

House Bill 1440

By: Representatives Smith of the 175th, Turnquest of the 73rd and Dukes of the 161st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions regarding assignment of corporate income tax
3 credits; to provide for state insurance premium tax credits with respect to certified capital
4 companies; to provide for definitions; to provide for procedures, conditions, and limitations;
5 to provide for powers, duties, and authority of the Office of Treasury and Fiscal Services; to
6 provide for related matters; to provide effective dates; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended by striking Code Section 48-7-42, relating to assignment of corporate income tax
12 credits, and inserting in its place a new Code Section 48-7-42 to read as follows:

13 "48-7-42.

14 (a) As used in this Code section, the term 'affiliated entity' means:

15 (1) A corporation that is a member of the taxpayer's 'affiliated group' within the meaning
16 of Section 1504(a) of the Internal Revenue Code; or

17 (2) An entity affiliated with a corporation, business, partnership, or limited liability
18 company taxpayer, which entity:

19 (A) Owns or leases the land on which a project is constructed;

20 (B) Provides capital for construction of the project; and

21 (C) Is the grantor or owner under a management agreement with a managing company
22 of the project.

23 (b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is
24 eligible for the taxable year (such eligibility being determined for this purpose without
25 regard to any limitation imposed by reason of the taxpayer's precredit income tax liability),

1 the taxpayer may elect to assign such credit in ~~its entirety to another affiliated entity~~ whole
 2 or in part to one or more affiliated entities for such taxable year by attaching a statement
 3 to the taxpayer's return for the taxable year; provided, however, that no carryover
 4 attributable to the unused portion of any previously claimed or assigned credit may be
 5 assigned or reassigned, except as provided in subsection (d) of this Code section. In the
 6 case of any credit that must be claimed in installments in more than one taxable year, the
 7 election under this subsection may be made on an annual basis with respect to each such
 8 installment, provided that the taxpayer shall notify the commissioner with respect to the
 9 assignment of each such installment by filing a separate copy of the election statement for
 10 such installment no later than the time of filing of the taxpayer's state income tax return for
 11 such taxable year. Once made, an election under this subsection shall be irrevocable.

12 (c) The recipient of a tax credit assigned under subsection (b) of this Code section shall
 13 attach a statement to its return identifying the assignor of the tax credit, in addition to
 14 providing any other information required to be provided by a claimant of the assigned tax
 15 credit.

16 (d) If the assignor and the recipient of a tax credit assigned under subsection (b) of this
 17 Code section cease to be affiliated entities, any carryover attributable to the unused portion
 18 of such credit shall be transferred back to the assignor of the credit. Such assignor shall be
 19 permitted to use any such carryover itself, and also shall be permitted to assign such
 20 carryover to ~~another affiliated entity~~ one or more affiliated entities, as if such carryover
 21 were an income tax credit for which the assignor became eligible in the taxable year in
 22 which the carryover was transferred back to the assignor.

23 (e) The assignor and recipient of a tax credit assigned under subsection (b) of this Code
 24 section shall be jointly and severally liable for any tax (plus interest and penalties, if any)
 25 attributable to the disallowance or recapture of the assigned credit."

26 SECTION 2.

27 Said title is further amended by adding a new chapter at the end thereof, to be designated
 28 Chapter 18, to read as
 29 follows:

30 "CHAPTER 18

31 48-18-1.

32 As used in this chapter, the term:

33 (1) 'Affiliate' of a certified capital company or insurance company means:

1 (A) Any person, directly or indirectly, who is beneficially owning, whether through
2 rights, options, convertible interests, or otherwise, controlling, or holding power to vote
3 15 percent or more of the outstanding voting securities or other voting ownership
4 interests of the certified capital company or insurance company, as applicable;

5 (B) Any person 15 percent or more of whose outstanding voting securities or other
6 voting ownership interests are, directly or indirectly, beneficially owned, whether
7 through rights, options, convertible interests, or otherwise, controlled, or held with
8 power to vote by the certified capital company or insurance company, as applicable;

9 (C) Any person, directly or indirectly, controlling, controlled by, or under common
10 control with the certified capital company or insurance company, as applicable;

11 (D) A partnership or limited liability company in which the certified capital company
12 or insurance company, as applicable, is a general partner, manager, or managing
13 member, as the case may be; or

14 (E) Any person who is an officer, director, employee, or agent of the certified capital
15 company or insurance company, as applicable, or an immediate family member of such
16 officer, director, employee, or agent.

