity interest of the accredited
21 investor or to any lawful business entity with respect to which the
22 accredited investor owns ~~fifty-one~~ fifty-one percent (51%) or more
23 of the voting equity interest, within a period of five (5) years
24 from the date of the ~~equity~~ qualified investment unless the return

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

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

16 I. Each eligible Oklahoma venture capital company shall file an
17 annual report with the Oklahoma Department of Commerce and with the
18 Authority on or before February 15 of each year during which it
19 qualifies as an eligible Oklahoma venture capital company. This
20 report shall include information that the Oklahoma Department of
21 Commerce prescribes from time to time, including but not limited to
22 the following:

23 1. For each eligible Oklahoma business venture in which
24 qualified investments are made by the eligible Oklahoma venture

1 capital company during the reporting period, the name and address of
2 the eligible Oklahoma business venture, the amount of qualified
3 investments made by the eligible Oklahoma venture capital company,
4 the job creation anticipated and achieved by the eligible Oklahoma
5 business venture, and new products and technologies being developed
6 by the eligible Oklahoma business venture;

7 2. An affidavit prepared by the eligible Oklahoma venture
8 capital company that states:

9 a. at the time of each qualified investment, each
10 eligible Oklahoma business venture qualifies as an
11 eligible Oklahoma business venture under the
12 provisions of paragraph 2 of subsection A of this
13 section,

14 b. the name and address of each investor, and the amount
15 of cash contribution to the eligible Oklahoma venture
16 capital company of each investor who is entitled to
17 the deduction, and

18 c. the continued compliance by the eligible Oklahoma
19 venture capital company and the manager of the
20 eligible Oklahoma venture capital company with all
21 applicable state and federal securities laws and
22 regulations;

23 3. The Oklahoma Department of Commerce shall provide an annual
24 written status report to the Legislative Office of Fiscal

1 Transparency concerning the activities of all eligible Oklahoma
2 venture capital companies for each fiscal year. On or before
3 November 1 of each year, the Oklahoma Department of Commerce shall
4 make an annual report for the preceding fiscal year to the Governor
5 and the Legislative Office of Fiscal Transparency. The annual
6 report shall include but not be limited to the following
7 information:

- 8 a. the total number of investors and the aggregate amount
9 of committed cash contributions to all eligible
10 Oklahoma venture capital companies, categorized by the
11 types of business entities through which investors
12 conduct business and the geographical distribution of
13 investors,
- 14 b. the total number and amounts of qualified investments
15 made by each eligible Oklahoma venture capital
16 companies to eligible Oklahoma business venture,
17 categorized by type of businesses, amount of
18 investment, job creation anticipated and achieved,
19 geographical distribution, and new products and
20 technologies developed, and
- 21 c. the total amount of deductions granted to investors.

22 The contents of the annual reports from eligible Oklahoma
23 venture capital companies to the Oklahoma Department of Commerce
24 described in subsection I of this section shall be treated by the

1 Oklahoma Department of Commerce as confidential and shall not be
2 considered a public record under the Oklahoma Open Records Act. The
3 Oklahoma Department of Commerce may charge a fee for the
4 administration and processing of an annual report made by an
5 eligible Oklahoma venture capital company.

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

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

20 SECTION 2. This act shall become effective November 1, 2023."
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1 ENGROSSED SENATE
BILL NO. 378

By: Hall of the Senate

2
3 and

4 Boatman of the House

5
6 An Act relating to income tax; amending 68 O.S. 2021,
7 Section 2358.110, which relates to deduction for
8 qualified equity investments; modifying definition;
9 updating statutory language; and providing an
10 effective date.

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

12 SECTION 3. AMENDATORY 68 O.S. 2021, Section 2358.110, is
13 amended to read as follows:

14 Section 2358.110. A. As used in this section:

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

18 2. "Eligible Oklahoma business venture" means a lawful business
19 entity that is determined by the Oklahoma Department of Commerce for
20 receipt of an equity investment by an eligible Oklahoma venture
21 capital company. In determining whether an investment is a
22 qualified equity investment, the Department shall consider the
23 potential impact the investment would have on the local and state
24 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,

1 d. a limited liability partnership,

2 e. a limited liability company, or

3 f. a corporation; and

4 5. "Qualified equity investment" means a transfer of cash or
5 its equivalent by an accredited investor to an eligible Oklahoma
6 venture capital company that is invested with an eligible Oklahoma
7 business venture and for purposes of the deduction authorized by
8 this section in an amount not in excess of Twenty-five Million
9 Dollars (\$25,000,000.00) by an accredited investor during a taxable
10 year.

11 B. For tax years 2022 through 2026, there shall be allowed a
12 deduction from Oklahoma taxable income or Oklahoma adjusted gross
13 income as determined pursuant to Section 2358 of Title 68 of the
14 Oklahoma Statutes equal to the amount of qualified equity investment
15 in an eligible Oklahoma venture capital entity made by an accredited
16 investor.

17 C. The maximum amount of qualified equity investment made by an
18 accredited investor for purposes of the deduction authorized by this
19 section shall not exceed Twenty-five Million Dollars
20 (\$25,000,000.00) for any taxable year of the investor.

21 D. Any qualified equity investment made for purposes of the
22 deduction authorized by this section shall be documented by the
23 issuance of shares of stock, membership interest or other evidence
24 of the equity interest acquired by the accredited investor. Such

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

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

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 related to such natural person within the third
13 degree of consanguinity or affinity, for a period of three (3) years
14 from the date of the qualified equity investment unless the return
15 is in the form of a dividend or other payment agreed to prior to or
16 simultaneously with the equity investment transfer from the
17 accredited investor to the eligible Oklahoma venture capital company
18 and only if the return of some part of the qualified equity
19 investment is based on the financial performance of either the
20 eligible Oklahoma venture capital company or the financial
21 performance of one or more for profit business entities in which the
22 accumulated equity funds of the eligible Oklahoma venture capital
23 company are further invested or both such measures of financial
24 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 investment unless the return is in the
11 form of a dividend or other payment agreed to prior to or
12 simultaneously with the equity investment transfer from the
13 accredited investor to the eligible Oklahoma venture capital company
14 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 business entities in which the
18 accumulated equity funds of the eligible Oklahoma venture capital
19 company are further invested or both such measures of financial
20 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. If the Oklahoma Tax Commission determines, either from
4 information accompanying any applicable income tax return or
5 schedule, form or supporting documentation filed in order to claim
6 the deduction authorized by this section, that the requirements of
7 this section were not fulfilled, the Oklahoma Tax Commission shall
8 notify the taxpayer claiming the deduction that the deduction has
9 been disallowed and the income tax liability for the taxpayer shall
10 be recalculated. The taxpayer shall retain all rights authorized
11 pursuant to the provisions of the Uniform Tax Procedure Code and the
12 Oklahoma Income Tax Code in order to contest the disallowance of
13 part or all of such deductions.

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

17 SECTION 4. This act shall become effective November 1, 2023.

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