

House Bill 1196

By: Representatives Stephens of the 164th, Keen of the 179th, Burkhalter of the 50th, and Mills of the 25th

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 certain
3 tax credits; to amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated,
4 relating to the Seed-Capital Fund, so as to provide that funds invested by the state from the
5 Seed-Capital Fund, with certain restrictions, may include funds from sources other than the
6 investment entity; to provide for related matters; to provide an effective date; 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 two new Code
12 sections to read as follows:

13 "48-7-40.27.

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

15 (1) 'Credit' means a state income tax credit against the tax imposed pursuant to this
16 article in an amount equal to 25 percent of the taxpayer's qualified investment.

17 (2) 'Qualified investment' means a cash investment in the research fund.

18 (3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7)
19 of Code Section 10-10-1, the purpose of which is to provide early-stage financing for
20 businesses formed as a result of the intellectual property resulting from the research
21 conducted in the research universities in this state.

22 (b) A taxpayer shall be entitled to a credit for any qualified investment he or she has made,
23 subject to the conditions and limitations set forth in this Code section. Notwithstanding
24 paragraph (3) of subsection (c) of this Code section, once the research fund reaches \$30
25 million in total private qualified investments, investors shall no longer be eligible for a
26 credit pursuant to this subsection.

1 (c) The credit provided in subsection (b) of this Code section shall be subject to the
2 following conditions and limitations:

3 (1) In no event shall the credit for a taxable year exceed the taxpayer's income tax
4 liability. Any unused portion of the credit shall be permitted to be carried forward and
5 applied to the taxpayer's tax liability for the subsequent ten years;

6 (2) The utilization of the credit shall have no effect on the taxpayer's basis in its
7 investment;

8 (3) In any calendar year that the amount of credits exceeds the maximum aggregate limit
9 set in subsection (b) of this Code section, tax credits for that calendar year shall be
10 allocated on a pro rata basis among the taxpayers who made qualified investments during
11 that calendar year. The department shall be required to make the allocation of credits by
12 the later of March 31 of the following year or within 30 days of receipt of the research
13 fund's report, required by subsection (e) of this Code section, listing the investments
14 made during the allocation year. Credits earned prior to the allocation year shall not be
15 affected by the allocation;

16 (4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited
17 liability company taxed as a partnership, the credit shall be claimed by the respective
18 shareholders, partners, or members of such entities in the same manner as they would
19 account for their proportionate shares of income or loss from such entities. For the
20 purposes of this Code section, such shareholders, partners, or members shall be
21 considered to have made the qualified investments attributable to their interest in such
22 entities; and

23 (5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this
24 Code section for a cash investment if they claim the tax credit provided in Code Section
25 48-7-40.28 for such cash investment.

26 (d) The research fund shall notify taxpayers when the total amount of qualified
27 investments reaches the limitations specified in subsection (b) of this Code section.
28 Available tax credits shall be allocated to taxpayers with respect to their qualified
29 investments on a pro rata basis in the calendar year in which the maximum aggregate limit
30 of tax credits is exceeded.

31 (e) The research fund shall provide the department, at a minimum, a report that includes
32 the taxpayer's name, the last four digits of the taxpayer's social security number or their
33 employment identification number, and the amount of the taxpayer's cash investment. The
34 research fund shall file this report with the department no later than January 31 of the year
35 following the end of the reporting year.

36 (f) If the research fund liquidates prior to the investment of all cash collected from
37 taxpayers, the credit claimed pursuant to this Code section shall be recaptured. Such

1 recapture shall be equal to the amount of tax credit attributable to the cash investment
2 returned to the taxpayer by the research fund. The recapture amount shall be treated as
3 taxes payable to the state for the taxable year in which such return of the investment occurs.

4 (g) The commissioner may require such reports, promulgate such regulations, and gather
5 such relevant data deemed necessary and advisable for the implementation of this Code
6 section.

7 48-7-40.28.

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

9 (1) 'Credit' means a state income tax credit against the tax imposed pursuant to this
10 article in an amount equal to 10 percent of the taxpayer's qualified investment.

11 (2) 'Qualified investment' means a cash investment in a business entity in which the
12 research fund has invested.

13 (3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7)
14 of Code Section 10-10-1, the purpose of which is to provide early-stage financing for
15 businesses formed as a result of the intellectual property resulting from the research
16 conducted in the research universities in this state.