17 (2) 'Allocation date' means the date on which the certified investors of a certified capital
18 company are allocated certified capital by the department pursuant to Code
19 Section 48-18-4.

20 (3) 'Certified capital' means an investment of cash by a certified investor in a certified
21 capital company which fully funds the purchase price of an equity interest in the certified
22 capital company or a qualified debt instrument issued by the certified capital company.

23 (4) 'Certified capital company' means a partnership, corporation, trust, or limited liability
24 company, whether organized on a profit or not for profit basis, that has as its primary
25 business activity the investment of cash in qualified businesses and that is certified by the
26 department as meeting the criteria of this law.

27 (5) 'Certified investor' means any insurance company that contributes certified capital
28 pursuant to an allocation of tax credits under Code Section 48-18-4.

29 (6) 'Department' means the Office of Treasury and Fiscal Services.

30 (7) 'Person' means any natural person or entity, including a corporation, general or
31 limited partnership, trust, or limited liability company.

32 (8) 'Qualified business' means a business that meets all of the following conditions as of
33 the time of a certified capital company's first investment in the business:

34 (A) Is headquartered and has its principal business operations located in this state;

35 (B) Is a small business concern as defined in Section 121.301 of the small business
36 size regulations of the U.S. Small Business Administration, 13 CFR 121.301;

1 (C) Has fewer than 200 employees and at least 75 percent of the employees are
2 employed in the state; and

3 (D) Is predominantly engaged in professional services provided by accountants,
4 lawyers, or physicians; businesses predominantly engaged in retail sales or the selling
5 of real estate shall not constitute a qualified business.

6 (9) 'Qualified debt instrument' means a debt instrument issued to a certified investor by
7 a certified capital company, at par value or a premium, with an original maturity date of
8 at least five years from date of issuance and a repayment schedule that is no faster than
9 a level principal amortization over five years and that contains no interest, distribution,
10 or payment features that are related to the profitability of the certified capital company
11 or the performance of the certified capital company's investment portfolio until such time
12 as the certified capital company is permitted to make distributions other than qualified
13 distributions under Code Section 48-18-6.

14 (10) 'Qualified distribution' means any distribution or payment by a certified capital
15 company in connection with any of the following:

16 (A) Reasonable costs and expenses of forming, organizing, and syndicating the
17 certified capital company not to exceed 2 1/2 percent of the certified capital of the
18 certified capital company, including the costs of financing and insuring the obligations
19 of the certified capital company;

20 (B) Reasonable costs and expenses of managing and operating the certified capital
21 company, including but not limited to reasonable and necessary fees paid for
22 professional services, such as legal and accounting services, related to the formation
23 and operation of the certified capital company and an annual management fee in an
24 amount that does not exceed 2 1/2 percent of the certified capital of the certified capital
25 company; and

26 (C) Any projected increase in federal or state taxes of the equity owners of a certified
27 capital company resulting from the earnings or other tax liability of the certified capital
28 company to the extent that the increase is related to the ownership, management or
29 operation of a certified capital company or issuance, repayment, or redemption of
30 qualified debt instruments of the certified capital company.

31 (11) 'Qualified investment' means the investment of cash by a certified capital company
32 in a qualified business for the purchase of any debt, debt participation, equity, or hybrid
33 security, of any nature and description whatsoever, including a debt instrument or
34 security which has the characteristics of debt but which provides for conversion into
35 equity or equity participation instruments such as options or warrants.

