

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SUBCOMMITTEE  
4 RECOMMENDATION

5 FOR ENGROSSED

6 SENATE BILL NO. 900

By: Leewright of the Senate

and

Boatman of the House

7  
8  
9 SUBCOMMITTEE RECOMMENDATION

10 An Act relating to revenue and taxation; defining  
11 terms; providing income tax credit for certain equity  
12 investments; specifying amount of tax credit;  
13 prescribing tax years for which credit may be  
14 claimed; prescribing procedures related to  
15 identification of eligible business entities and  
16 preinvestment clearance process; imposing duties on  
17 Oklahoma Department of Commerce; prescribing  
18 procedures prior to equity investment; prescribing  
19 procedures after equity investment; providing for  
20 forms; providing for final application; providing for  
21 allocation of tax credit cap amount; providing for  
22 system to allow equity investors to determine cap  
23 amount remaining each fiscal year; prohibiting  
24 allocation of tax credit cap in excess of designated  
limit; requiring certain information to be  
confidential and providing exemption from Oklahoma  
Open Records Act; requiring adoption of rules by  
Oklahoma Department of Commerce; imposing fiscal year  
cap on tax credits; prohibiting credits to reduce  
income tax liability to less than zero; providing for  
carryover; providing for codification; providing an  
effective date; and declaring an emergency.

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

1           SECTION 1.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2358.8 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. As used in this section:

5           1. "Eligible business" means a business establishment of any  
6 legal form including, but not limited to, a partnership, limited  
7 liability company, corporation or any other legal form that meets at  
8 least one of the following requirements:

- 9           a. operates in a technology-based industry in this state,
- 10           b. is supported by federal small business innovation  
11           research grants in this state, or
- 12           c. is supported by technology development or seed capital  
13           investments made by the Oklahoma Center for the  
14           Advancement of Science and Technology;

15           2. "Equity investment" means an investment in common stock or  
16 preferred stock or its equivalent in a partnership, limited  
17 liability company or corporation. Equity investment shall not  
18 include:

- 19           a. new equity investments in an otherwise eligible  
20           business owned, or partially owned, by an investor or  
21           an investor's family members. For the purposes of  
22           this section, family members mean parents,  
23           grandparents, children, grandchildren or siblings of  
24           the investor, or

1           b. any fees or commissions paid by the investor or the  
2           eligible business; and

3       3. "Technology-based industry" means:

4           a. those manufacturing activities that are defined or  
5           classified in the NAICS Manual under Industry Sector  
6           Nos. 31, 32 and 33 and for which the applicable  
7           industry is included among the top one-third of  
8           manufacturing industries in at least two of the  
9           following categories:

10           (1) the amount of capital expenditures in computers  
11           and technology equipment, as identified by the  
12           Oklahoma Department of Commerce utilizing  
13           information from the United States Census Bureau,

14           (2) the proportion of highly paid production  
15           occupations defined as Standard Occupational  
16           Classification SOC-51, as identified by the  
17           Oklahoma Department of Commerce utilizing  
18           information derived from the United States Bureau  
19           of Labor Statistics, or

20           (3) the proportion of engineers relative to  
21           production occupations, as identified by the  
22           Oklahoma Department of Commerce utilizing  
23           information derived from the United States Bureau  
24           of Labor Statistics,

- 1           b.    those information technology and other computer-  
2                    related service activities defined or classified in  
3                    the NAICS Manual under Industry Group Nos. 5112, 5182,  
4                    5191 and 5415,
- 5           c.    those sound recording and film production activities  
6                    defined or classified in the NAICS Manual under  
7                    Industry Group Nos. 512110 and 5122,
- 8           d.    those scientific, research and development services  
9                    defined or classified in the NAICS Manual under  
10                  Industry Group No. 5417,
- 11          e.    those professional scientific, consulting, laboratory  
12                  and technical services defined or classified in the  
13                  NAICS Manual under Industry Group Nos. 5416, 5419 and  
14                  6215,
- 15          f.    those engineering and design services defined or  
16                  classified in the NAICS Manual under Industry Group  
17                  Nos. 5413 and 5414, or
- 18          g.    a business which otherwise qualifies pursuant to the  
19                  provisions of this act for purposes of making an  
20                  equity investment which either has its principal place  
21                  of business located within an entertainment district  
22                  as defined by Section 2393 of Title 68 of the Oklahoma  
23                  Statutes or which derives a significant amount of its  
24                  gross revenues from business activity conducted within

1 the geographical area of an entertainment district as  
2 defined by Section 2393 of Title 68 of the Oklahoma  
3 Statutes.

