

House Bill 198

By: Representatives Casas of the 103rd, Stephens of the 164th, Cox of the 102nd, Scott of the 2nd, and Horne of the 71st

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 businesses engaged in biotechnology or new or
4 expanding businesses incurring qualified research expenses; to provide for definitions; to
5 provide for procedures, conditions, and limitations; to provide for transfer of such credits;
6 to provide for powers, duties, and authority of the state revenue commissioner, the
7 Department of Revenue, and the Department of Economic Development with respect to the
8 foregoing; to provide an effective date; to provide for applicability; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
13 imposition, rate, and computation of income tax, is amended by adding a new Code section
14 immediately following Code Section 48-7-40.26, to be designated Code Section 48-7-40.27,
15 to read as follows:

16 "48-7-40.27.

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

18 (1) 'Biotechnology' means the continually expanding body of fundamental knowledge
19 about the functioning of biological systems for the macro level to the molecular and
20 subatomic levels, as well as novel products, services, technologies, and subtechnologies
21 developed as a result of insights gained from research advances that add to that body of
22 fundamental knowledge.

23 (2) 'Biotechnology company' means a company that has its headquarters or base of
24 operations in this state and that is engaged in a research, development, production, or
25 provision of biotechnology for the purpose of developing or providing products or
26 processes for specific commercial or public purposes, including by not limited to,

1 medical, pharmaceutical, nutritional, and other health related purposes, agricultural
2 purposes, and environmental purposes, or a person whose headquarters or base of
3 operations is located in this state, engaged in providing services or products necessary for
4 such research, development, production, or provision.

5 (3) 'New or expanding' means a company that has fewer than 225 employees, of whom
6 75 percent are Georgia based employees filling a position or job in this state which incurs
7 qualified research expenses.

8 (4) 'Qualified business' means a biotechnology company or a new or expanding company
9 that has its headquarters or base of operations in this state and that employs some
10 combination of the following: highly educated or trained managers and workers, or both,
11 employed in this state who use sophisticated scientific research service or production
12 equipment, processes or knowledge to discover, develop, test, transfer, or manufacture
13 a product or service.

14 (5) 'Qualified research expenses' means qualified research expenses for any qualified
15 business as that term is defined in Section 41 of the Internal Revenue Code of 1986, as
16 amended, except that all wages paid and all purchases of services and supplies must be
17 for research conducted within the State of Georgia.

18 (b) A tax credit in an amount not to exceed 50 percent of the qualified research expenses
19 is allowed a qualified business which has qualified research expenses in Georgia in a
20 taxable year, provided that the qualified business is allowed a research credit under Section
21 41 of the Internal Revenue Code of 1986, as amended.

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

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

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

33 (2) Transferors and transferees shall submit to the Department of Revenue and the
34 Department of Economic Development a written notification of any transfer or sale of tax
35 credits within 30 days after the transfer or sale of such tax credits. The notification shall
36 include the transferor's tax credit balance prior to transfer, the credit certificate number,
37 the remaining balance after transfer, all tax identification numbers for both transferor and

1 each transferee, the date of transfer, the amount transferred, and any other information
2 required by the Department of Revenue and the Department of Economic Development;

3 (3) No transfer shall be authorized if the Department of Economic Development
4 determines that the transferee is an affiliated entity of the transferor which owns or
5 controls 5 percent or more of the voting rights or 5 percent or more of the value of all
6 classes of stock of the transferor;

7 (4) Failure to comply with this subsection shall result in the disallowance of the tax
8 credit until the taxpayers are in full compliance;

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

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

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

20 (f)(1) The commissioner shall not authorize the transfer of tax credits under this Code
21 section in excess of an aggregate of \$40 million in any taxable year.

22 (2) The commissioner shall not authorize any single qualified business to transfer tax
23 credits under this code section in excess of an aggregate amount of \$10 million.

24 (g) The Department of Revenue and the Department of Economic Development shall
25 develop criteria for the approval or disapproval of applications under this Code section.
26 Such criteria shall include, but need not be limited to, an evaluation of the new or
27 expanding emerging technology or biotechnology company's actual or potential scientific
28 and technological viability, a determination that the new or expanding emerging
29 technology or biotechnology company's principal products or services are sufficiently
30 innovative to provide a competitive advantage, a determination that the proposed financial
31 assistance will result in significant growth in permanent, full-time employment in this state,
32 a determination made by the authority that new or expanding emerging technology or
33 biotechnology company does not have sufficient resources to operate in the short term or
34 cannot secure financial assistance from venture capital, stock issuance, product sales
35 revenue, a parent corporation or other affiliates, bank or any other method of obtaining
36 capital, and a determination that the financial assistance provided pursuant to this act
37 demonstrates the prospect of a significant positive change in the applicant's net income.

1 The departments shall establish the weight of importance to be given each criterion utilized
2 in its application approval process. No application shall be approved in which the new or
3 expanding technology or application shall be approved in which the new or expanding
4 technology or biotechnology company (1) has demonstrated positive net income in any of
5 the two previous full years of ongoing operations as determined on its financial statements;
6 or (2) has demonstrated a ratio in excess of 110 percent or greater of operating revenues
7 divided by operating expenses in any of the two previous full years of operations as
8 determined on its financial statements; or (3) is directly or indirectly at least 50 percent
9 owned or controlled by another corporation that has demonstrated positive net income in
10 any of the two previous full years of ongoing operations as determined on its financial
11 statements or is part of a consolidated group of affiliated corporations, as filed for federal
12 income tax purposes, that in the aggregate has demonstrated positive net income in any of
13 the two previous full years of ongoing operations as determined on its combined financial
14 statements. The departments shall require a transferee that acquires a tax credit to enter
15 into a written agreement with the new or expanding emerging technology or biotechnology
16 company concerning the terms and conditions of the funds received in exchange for such
17 credit. The written agreement may contain terms concerning the maintenance by the new
18 or expanding emerging technology or biotechnology company of a headquarters or a base
19 of operations in this state.

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

22 SECTION 2.

23 This Act shall become effective on January 1, 2008, and shall be applicable to all taxable
24 years beginning on or after that date.

25 SECTION 3.

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