36 (12) 'Qualified technology business' means a qualified business less than two years old
37 at the time of the initial investment in such business by a certified capital company, that

1 had, together with its affiliates, less than \$3 million in annual revenue for the fiscal year
 2 immediately preceding the fiscal year of such investment on a consolidated basis in
 3 conformance with generally accepted accounting principles, and that is engaged on the
 4 date of such investment in development of initial product or service offerings involving:

5 (A) Biotechnology;

6 (B) The industrial use of microorganisms or biological techniques;

7 (C) Biomedical engineering and the use of engineering technology, instrumentation,
 8 and methods to solve medical problems;

9 (D) Pharmacology;

10 (E) The uses and manufacture of drugs;

11 (F) Pharmaceutical research, development, and testing; or

12 (G) Bioagriculture.

13 (13) 'State premium tax liability' means any state insurance premium tax liability
 14 incurred by an insurance company under the provisions of Code Sections 33-8-4 and
 15 33-8-5.

16 (14) 'Tax credit' means the credit against state premium tax liability which is earned by
 17 a certified investor in connection with an investment of certified capital in a certified
 18 capital company pursuant to this chapter.

19 (15) 'Tax credit allocation claim' means a claim for allocation of tax credits prepared and
 20 executed by an insurance company on a form provided by the department and filed by a
 21 certified capital company with the department. The form shall include an affidavit of the
 22 insurance company pursuant to which such insurance company shall become legally
 23 bound and irrevocably committed to make an investment of certified capital in a certified
 24 capital company in the amount allocated (even if such amount is less than the amount of
 25 the claim), subject only to the receipt of an allocation pursuant to Code Section 48-18-4.

26 48-18-2.

27 (a) The director of the department shall establish by rule or regulation the procedures for
 28 making an application to become a certified capital company. The applicant shall pay a
 29 nonrefundable application fee of \$7,500.00 at the time of filing the application with the
 30 department.

31 (b) A certified capital company's equity capitalization from the time of seeking
 32 certification through the date of receipt of an allocation of certified capital must be
 33 \$500,000.00 or more and must be in the form of unencumbered cash, marketable securities,
 34 or other liquid assets.

35 (c) The department shall review the organizational documents of each applicant for
 36 certification and the business history of the applicant and shall determine that the

1 applicant's cash, marketable securities, and other liquid assets are at least \$500,000.00. As
2 part of its application, each applicant shall submit to the department its balance sheet,
3 audited with an unqualified opinion of a firm of independent certified public accountants,
4 of a date no more than 35 days prior to the date of the application.

5 (d) The department shall verify that at least two principals of the certified capital company
6 or at least two persons employed or engaged to manage the funds of the certified capital
7 company have not less than two years of experience in the venture capital industry.

8 (e) The certified capital company shall certify that within 60 days of the investment of
9 certified capital in the certified capital company, at least one of such principals or managers
10 of the certified capital company shall be primarily located in an office of the certified
11 capital company which is based in this state.

12 (f) Any offering material involving the sale of securities of the certified capital company
13 shall include the following statement:

14 'By authorizing the formation of a certified capital company, the state does not
15 necessarily endorse the quality of management or the potential for earnings of such
16 company and is not liable for damages or losses to a certified investor in the company.

17 Use of the word "certified" in an offering does not constitute a recommendation or
18 endorsement of the investment by the Office of Treasury and Fiscal Services. In the
19 event applicable provisions of this law are violated, the state may require forfeiture of
20 unused tax credits and repayment of used tax credits.'

21 (g) Within 30 days of application, the department shall issue the certification or shall
22 refuse the certification and communicate in detail to the applicant the grounds for the
23 refusal, including suggestions for the removal of those grounds. If an applicant submits an
24 amended application within 15 days of receipt of refusal by the department, the department
25 shall have 15 days from the receipt of such amended application by which to communicate
26 its approval or refusal of such amended application to the applicant. The department shall
27 review and approve or reject applications in the order submitted, and in the event more than
28 one application is received by the department on any date, all such applications shall be
29 reviewed and approved simultaneously, except in the case of incomplete applications or
30 applications for which additional information is requested by the department and is not
31 supplied by the applicant within the allowable time limits established by the department.

