

House Bill 435

By: Representative Martin of the 47th

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
3 legislative findings and intent; to provide for an income tax credit for certain qualified
4 business investments; to provide for definitions; to provide for conditions and limitations;
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 48-7-40.27 to read as follows:

13 "48-7-40.27.

14 (a) The General Assembly finds that the welfare of the state is enhanced by a healthy
15 entrepreneurial business environment and that ready sources of capital necessary to support
16 this environment are not currently available in the state.

17 (b) The intent of this Code section is to achieve the following:

18 (1) To create the Angel Investor Tax Credit Program to encourage third-party investors
19 to invest in early stage, innovative, wealth-creating businesses;

20 (2) To facilitate the availability of equity investment in businesses in the early stages of
21 commercial development;

22 (3) To expand the economy of the state by enlarging its base of wealth-creating
23 businesses; and

24 (4) To enlarge the number of high quality, high paying jobs within the state both to
25 attract qualified individuals to move to and work within the state and to retain young
26 people educated in Georgia.

1 (c) As used in this Code section, the term:

2 (1) 'Investment' means:

3 (A) A contribution of cash or cash equivalents in a qualified Georgia business for
4 common or preferred stock or subordinated debt that is convertible into, or entitles the
5 holder to receive upon its exercise, common or preferred stock;

6 (B) An interest in a partnership in which contribution of proceeds is not secured or
7 guaranteed and is at risk or otherwise dependent solely upon the success of a qualified
8 Georgia business and which proceeds are used solely for capital improvements,
9 research and development, or working capital for such qualified Georgia business; and

10 (C) A contribution of cash or cash equivalents by a pass-through entity domiciled in
11 this state.

12 provided, however, that funds constituting an investment cannot have been raised or be
13 raised as a result of other tax incentive programs, cannot be composed of funds raised
14 prior to January 1, 2008, and pooled or organized through capital placement agreements
15 for the purpose of equity and venture capital investing, and cannot be composed of
16 pooled capital in the form of hedge funds or commodities funds. Furthermore, the
17 purchase of equity securities shall not qualify as an investment if a broker fee or
18 commission or a similar remuneration is paid or given directly or indirectly for soliciting
19 the purchase.

20 (2) 'Investor' means a taxpayer of this state who is an accredited investor as provided in
21 Rule 501(a) of Regulation D of the Federal Securities Act of 1933.

22 (3) 'Net income tax liability' means net income tax liability reduced by all other credits
23 allowed under this chapter.

24 (4) 'Qualified Georgia business' means a business that is domiciled in this state, employs
25 20 or fewer people in this state, has gross annual sales of less than \$500,000.00, has not
26 obtained during its existence more than \$1 million in aggregate gross cash proceeds from
27 the issuance of its equity or debt investments not including commercial loans from
28 chartered banking or savings and loan institutions, has a business net worth of less than
29 \$3 million, and does not engage primarily in:

30 (A) Retail sales;

31 (B) Real estate or construction;

32 (C) Professional services;

33 (D) Gaming or gambling;

34 (E) Natural resource extraction;

35 (F) Financial, brokerage, or investment activities; or

36 (G) The activities of banks, savings and loan institutions, extension of credit, business
37 brokerage, or insurance.

1 (d) For any investor making an investment there shall be allowed an income tax credit that
2 shall be deductible from such investor's net income tax liability, if any, imposed by this
3 chapter for the taxable year in which the investment was made and the following two years
4 as provided by this Code section.

5 (e) For any investor that is a pass-through entity and purchases the equity securities or
6 subordinated debt of a qualified Georgia business directly from that business there shall be
7 allowed an income tax credit that shall be deductible from such investor's net income tax
8 liability, if any, imposed by this chapter for the taxable year in which the investment was
9 made and the following two years as provided by this Code section; provided, however,
10 that no credit under this Code section shall be allowed to a pass-through entity that has
11 current committed capital under management in excess of \$5 million or to a pass-through
12 entity that is a qualified Georgia business.

13 (f) Tax credits claimed pursuant to this Code section shall be allowed as follows:

14 (1) In the year in which the investment was made, not more than 33.3 percent of the
15 investment;

16 (2) In the first year following the year in which the investment was made, not more than
17 33.3 percent of the investment plus the difference, if any, between the amount allowed
18 in the first year and 33.3 percent of the investment;

19 (3) In the second year following the year in which the investment was made, not more
20 than 33.4 percent of the investment plus the difference, if any, between the amount
21 allowed in the first and second years and 66.6 percent of the investment; and

22 (4) If the tax credit exceeds the investor's income tax liability for the three years that the
23 credit is taken, the excess of the tax credit over liability may be used as a credit against
24 the investor's income tax liability in subsequent years until exhausted.

25 (g)(1) The aggregate amount of credit allowed an individual for one or more investments
26 in a single taxable year under this Code section, whether directly or indirectly, shall not
27 exceed \$100,000.00.

28 (2) The aggregate amount of credit allowed for one or more investments in a single
29 taxable year under this Code section, whether directly or indirectly, shall not exceed
30 \$500,000.00 if the investor is:

31 (A) A corporation with assets exceeding \$5 million; or

32 (B) A trust with assets in excess of \$5 million not formed to acquire the securities
33 offered and whose purchases are managed by a sophisticated investor.

34 (h)(1) The credit claimed under this Code section shall be recaptured if at the close of any
35 taxable year in the two-year period after the year of the investment:

36 (A) The qualified Georgia business or an interest in such business has been sold by the
37 investor; or

1 (B) The investor has withdrawn the investment wholly or partially from the qualified
2 Georgia business.

3 (2) The credit shall not be recaptured if the qualified Georgia business ceases business
4 operations.

5 (3) The recapture under this subsection shall be equal to 25 percent of the amount of the
6 total tax credit claimed under this Code section in the preceding taxable year. The
7 amount of the credit recaptured shall apply only to the investment in the particular
8 qualified business in which the investment was made. The amount of the recaptured tax
9 credit determined under this subsection shall be added to the taxpayer's income tax
10 liability for the taxable year in which the recapture occurs under this subsection.

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

13 (j) The total aggregate amount of all tax credits allowed to investors or pass-through
14 entities for investments made in a calendar year shall not exceed \$15 million."

15 **SECTION 2.**

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

18 **SECTION 3.**

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