4 B. For tax years beginning on or after January 1, 2021, but not  
5 later than December 31, 2029, there shall be allowed a credit  
6 against the tax imposed pursuant to Section 2355 of Title 68 of the  
7 Oklahoma Statutes equal to fifty percent (50%) of the investment in  
8 the equity securities issued by an eligible business. No credit  
9 shall be authorized for any equity investment occurring prior to the  
10 effective date of this act.

11 C. 1. A prospective equity investor that seeks eligibility for  
12 the purposes of the tax credit authorized by this section shall  
13 submit an application to the Oklahoma Department of Commerce at  
14 least ninety (90) days prior to the date upon which the equity  
15 investment is made. The application shall include:

- 16 a. a business plan describing the proposed business for  
17 which eligibility is sought or a description of the  
18 primary business activity of an existing business with  
19 an operating history of at least six (6) months,
  - 20 b. a projection of the amount of capital being sought for  
21 the proposed business or existing business, and
  - 22 c. other information requested by the Oklahoma Department  
23 of Commerce.
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1           2. The Oklahoma Department of Commerce shall gather information  
2 necessary to determine if the business qualifies as a technology-  
3 based industry pursuant to the definition in subsection A of this  
4 section.

5           3. Prior to the time an investor makes an equity investment in  
6 an eligible business enterprise for which the tax credit authorized  
7 by this section will be claimed as a result of the investment, the  
8 investor shall obtain a preinvestment clearance document from the  
9 Oklahoma Department of Commerce on such form as may be prescribed  
10 for such purpose by the Department. The Department of Commerce  
11 shall identify the business entity in which the equity investment is  
12 proposed to be made and if the business qualifies pursuant to the  
13 provisions of this section, and all other requirements prescribed by  
14 this section are met, the Department shall issue the document to the  
15 person or business entity making application.

16           4. After the equity investment has been completed, the holder  
17 of the clearance document shall complete a final application  
18 document on such form as may be prescribed by the Department for  
19 such purpose to identify the business entity in which the investment  
20 was made, the amount of the equity investment, and such other  
21 information as the Department may require.

22           5. The Department shall maintain a record of finalized equity  
23 investments made during each fiscal year by persons or business  
24 entities as provided by this section and shall maintain a system so

1 that prospective equity investors seeking preinvestment clearances  
2 will be able to determine the amount of the tax credit cap remaining  
3 during each fiscal year as required by subsection E of this section.

4 6. If the Department receives an application regarding a  
5 prospective equity investment amount which would cause the fiscal  
6 year cap amount to be exceeded, the Department shall notify the  
7 applicant and no tax credits may be allocated in excess of the  
8 applicable tax credit cap total.

9 7. The Oklahoma Department of Commerce shall send a copy of the  
10 final agreement regarding the equity investment to the Oklahoma Tax  
11 Commission and the investor shall attach the original or a copy of  
12 the signed agreement to the tax return for the applicable tax year  
13 with respect to which such tax credits will be claimed.

14 8. Information received during the application process by the  
15 Oklahoma Department of Commerce shall be considered confidential  
16 information and shall not be subject to the provisions of the  
17 Oklahoma Open Records Act.

18 D. The Oklahoma Department of Commerce shall promulgate rules  
19 for the purpose of administering the provisions of this act  
20 including, but not limited to, allocation of the tax credit cap  
21 amount.

22 E. For the fiscal year beginning July 1, 2021, and each  
23 applicable fiscal year thereafter, the total amount of tax credits  
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1 allowed for each fiscal year shall not exceed Seven Million Five  
2 Hundred Thousand Dollars (\$7,500,000.00).

3 F. The tax credit authorized pursuant to the provisions of this  
4 section shall not be used to reduce an income tax liability to less  
5 than zero (0).

6 G. To the extent not used, the credit authorized by the  
7 provisions of this section may be carried over, in order, to each of  
8 the succeeding ten (10) taxable years.

9 SECTION 2. This act shall become effective July 1, 2021.

10 SECTION 3. It being immediately necessary for the preservation  
11 of the public peace, health or safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

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