32 (h) No insurance company or any affiliate of an insurance company shall, directly or
33 indirectly, own whether through rights, options, convertible interests, or otherwise 15
34 percent or more of the voting equity interests of or manage a certified capital company or
35 control the direction of investments for a certified capital company. This provision shall
36 not preclude a certified investor, insurance company, or any other person from:

1 (1) Exercising its legal rights and remedies which may include interim management of
2 a certified capital company in the event that a certified capital company is in default of
3 its statutory obligations or its contractual obligations to a certified investor, insurance
4 company, or other person; or

5 (2) Establishing controls to ensure that the certified capital company satisfies the
6 requirements of subsections (a) and (f) of Code Section 48-18-5.

7 (i) A certified capital company may obtain a guaranty, indemnity, bond, insurance policy,
8 or other payment undertaking for the benefit of its certified investors from any entity;
9 provided that, in no case shall more than one certified investor of such certified capital
10 company or affiliates of such certified investor be entitled to provide such guaranty,
11 indemnity, bond, insurance policy, or other payment undertaking in favor of the certified
12 investors of the certified capital company and its affiliates in this state.

13 48-18-3.

14 (a) Any certified investor who makes an investment of certified capital pursuant to an
15 allocation of tax credits under Code Section 48-18-4 shall, in the year of investment, earn
16 a vested credit against state premium tax liability equal to 100 percent of the certified
17 investor's investment of certified capital. After January 1, 2006, a certified investor shall
18 be entitled to take up to 10 percent of such vested tax credits in any taxable year to reduce
19 the certified investor's state premium tax liability for such taxable year of the certified
20 investor, plus 10 percent of the original amount of any unused tax credits carried forward
21 pursuant to subsection (b) of this Code section.

22 (b) The tax credit that may be applied against state premium tax liability in any one year
23 may not exceed the state premium tax liability of the certified investor for such taxable
24 year. All unused tax credits against state premium tax liability may be carried forward
25 indefinitely and used in any subsequent year until the tax credits are utilized in full.

26 (c) A certified investor shall not be required to reduce the amount of tax liability included
27 with respect to its state premium tax liability in connection with ratemaking for any
28 insurance contract written in this state because of a reduction in the certified investor's
29 actual state premium tax liability as a result of tax credits allowed under this chapter.

30 (d) If the taxes paid by a certified investor with respect to its state premium tax liability
31 constitute a credit against any other tax which is imposed by this state, the certified
32 investor's credit against such other tax shall not be reduced by virtue of the reduction in the
33 certified investor's state premium tax liability as a result of tax credits allowed under this
34 chapter.

35 (e) A certified investor shall not be subject to additional or retaliatory tax as a result of
36 claiming tax credits allowed under this chapter.

1 48-18-4.

2 (a) The aggregate amount of certified capital for which tax credits shall be allowed for all
3 certified investors under this act shall not exceed the amount which would entitle all
4 certified investors in certified capital companies to take aggregate tax credits of \$7.5
5 million per year for ten years. No certified capital company, on an aggregate basis with its
6 affiliates, may file tax credit allocation claims in excess of the maximum amount of
7 certified capital for which tax credits may be allowed as provided in this subsection.

8 (b) Certified capital for which tax credits are allowed will be allocated to certified
9 investors in certified capital companies in the order that tax credit allocation claims are
10 received by the department from such certified capital companies on behalf of their
11 certified investors. All filings made on the same day shall be treated as having been made
12 contemporaneously.

13 (c) In the event that two or more certified capital companies file tax credit allocation
14 claims with the department on behalf of their respective certified investors on the same day,
15 and the amount of such tax credit allocation claims exceeds in the aggregate the limit of
16 available tax credits under the provisions of subsection (a) of this Code section, capital for
17 which tax credits are allowed shall be allocated among the certified investors who filed on
18 that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation
19 for any one certified investor shall be the product of a fraction, the numerator of which is
20 the amount of the tax credit allocation claim filed on behalf of such certified investor and
21 the denominator of which is the total of all tax credit allocation claims filed on behalf of
22 all certified investors on such day, multiplied by the aggregate limitation as provided in
23 subsection (a) of this Code section or such lesser amount of tax credits that remains
24 unallocated on such day.

