

The House Special Committee on Small Business Development and Job Creation offers the following substitute to HB 1001:

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 for certain qualified investments for a limited period of time; to provide
4 for legislative findings and intent; to provide for definitions; to provide for procedures,
5 conditions, and limitations; to provide for powers, duties, and authority of the state revenue
6 commissioner with respect to the foregoing; to provide for an effective date; to provide for
7 applicability; to repeal 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 to read as follows:

13 "48-7-40.29.

14 (a) The General Assembly finds that entrepreneurial businesses significantly contribute
15 to the economy of the state. The intent of this Code section is to achieve the following:

16 (1) To encourage individual investors to invest in early stage, innovative, wealth-creating
17 businesses;

18 (2) To enlarge the number of high quality, high paying jobs within the state both to
19 attract qualified individuals to move to and work within this state and to retain young
20 people educated in Georgia's universities and colleges;

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

23 (4) To support businesses seeking to commercialize technology invented in Georgia's
24 universities and colleges.

25 (b) As used in this Code section, the term:

- 26 (1) 'Allowable credit' means the credit as it may be reduced pursuant to subparagraph (3)
27 of subsection (i) of this Code section.
- 28 (2) 'Headquarters' means the principal central administrative office of a business located
29 in this state which conducts significant operations of such business.
- 30 (3) 'Net income tax liability' means income tax liability reduced by all other credits
31 allowed under this chapter.
- 32 (4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability
33 company taxed as a partnership.
- 34 (5) 'Professional services' means those services specified in paragraph (2) of Code
35 Section 14-7-2 or any service which requires as a condition precedent to the rendering of
36 such service the obtaining of a license from a state licensing board pursuant to Title 43.
- 37 (6) 'Qualified business' means a registered business that:
- 38 (A) Is either a corporation, limited liability company, or a general or limited
39 partnership located in this state;
- 40 (B) Was organized no more than three years before the qualified investment was made;
- 41 (C) Has its headquarters located in this state at the time the investment was made and
42 has maintained such headquarters for the entire time the qualified business benefitted
43 from the tax credit provided for pursuant to this Code section;
- 44 (D) Employs 20 or fewer people in this state at the time it is registered as a qualified
45 business;
- 46 (E) Has had in any complete fiscal year before registration gross annual revenue as
47 determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a
48 consolidated basis;
- 49 (F) Has not obtained during its existence more than \$1 million in aggregate gross cash
50 proceeds from the issuance of its equity or debt investments, not including commercial
51 loans from chartered banking or savings and loan institutions;
- 52 (G) Has not utilized the tax credit described in Code Section 48-7-40.26;
- 53 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
54 online and digital wholesaling, software development, information technology services,
55 research and development, or a business providing services other than those described
56 in subparagraph (I) of this paragraph; and
- 57 (I) Does not engage substantially in:
- 58 (i) Retail sales;
- 59 (ii) Real estate or construction;
- 60 (iii) Professional services;
- 61 (iv) Gambling;
- 62 (v) Natural resource extraction;

63 (vi) Financial, brokerage, or investment activities or insurance; or

64 (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which
 65 an admission or membership is charged.

66 A business shall be substantially engaged in one of the above activities if its gross
 67 revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or
 68 it is established pursuant to its articles of incorporation, articles of organization, operating
 69 agreement or similar organizational documents to engage as one of its primary purposes
 70 such activity.

71 (7) 'Qualified investment' means an investment by a qualified investor of cash in a
 72 qualified business for common or preferred stock or an equity interest or a purchase for
 73 cash of qualified subordinated debt in a qualified business; provided, however, that funds
 74 constituting a qualified investment cannot have been raised or be raised as a result of
 75 other tax incentive programs. Furthermore, no investment of common or preferred stock
 76 or an equity interest or purchase of subordinated debt shall qualify as a qualified
 77 investment if a broker fee or commission or a similar remuneration is paid or given
 78 directly or indirectly for soliciting such investment or purchase.

79 (8) 'Qualified investor' means an accredited investor as that term is defined by the United
 80 States Securities and Exchange Commission who is:

81 (A) An individual person who is a resident of this state or a nonresident who is
 82 obligated to pay taxes imposed by this chapter; or

83 (B) A pass-through entity which is formed for investment purposes, has no business
 84 operations, has committed capital under management of equal to or less than \$5 million,
 85 and is not capitalized with funds raised or pooled through private placement
 86 memoranda directed to institutional investors. A venture capital fund or commodity
 87 fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

88 (9) 'Qualified subordinated debt' means indebtedness that is not secured, that may or may
 89 not be convertible into common or preferred stock or other equity interest, and that is
 90 subordinated in payment to all other indebtedness of the qualified business issued or to
 91 be issued for money borrowed and no part of which has a maturity date less than five
 92 years after the date such indebtedness was purchased.

