

Senate Bill 558

By: Senators Price of the 56th, Cagle of the 49th, Mullis of the 53rd, Hamrick of the 30th and Smith of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of income tax, so as to provide for an
3 income tax credit with respect to qualified biotechnology businesses; to provide for
4 definitions; to provide for conditions and limitations; to provide for transfer of such credits;
5 to provide for powers, duties, and authority of the state revenue commissioner with respect
6 to the foregoing; to provide an effective date; to provide for applicability; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
11 imposition, rate, and computation of income tax, is amended by adding a new Code section
12 immediately following Code Section 48-7-40.25, to be designated Code Section 48-7-40.26,
13 to read as follows:

14 "48-7-40.26.

15 (a) As used in this Code section, the term:

16 (1) 'Qualified biotechnology business' means a new or existing business that:

17 (A) Uses the application of technologies, such as recombinant DNA techniques,
18 biochemistry, molecular and cellular biology, genetics and genetic engineering,
19 biological cell fusion techniques, and new bioprocesses, using living organisms or parts
20 of organisms to produce or modify products to improve plants or animals, to develop
21 microorganisms for specific uses, to identify targets for small molecule pharmaceutical
22 development, or to transform biological systems into useful processes and products;

23 (B) Is classified under North American Industry Classification System code 3254,
24 3391, 54171, or 6215;

1 (C) Receives its income from products sold, manufactured, or produced in this state or
2 from services including, but not limited to, research and development activities
3 performed in this state; and

4 (D) Elects not to receive the tax credits provided for by Code Sections 48-7-40,
5 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, 48-7-40.9, and
6 48-7-40.17 for such jobs or such investment.

7 (2) 'Qualified research expenses' means qualified research expenses for any qualified
8 biotechnology business as that term is defined in Section 41 of the Internal Revenue Code
9 of 1986, as amended, except that all wages paid and all purchases of services and supplies
10 must be for research conducted within the State of Georgia.

11 (b) A tax credit is allowed a qualified biotechnology business which has qualified research
12 expenses in Georgia in a taxable year exceeding a base amount, provided that the
13 biotechnology business for the same taxable year claims and is allowed a research credit
14 under Section 41 of the Internal Revenue Code of 1986, as amended.

15 (c) The tax credit provided in subsection (b) of this Code section shall be in an amount not
16 to exceed 50 percent of the qualified research expenses.

17 (d) Any unused credit claimed under this Code section may be carried forward 15 years
18 from the close of the taxable year in which the qualified research expenses were made. No
19 such credit shall be allowed the qualified biotechnology business against prior years' tax
20 liability.

21 (e) Any tax credits with respect to qualified research expenses not previously claimed by
22 such qualified biotechnology business taxpayer against its income tax may be transferred
23 or sold by such taxpayer to another Georgia taxpayer, subject to the following conditions:

24 (1) A taxpayer may make only three transfers or sales of tax credits during any calendar
25 year; provided, however, that a single transfer or sale may involve one or more
26 transferees. The transferee of the tax credits may transfer or sell such tax credits subject
27 to the conditions of this subsection;

28 (2) Transferors and transferees shall submit to the Department of Revenue a written
29 notification of any transfer or sale of tax credits within 30 days after the transfer or sale
30 of such tax credits. The notification shall include the transferor's tax credit balance prior
31 to transfer, the credit certificate number, the remaining balance after transfer, all tax
32 identification numbers for both transferor and each transferee, the date of transfer, the
33 amount transferred, and any other information required by the Department of Revenue;

34 (3) Failure to comply with this subsection shall result in the disallowance of the tax
35 credit until the taxpayers are in full compliance;

1 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
2 can be used. The carry forward period for tax credit that is transferred or sold begins on
3 the date on which the tax credit was originally earned;

4 (5) A transferee shall have only such rights to claim and use the tax credit that were
5 available to the transferor at the time of the transfer. To the extent that the transferor did
6 not have rights to claim or use the tax credit at the time of the transfer, the Department
7 of Revenue shall either disallow the tax credit claimed by the transferee or recapture the
8 tax credit from the transferee. The transferee's recourse is against the transferor; and

9 (6) The transferee shall apply such tax credits in the same manner and against the same
10 taxes as the taxpayer originally awarded the credit unless subsequent elections are made
11 and allowed.

12 (f) The commissioner shall be authorized to promulgate any rules and regulations
13 necessary to implement and administer the provisions of this Code section."

14 **SECTION 2.**

15 This Act shall become effective on January 1, 2005, and shall be applicable to all taxable
16 years beginning on or after that date.

17 **SECTION 3.**

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