25 (d) Within ten business days after the department receives a tax credit allocation claim
26 filed by a certified capital company on behalf of one or more of its certified investors, the
27 department shall notify the certified capital company of the amount of tax credits allocated
28 to each of the certified investors in such certified capital company.

29 (e) In the event a certified capital company does not receive an investment of certified
30 capital equaling the amount of premium tax credits allocated to a certified investor for
31 which it filed a tax credit allocation claim from such certified investor or affiliate of such
32 certified investor within ten business days of its receipt of notice of allocation, that portion
33 of the tax credits allocated to such certified investor in the certified capital company shall
34 be forfeited, and the department shall reallocate that certified capital among the other
35 certified investors in all certified capital companies on a pro rata basis with respect to the
36 tax credit allocation claims filed on behalf of such certified investors by all certified capital
37 companies. The department is authorized to levy a fine of not more than \$50,000.00 on

1 any certified investor that does not invest, or have an affiliate invest, the full amount of
2 certified capital allocated by the department to such certified investor in accordance with
3 the tax credit allocation claim filed on its behalf.

4 (f) The maximum amount of tax credit allocation claims that may be filed on behalf of any
5 one certified investor, on an aggregate basis with its affiliates, in one or more certified
6 capital companies, shall not exceed the greater of \$10 million or 15 percent of the
7 aggregate limitation as provided in subsection (a) of this Code section.

8 48-18-5.

9 (a) To continue to be certified, a certified capital company must make qualified
10 investments according to the following schedule:

11 (1) Within the period ending three years after its allocation date, a certified capital
12 company must have made qualified investments cumulatively equal to 30 percent of its
13 certified capital;

14 (2) Within the period ending five years after its allocation date, a certified capital
15 company must have made qualified investments cumulatively equal to 50 percent of its
16 certified capital; and

17 (3) For purposes of this subsection, each \$1.00 of qualified investment made in a
18 qualified business having its headquarters or principal place of business in a county
19 designated tier 1 or tier 2 pursuant to Code Section 48-7-40, as amended, shall be treated
20 as respectively, \$2.00 and \$1.50.

21 (b) The aggregate cumulative amount of all qualified investments made by the certified
22 capital company from its allocation date shall be considered in the calculation of the
23 percentage requirements under this chapter. Any funds received from a qualified
24 investment may be invested in another qualified investment and shall count toward any
25 requirement in this chapter with respect to investments of certified capital.

26 (c) Any business which is classified as a qualified business at the time of the first
27 investment in said business by a certified capital company shall remain classified as a
28 qualified business and may receive follow-on investments from any certified capital
29 company, and such follow-on investments shall be qualified investments even though such
30 business may not meet the definition of a qualified business at the time of such follow-on
31 investments.

32 (d) No qualified investment may be made if the aggregate investment by the certified
33 capital company in the qualified business following such investment would exceed 15
34 percent of the total certified capital of the certified capital company at the time of
35 investment.

1 (e) At its option, a certified capital company, prior to making a proposed investment in a
2 specific business, may request from the department a written opinion that the investment
3 which it proposes to make should be considered a qualified investment. Upon receiving
4 such a request, the department shall have ten business days to determine whether or not the
5 proposed investment meets the definition of a qualified investment and notify the certified
6 capital company of its determination and an explanation thereof. If the department fails
7 to notify the certified capital company with respect to the proposed investment within the
8 ten day period, the proposed investment shall be deemed to be a qualified investment. If
9 the department determines that the proposed investment does not meet all applicable
10 criteria, the department may nevertheless consider the business a qualified investment and
11 approve the investment if the department determines that the proposed investment will
12 further state economic development.