93 (10) 'Registered' or 'registration' means that a business has been certified by the
 94 commissioner as a qualified business at the time of application to the commissioner.

95 (c) A qualified business shall register with the commissioner for purposes of this Code
 96 section. Approval of such registration shall constitute certification by the commissioner
 97 for 12 months after being issued. A business shall be permitted to renew its registration
 98 with the commissioner so long as, at the time of renewal, the business remains a qualified
 99 business.

100 (d) Any individual person making a qualified investment directly in a qualified business
101 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the
102 amount invested against the tax imposed by this chapter commencing on January 1 of the
103 second year following the year in which the qualified investment was made as provided in
104 this Code section.

105 (e) Any pass-through entity making a qualified investment directly in a qualified business
106 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the
107 amount invested against the tax imposed by this chapter commencing on January 1 of the
108 second year following the year in which the qualified investment was made as provided in
109 this Code section. Each individual who is a shareholder, partner, or member of an entity
110 shall be allocated the credit allowed the pass-through entity in an amount determined in the
111 same manner as the proportionate shares of income or loss of such pass-through entity
112 would be determined. If an individual's share of the pass-through entity's credit is limited
113 due to the maximum allowable credit under this Code section for a taxable year, the
114 pass-through entity and its owners may not reallocate the unused credit among the other
115 owners.

116 (f) Tax credits claimed pursuant to this Code section shall be subject to the following
117 conditions and limitations:

118 (1) The qualified investor is not eligible for the credit for the taxable year in which the
119 qualified investment is made but shall be eligible for the credit for the second taxable
120 year beginning after the qualified investment is made as provided in subsection (d) or (e)
121 of this Code section;

122 (2) The aggregate amount of credit allowed an individual for one or more qualified
123 investments in a single taxable year under this Code section, whether made directly or by
124 a pass-through entity and allocated to such individual, shall not exceed \$30,000.00;

125 (3) In no event shall the amount of the tax credit allowed an individual under this Code
126 section for a taxable year exceed such individual's net income tax liability. Any unused
127 credit amount shall be allowed to be carried forward for five years from the close of the
128 taxable year in which the qualified investment was made. No such credit shall be allowed
129 against prior years' tax liability;

130 (4) The qualified investor's basis in the common or preferred stock, equity interest, or
131 subordinated debt acquired as a result of the qualified investment shall be reduced for
132 purposes of this chapter by the amount of the allowable credit;

133 (5) The credit shall not be transferrable by the qualified investor except to the heirs and
134 legatees of the qualified investor upon his or her death and to his or her spouse or incident
135 to divorce; and

136 (6) To be eligible for the credit provided in this Code section, the qualified investor must
137 file an application for the credit with the commissioner on or before June 30 of the year
138 following the calendar year in which the qualified investment was made.

139 (g) The registration of a business as a qualified business shall be subject to the following
140 conditions and limitations:

141 (1) If the commissioner finds that any of the information contained in an application of
142 a business for registration under this Code section is false, the commissioner shall revoke
143 the registration of such business. The commissioner shall not revoke the registration of
144 a business solely because it ceases business operations for an indefinite period of time,
145 as long as the business renews its registration;

146 (2) A registration as a qualified business may not be sold or otherwise transferred, except
147 that, if a qualified business enters into a merger, conversion, consolidation, or other
148 similar transaction with another business and the surviving company would otherwise
149 meet the criteria for being a qualified business, the surviving company retains the
150 registration for the 12 month registration period without further application to the
151 commissioner. In such a case, the qualified business must provide the commissioner with
152 written notice of the merger, conversion, consolidation, or similar transaction and such
153 other information as required by the commissioner; and

154 (3) The commissioner shall report to the House Committee on Ways and Means and the
155 Senate Finance Committee each year all of the businesses that have registered with the
156 commissioner as a qualified business. The report shall include the name and address of
157 each business, the location of its headquarters, a description of the types of business in
158 which it engages, the number of jobs created by the business during the period covered
159 by the report, and the average wages paid by these jobs.