17 (b) A taxpayer shall be entitled to a credit for any qualified investment he or she has made,
18 subject to the conditions and limitations set forth in this Code section. Notwithstanding
19 paragraph (3) of subsection (c) of this Code section, once the research fund reaches \$75
20 million in total private qualified investments, investors shall no longer be eligible for a
21 credit pursuant to this subsection.

22 (c) The credit provided in subsection (b) of this Code section shall be subject to the
23 following conditions and limitations:

24 (1) In no event shall the credit for a taxable year exceed the taxpayer's income tax
25 liability. Any unused portion of the credit shall be permitted to be carried forward and
26 applied to the taxpayer's tax liability for the subsequent ten years;

27 (2) The utilization of the credit shall have no effect on the taxpayer's basis in its
28 investment;

29 (3) In any calendar year that the amount of credits exceeds the maximum aggregate limit
30 set in subsection (b) of this Code section, tax credits for that calendar year shall be
31 allocated on a pro rata basis among the taxpayers who made qualified investments during
32 that calendar year. The department shall be required to make the allocation of credits by
33 the later of March 31 of the following year or within 30 days of receipt of the research
34 fund's report, required by subsection (e) of this Code section, listing the investments
35 made during the allocation year. Credits earned prior to the allocation year shall not be
36 affected by the allocation;

1 (4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited
 2 liability company taxed as a partnership, the credit shall be claimed by the respective
 3 shareholders, partners, or members of such entities in the same manner as they would
 4 account for their proportionate shares of income or loss from such entities. For the
 5 purposes of this Code section, such shareholders, partners, or members shall be
 6 considered to have made the qualified investments attributable to their interest in such
 7 entities;

8 (5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section
 9 for a cash investment into the research fund; and

10 (6) If the research fund is liquidated, taxpayers shall no longer be eligible for a credit.

11 (d) The research fund shall notify taxpayers when the total amount of qualified
 12 investments reaches the limitations specified in subsection (b) of this Code section.
 13 Available tax credits shall be allocated to taxpayers with respect to their qualified
 14 investments on a pro rata basis in the calendar year in which the maximum aggregate limit
 15 of tax credits is exceeded.

16 (e) The research fund shall provide the department, at a minimum, a report that includes
 17 the taxpayer's name, the last four digits of the taxpayer's social security number or their
 18 employment identification number, and the amount of the taxpayer's cash investment. The
 19 research fund shall file this report with the department no later than January 31 of the year
 20 following the end of the reporting year.

21 (f) The commissioner may require such reports, promulgate such regulations, and gather
 22 such relevant data deemed necessary and advisable for the implementation of this Code
 23 section."

24 SECTION 2.

25 Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the
 26 Seed-Capital Fund, is amended by revising paragraph (1) of subsection (b) of Code Section
 27 10-10-4, relating to investing of funds with investment entities, as follows:

28 "(1) Either:

29 (A) At least \$3.00 of equity contributions has been committed in writing to the
 30 investment entity by persons other than the state for every \$1.00 of equity contributions
 31 committed by the state from the fund or from an investment entity ~~as to~~ which the state
 32 is the sole limited liability owner ~~to the investment entity of~~; or

33 (B) At least \$1.00 of equity contributions has been committed in writing to the
 34 investment entity by persons other than the state for every \$1.00 of equity contributions
 35 committed by the state from the fund or from an investment entity ~~as to~~ which the state
 36 is the sole limited liability owner ~~to an investment entity of~~; provided, however, that no

1 investment is to be made from such investment entity in qualified securities ~~without an~~
2 ~~equal or greater investment in the same enterprise from sources other than the~~
3 ~~investment entity, such that~~ unless, in total, at least \$3.00 of investment from sources
4 other than the state, ~~including~~ which may include funds from sources other than the
5 investment entity and funds invested by the investment entity in the enterprise that are
6 other than from equity contributions made by the state from the fund or from an
7 investment entity ~~as to~~ which the state is the sole limited liability owner of, has been
8 committed to such enterprise for every \$1.00 of the state's portion of the amount
9 invested in the qualified securities of such enterprise;"

10 **SECTION 3.**

11 This Act shall become effective upon its approval by the Governor or upon its becoming law
12 without such approval and shall be applicable to investments made on or after July 1, 2008.

13 **SECTION 4.**

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