13 (f) All certified capital not currently invested in qualified investments by the certified
14 capital company must be invested in one or more of the following:

15 (1) Cash deposited with a federally insured financial institution;

16 (2) Certificates of deposit in a federally insured financial institution;

17 (3) Investment securities that are obligations of the United States, its agencies or
18 instrumentalities, or obligations that are guaranteed fully as to principal and interest by
19 the United States;

20 (4) Debt instruments rated at least 'AA' or its equivalent by a nationally recognized rating
21 organization, or issued by, or guaranteed with respect to payment by, an entity whose
22 unsecured indebtedness is rated at least 'AA' or its equivalent by a nationally recognized
23 credit rating organization, and which is not subordinated to other unsecured indebtedness
24 of the issuer or the guarantor, as the case may be;

25 (5) Obligations of this state, or any municipality in this state, or any political subdivision
26 thereof;

27 (6) Commercial paper rated at least A1 or P1 by Standard and Poor's Ratings Services
28 or Moody's Investor Service, Inc., with a maturity of no more than 270 days; or

29 (7) Any other investments approved in advance and in writing by the department.

30 (g) Each certified capital company shall report the following to the department:

31 (1) As soon as practicable after the receipt of certified capital, each certified capital
32 company shall report the following to the department:

33 (A) The name of each certified investor from which the certified capital was received,
34 including such certified investor's insurance premium tax identification number;

35 (B) The amount of each certified investor's investment of certified capital and tax
36 credits; and

37 (C) The date on which the certified capital was received.

1 (2) On an annual basis, on or before January 31:

2 (A) The amount of the certified capital company's certified capital at the end of the
3 immediately preceding year;

4 (B) Whether or not the certified capital company has invested more than 15 percent of
5 its total certified capital in any one qualified business;

6 (C) A description of all qualified investments that the certified capital company made
7 during the previous calendar year; and

8 (D) For informational purposes only, the total number of permanent, full-time jobs
9 either created or retained by the qualified business during the calendar year, the average
10 wage of the jobs created or retained, the industry sectors in which the qualified
11 businesses operate, and any additional capital invested in qualified businesses from
12 sources other than certified capital companies.

13 (3) Each certified capital company shall provide to the department annual audited
14 financial statements, which shall include the opinion of an independent certified public
15 accountant regarding the financial statements, within 90 days of the close of the fiscal
16 year. The audit or such other review performed by the independent certified public
17 accountant shall address the methods of operation and conduct of the business of the
18 certified capital company to determine if the certified capital company is complying with
19 the statutes and program rules and that the funds received by the certified capital
20 company have been invested as required within the time limits provided by subsection (a)
21 of this Code section; and

22 (4) On or before January 31 of each year, each certified capital company shall pay an
23 annual, nonrefundable certification fee of \$5,000.00 to the department.

24 48-18-6.

25 A certified capital company may make qualified distributions at any time. In order to make
26 a distribution from certified capital, other than a qualified distribution, a certified capital
27 company must have made qualified investments in qualified technology businesses in an
28 amount cumulatively equal to at least 35 percent of its certified capital, and aggregate
29 qualified investments, including such qualified technology business investments, in an
30 amount cumulatively equal to at least 100 percent of its certified capital. A certified capital
31 company may, however, make payments of principal and interest on its indebtedness
32 without any restriction whatsoever, including payments of indebtedness of the certified
33 capital company on which certified investors earned tax credits.

1 48-18-7.

2 (a) The department shall conduct an annual review of each certified capital company to
3 determine if the certified capital company is abiding by the requirements of certification,
4 to advise the certified capital company as to the eligibility status of its qualified
5 investments, and to ensure that no investment has been made in violation of this chapter.
6 The cost of the annual review shall be paid by each certified capital company according to
7 a reasonable fee schedule adopted by the department.

8 (b) A certified capital company at any time may certify to the department its good faith
9 belief that it has complied with the provisions of paragraphs (1) or (2) of subsection (a) of
10 Code Section 48-18-5 or subsection (f) of Code section 48-18-7. Within 60 days of receipt
11 of such certification by the department, the department shall conduct a review of the
12 qualified investments of the certified capital company and shall certify in writing to the
13 certified capital company whether or not the certified capital company has so complied.
14 The certified capital company shall pay the costs of such a review according to a
15 reasonable fee schedule adopted by the department.