160 (h) Any credit claimed under this Code section shall be recaptured in the following
161 situations and shall be subject to the following conditions and limitations:

162 (1) If within two years after the qualified investment was made, the qualified investor
163 transfers any of the securities or subordinated debt received in the qualified investment
164 to another person or entity, other than a transfer resulting from one of the following:

165 (A) The death of the qualified investor;

166 (B) A transfer to the spouse of the qualified investor or incident to divorce; or

167 (C) A merger, conversion, consolidation, sale of the qualified business's assets, or
168 similar transaction requiring approval by the owners of the qualified business under
169 applicable law, to the extent the qualified investor does not receive cash or tangible
170 property in such merger, conversion, consolidation, sale, or other similar transaction;

171 (2) Except as provided in paragraph (1) of this subsection, if within five years after the
172 qualified investment was made, the qualified business makes a redemption with respect
173 to the securities received or pays any principal of the subordinated debt;

174 (3) If within two years after the qualified investment was made, the qualified investor
175 participates in the operation of the qualified business. For the purpose of this paragraph,
176 a qualified investor participates in the operation of a qualified business if the qualified
177 investor, or the qualified investor's spouse, parent, sibling, or child, or a business
178 controlled by any of these individuals, provides services of any nature to the qualified
179 business for compensation, whether as an employee, a contractor, or otherwise.
180 However, a person who provides uncompensated professional advice to a qualified
181 business whether as an officer, a member of the board of directors or managers or
182 otherwise or participates in a stock or membership option or stock or membership plan,
183 or both, shall be eligible for the credit;

184 (4) The amount of the credit recaptured shall apply only to the qualified investment in
185 the particular qualified business in which the investment was made;

186 (5) The amount of the recaptured tax credit determined under this subsection shall be
187 added to the qualified investor's income tax liability for the taxable year in which the
188 recapture occurs under this subsection; and

189 (6) In the event the credit is recaptured because the qualified business ceases business
190 operations, dissolves, or liquidates, the qualified investor may claim either the credit
191 authorized under this Code section or any capital loss the qualified investor otherwise
192 would be able to claim regarding that qualified business, but shall not be authorized to
193 claim and be allowed both.

194 (i)(1) A qualified investor seeking to claim a tax credit provided for under this Code
195 section must submit an application to the commissioner for tentative approval of such tax
196 credit between September 1 and October 31 of the year for which the tax credit is claimed
197 or allowed. The commissioner shall promulgate the rules and forms on which the
198 application is to be submitted. Amounts specified on such application shall not be
199 changed by the qualified investor after the application is approved by the commissioner.
200 The commissioner shall review such application and shall tentatively approve such
201 application upon determining that it meets the requirements of this Code section.

202 (2) The commissioner shall provide tentative approval of the applications by the date
203 provided in paragraph (3) of this subsection as follows:

204 (A) The total aggregate amount of all tax credits allowed to qualified investors or
205 pass-through entities for investments made in the 2011 calendar year and claimed and
206 allowed in the 2013 taxable year shall not exceed \$3 million in such year;

207 (B) The total aggregate amount of all tax credits allowed to qualified investors or
208 pass-through entities for investments made in the 2012 calendar year and claimed and
209 allowed in the 2014 taxable year shall not exceed \$3 million in such year; and
210 (C) The total aggregate amount of all tax credits allowed to qualified investors or
211 pass-through entities for investments made in the 2013 calendar year and claimed and
212 allowed in the 2015 taxable year shall not exceed \$3 million in such year.
213 (3) The commissioner shall notify each qualified investor of the tax credits tentatively
214 approved and allocated to such qualified investor by December 31 of the year in which
215 the application was submitted. In the event that the credit amounts on the tax credit
216 applications filed with the commissioner exceed the maximum aggregate limit of tax
217 credits under this subsection, then the tax credits shall be allocated among the qualified
218 investors who filed a timely application on a pro rata basis based upon the amounts
219 otherwise allowed by this Code section. Once the tax credit application has been
220 approved and the amount approved has been communicated to the applicant, the qualified
221 investor may then apply the amount of the approved tax credit to its tax liability for the
222 tax year for which the approved application applies.
223 (j) The commissioner shall promulgate any rules and regulations necessary to implement
224 and administer this Code section."

225 **SECTION 2.**

226 This Act shall become effective on January 1, 2011.

227 **SECTION 3.**

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