

House Bill 1001

By: Representatives Martin of the 47th, Stephens of the 164th, Loudermilk of the 14th, and Lunsford of the 110th

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

63 (6) 'Qualified Investment' means an investment by a qualified investor of cash in a
64 qualified business for common or preferred stock or an equity interest or a purchase for
65 cash of qualified subordinated debt in a qualified business; provided, however, that funds
66 constituting a qualified investment cannot have been raised or be raised as a result of
67 other tax incentive programs. Furthermore, no investment of common or preferred stock
68 or an equity interest or purchase of subordinated debt shall qualify as a qualified
69 investment if a broker fee or commission or a similar remuneration is paid or given
70 directly or indirectly for soliciting such investment or purchase.

71 (7) 'Qualified Investor' means an accredited investor as that term is defined in Rule 501
72 of Regulation D promulgated by the United States Securities and Exchange Commission
73 who is:

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

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

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

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

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

93 (d) Any individual person making a qualified investment directly in a qualified business
94 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the
95 amount invested against the tax imposed by this chapter commencing on January 1 of the
96 second year following the year in which the qualified investment was made as provided in
97 this Code section.

98 (e) Any pass-through entity making a qualified investment directly in a qualified business
99 in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 35 percent of the

100 amount invested against the tax imposed by this chapter commencing on January 1 of the
101 second year following the year in which the qualified investment was made as provided in
102 this Code section. Each individual who is a shareholder, partner, or member of an entity
103 shall be allocated the credit allowed the pass-through entity in an amount determined in the
104 same manner as the proportionate shares of income or loss of such pass-through entity
105 would be determined. If an individual's share of the pass-through entity's credit is limited
106 due to the maximum allowable credit under this Code section for a taxable year, the
107 pass-through entity and its owners may not reallocate the unused credit among the other
108 owners.

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

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

115 (2) The aggregate amount of credit allowed an individual for one or more qualified
116 investments in a single taxable year under this Code section, whether made directly or by
117 a pass-through entity and allocated to such individual, shall not exceed \$50,000.00;

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

123 (4) The utilization of the credit shall have no effect on the taxpayer's basis in the
124 qualified investment;

125 (5) The credit shall not be transferrable by the taxpayer except to the heirs and legatees
126 of the taxpayer upon his or her death and to his or her spouse or incident to divorce;

127 (6) To be eligible for the credit provided in this Code section, the taxpayer must file an
128 application for the credit with the commissioner on or before June 30 of the year
129 following the calendar year in which the qualified investment was made; and

130 (7)(A) The total aggregate amount of all tax credits allowed to investors or
131 pass-through entities for investments made in the 2011 calendar year and claimed and
132 allowed in the 2013 taxable year shall not exceed \$10 million in such year.

133 (B) The total aggregate amount of all tax credits allowed to investors or pass-through
134 entities for investments made in the 2012 calendar year and claimed and allowed in the
135 2014 taxable year shall not exceed \$10 million in such year.

136 (C) The total aggregate amount of all tax credits allowed to investors or pass-through
137 entities for investments made in the 2013 calendar year and claimed and allowed in the
138 2015 taxable year shall not exceed \$10 million in such year.

139 (D) The commissioner shall calculate the total amount of tax credits claimed from the
140 applications filed pursuant to paragraph (6) of this subsection. If the total amount of
141 tax credits claimed for qualified investments made in a calendar year exceeds this
142 maximum amount, the commissioner shall allow a portion of the credits claimed by
143 allocating the maximum amount in tax credits in proportion to the size of the credit
144 claimed by each qualified investor.

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

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

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

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

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

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

171 (A) The death of the taxpayer;

172 (B) A transfer to the spouse of the taxpayer or incident to divorce; or

173 (C) A merger, conversion, consolidation, sale of the qualified business's assets, or
174 similar transaction requiring approval by the owners of the qualified business under
175 applicable law, to the extent the taxpayer does not receive cash or tangible property in
176 such merger, conversion, consolidation, sale, or other similar transaction;

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

180 (3) The credit shall be recaptured if:

181 (A) The qualified business ceases business operations at any time during the period
182 commencing after the investment was made and until the credit is claimed and allowed
183 the taxpayer; or

184 (B) The qualified business ceases to be a qualified business solely due to failure to
185 comply with subparagraph (b)(5)(D) or (b)(5)(E) of this Code section, or both.

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

188 (5) The amount of the recaptured tax credit determined under this subsection shall be
189 added to the taxpayer's income tax liability for the taxable year in which the recapture
190 occurs under this subsection.

191 (i) The commissioner shall promulgate any rules and regulations necessary to implement
192 and administer this Code section."

193 **SECTION 2.**

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

195 **SECTION 3.**

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