16 (c) Any material violation of Code Section 48-18-5 shall be grounds for decertification of
17 the certified capital company. If the department determines that a certified capital
18 company is not in compliance with the requirements of Code section 48-18-5, it shall, by
19 written notice, inform the officers of the certified capital company that the certified capital
20 company may be subject to decertification in 120 days from the date of mailing of the
21 notice, unless the deficiencies are corrected and the certified capital company is again in
22 compliance with all requirements for certification.

23 (d) At the end of the such grace period, if the certified capital company is still not in
24 compliance with Code Section 48-18-5, the department may send a notice of decertification
25 to the certified capital company and to all other appropriate state agencies.

26 (e) Decertification of a certified capital company may cause the recapture of tax credits
27 previously claimed and the forfeiture of future tax credits to be claimed by certified
28 investors with respect to such certified capital company, as follows:

29 (1) Decertification of a certified capital company within three years of its allocation date
30 shall cause the recapture of all tax credits previously claimed and the forfeiture of all
31 future tax credits to be claimed by certified investors with respect to such certified capital
32 company, except as set forth in paragraph (4) of this subsection;

33 (2) When a certified capital company meets all requirements for continued certification
34 under paragraph (1) of subsection (a) of this Code section and subsequently fails to meet
35 the requirements for continued certification under the provisions of paragraph (2) of
36 subsection (a) of this Code section, those tax credits which are eligible to be taken by
37 certified investors within the first three years in which such tax credits may be taken will

1 not be subject to recapture or forfeiture; however, all tax credits that are eligible to be
2 taken by certified investors after the third year in which tax credits may be taken shall be
3 subject to recapture or forfeiture;

4 (3) Once a certified capital company has met all requirements for continued certification
5 under paragraphs (1) and (2) of subsection (a) of this Code section, and is subsequently
6 decertified, those tax credits which are eligible to be taken by certified investors within
7 the first five years in which such tax credits may be taken will not be subject to recapture
8 or forfeiture. Those tax credits that are eligible to be taken only after the fifth year in
9 which such tax credits may be taken shall be subject to forfeiture only if the certified
10 capital company is decertified within five years from the applicable allocation date,
11 except as set forth in paragraph (4) of this subsection;

12 (4) Once a certified capital company has invested an amount cumulatively equal to 100
13 percent of its certified capital in qualified investments, all tax credits claimed or to be
14 claimed by its certified investors shall no longer be subject to recapture or forfeiture; and

15 (5) If at the time of any such distribution made by the certified capital company, such
16 distribution taken together with all other such distributions made by the certified capital
17 company, other than qualified distributions, exceeds in the aggregate the sum of the
18 certified capital company's original certified capital and any additional capital
19 contributions to the certified capital company, as determined by the audit, the certified
20 capital company shall pay to the department 10 percent of the portion of such distribution
21 in excess of such amount. Payments to the department by a certified capital company
22 pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by
23 all certified investors in such certified capital company.

24 (f) Once a certified capital company has invested an amount cumulatively equal to 100
25 percent of its certified capital in qualified investments, the certified capital company shall
26 no longer be subject to regulation by the department.

27 (g) The department shall send written notice to the address of each certified investor whose
28 tax credit has been subject to recapture or forfeiture, using the address last shown on the
29 last premium tax filing.

30 48-18-8.

31 The tax credit established pursuant to this chapter may be transferred or sold to any other
32 person with state premium tax liability. The department shall promulgate regulations to
33 facilitate the transfer or sale of the tax credits. Any such transfer or sale shall not affect the
34 time schedule for taking the tax credit as provided in this chapter. Any tax credits
35 recaptured pursuant to Code Section 48-18-7 shall be the liability of the taxpayer which
36 actually claimed the tax credits."

1 **SECTION 3.**

2 Section 1, this section, and Section 4 of this Act shall become effective upon the approval
3 of the Governor or upon its becoming law without such approval. The remainder of this Act
4 shall become effective on March 1, 2003.

5 **SECTION 4.**

6 All laws and parts of laws in conflict with this Act are repealed.