



## Ohio Revised Code

### Section 122.851 Certification as Ohio venture capital operating company.

Effective: September 30, 2021

Legislation: House Bill 110 - 134th General Assembly

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(A) As used in this section:

(1) "Venture capital operating company" has the same meaning as in 29 C.F.R. 2510.3-101.

(2) "Ohio venture capital operating company" means a venture capital operating company certified by the director of development as having met the requirements prescribed by division (B) of this section. A venture capital operating company is an Ohio venture capital operating company only for so long as the certification is valid.

(3) "Ohio business" means a business that, in either the calendar year in which a capital gain from the business is recognized by the Ohio venture capital operating company or its direct or indirect investors or the calendar year in which the Ohio venture capital operating company distributes an equity interest or security in the business, has its headquarters in this state and employs more than one-half of the total number of its full-time equivalent employees in this state. For the purpose of this section, an employee is employed in this state if the business is required to withhold income tax under section 5747.06 of the Revised Code for fifty per cent or more of the compensation paid to the employee in either the calendar year in which the Ohio venture capital operating company or its direct or indirect investors recognize a capital gain from the business or the calendar year in which the Ohio venture capital operating company distributes an equity interest or security in the business, as applicable.

(4) "Qualifying interest" means a direct or indirect ownership interest acquired through an investment of cash or cash equivalent made in, or the provision of services to, a venture capital operating company during the period for which it was certified as an Ohio venture capital operating company.

(B)(1) A venture capital operating company may apply to the director of development for certification as an Ohio venture capital operating company if it manages, or has capital commitments



of, at least fifty million dollars in active assets and at least two-thirds of its managing and general partners are residents of Ohio under division (I) of section 5747.01 of the Revised Code. The director, in consultation with the tax commissioner, shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application.

(2) The director shall review and make a determination with respect to each application submitted under this division within sixty days of receipt. The director shall grant certification to any applicant that meets the criteria prescribed by this division. The director shall decline certification of any applicant that does not meet such criteria. The director shall notify the applicant and the tax commissioner of the director's determination in writing.

(C)(1) Certification as an Ohio venture capital operating company is valid for as long as the company continues to qualify as a venture capital operating company and meets the criteria prescribed by division (B)(1) of this section.

(2) A company that no longer qualifies as a venture capital operating company or no longer meets the criteria prescribed by division (B)(1) of this section shall notify the director within thirty days of the date the company ceases to qualify.

(3) Upon receiving such a notification or upon otherwise discovering that an Ohio venture capital operating company no longer qualifies for certification, the director shall issue a written notice of revocation to the venture capital operating company and the tax commissioner. The notice shall state the effective date of the revocation, which shall be the date the company ceased to qualify for certification as an Ohio venture capital operating company.

(4) An Ohio venture capital operating company receiving such a notice may contest the director's decision to revoke its certification or the effective date of that revocation by submitting additional information or documentation to the director and requesting reconsideration in writing within thirty days of the notice of revocation based on that information or documentation. The director shall review and evaluate any such requests within thirty days of receipt. The director shall notify the company and tax commissioner in writing of the director's decision on the request, which shall not be subject to appeal or further review.



(D)(1) On or after the first day of January and on or before the first day of February of each year, a company that is certified as an Ohio venture capital operating company shall provide the following information, on forms prescribed by the director of development, to the director and the tax commissioner:

- (a) The name, social security or federal employer identification number, and ownership percentage of each person with a qualifying interest in the company;
- (b) The amount of capital gains generated during the portion of the previous calendar year during which the company was certified as an Ohio venture capital operating company;
- (c) A description of the company's investments that generated the capital gains described in division (D)(1)(b) of this section, including the date of sale and whether the investment was in an Ohio business;
- (d) The amount of, and basis in, any equity interests or securities distributed to each investor, arranged by entity, while the company was certified as an Ohio venture capital operating company and whether the entity is an Ohio business;
- (e) Any other information the director, in consultation with the tax commissioner, considers relevant and necessary to administer the deduction allowed under division (A)(35) of section 5747.01 of the Revised Code.

(2) The director shall review the information submitted under division (D)(1) of this section by an Ohio venture capital operating company within sixty days of receipt. If the company generated capital gains that qualify for the deduction allowed under division (A)(35) of section 5747.01 of the Revised Code or distributed equity interests or securities that, when sold, will qualify for the deduction once income is recognized from its disposition, the director shall issue a certificate to the company. The certificate shall include a unique number and the following information:

- (a) The total amount of capital gains generated during the portion of the year during which the company was certified as an Ohio venture capital operating company;



(b) The portion of the capital gains attributable to the company's investments in Ohio businesses; and

(c) The total amount of, and basis in, any equity interests or securities distributed during the portion of the year during which the company was certified as an Ohio venture capital operating company;

(d) The portion of the distributed equity interests or securities attributable to the company's investments in Ohio businesses;

(e) The portion of the amounts described in divisions (D)(2)(a) and (b) of this section attributable to each individual with a qualifying interest in the company;

(f) Any other information the director or tax commissioner considers necessary for the administration of the deduction allowed under division (A)(35) of section 5747.01 of the Revised Code.

(E) An Ohio venture capital operating company shall provide each person with a qualifying interest in the company with a copy of the certificate issued under division (D) of this section and any other documentation necessary to compute the adjustments under division (A)(35) of section 5747.01 of the Revised Code. A pass-through entity that receives a certificate issued under this division from an Ohio venture capital operating company shall provide its investors with a copy of the certificate and any other documentation necessary to compute the adjustments under division (A)(35) of section 5747.01 of the Revised Code.

A taxpayer claiming a deduction under division (A)(35)(a) of section 5747.01 of the Revised Code shall provide, upon request of the tax commissioner, a copy of that certificate. The taxpayer shall retain a copy of the certificate for four years from the later of the final filing date of the return on which the deduction was claimed or the date the return on which the deduction was claimed is filed.

(F) The director of development, in consultation with the tax commissioner, may adopt rules in accordance with Chapter 119. of the Revised Code as are necessary to administer this section.