

House Bill 109

By: Representatives Kendrick of the 93rd, Gardner of the 57th, Fludd of the 64th, Harrell of the 106th, Harbin of the 122nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to change the qualifications of an investor; to provide for related matters;
3 to provide for an effective date; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
7 is amended by revising Code Section 48-7-40.30, relating to an income tax credit for certain
8 qualified investments, as follows:

9 "48-7-40.30.

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

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

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

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

19 (4) To support businesses seeking to commercialize technology invented in Georgia's
20 universities and colleges and other high growth businesses.

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

22 (1) 'Allowable credit' means the credit as it may be reduced pursuant to subparagraph (3)
23 of subsection (i) of this Code section.

24 (2) 'Headquarters' means the principal central administrative office of a business located
25 in this state which conducts significant operations of such business.

26 (3) 'Investor' means a person who is:

27 (A) A resident of this state or a nonresident who is obligated to pay taxes imposed by
 28 this chapter; or

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

34 ~~(3)~~(4) 'Net income tax liability' means income tax liability reduced by all other credits
 35 allowed under this chapter.

36 ~~(4)~~(5) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability
 37 company taxed as a partnership.

38 ~~(5)~~(6) 'Professional services' means those services specified in paragraph (2) of Code
 39 Section 14-7-2 or any service which requires as a condition precedent to the rendering of
 40 such service the obtaining of a license from a state licensing board pursuant to Title 43.

41 ~~(6)~~(7) 'Qualified business' means a registered business that:

42 (A) Is either a corporation, limited liability company, or a general or limited
 43 partnership located in this state;

44 (B) Was organized no more than three years before the qualified investment was made;

45 (C) Has its headquarters located in this state at the time the investment was made and
 46 has maintained such headquarters for the entire time the qualified business benefited
 47 from the tax credit provided for pursuant to this Code section;

48 (D) Employs 20 or fewer people in this state at the time it is registered as a qualified
 49 business;

50 (E) Has had in any complete fiscal year before registration gross annual revenue as
 51 determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a
 52 consolidated basis;

53 (F) Has not obtained during its existence more than \$1 million in aggregate gross cash
 54 proceeds from the issuance of its equity or debt investments, not including commercial
 55 loans from chartered banking or savings and loan institutions;

56 (G) Has not utilized the tax credit described in Code Section 48-7-40.26;

57 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
 58 online and digital wholesaling, software development, information technology services,
 59 or research and development; or is a high growth business providing services other than
 60 those described in subparagraph (I) of this paragraph; and

61 (I) Does not engage substantially in:

62 (i) Retail sales;

63 (ii) Real estate or construction;

- 64 (iii) Professional services;
- 65 (iv) Gambling;
- 66 (v) Natural resource extraction;
- 67 (vi) Financial, brokerage, or investment activities or insurance; or
- 68 (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which
- 69 an admission or membership is charged.

70 A business shall be substantially engaged in one of the ~~above~~ activities listed in

71 subparagraph (H) or (I) of this paragraph if its gross revenue from such activity exceeds

72 25 percent of its gross revenues in any fiscal year or it is established pursuant to its

73 articles of incorporation, articles of organization, operating agreement, or similar

74 organizational documents to engage in such activity as one of its primary purposes.

75 ~~(7)~~(8) 'Qualified investment' means an investment by a ~~qualified~~ an investor of cash in

76 a qualified business for common or preferred stock or an equity interest or a purchase for

77 cash of qualified subordinated debt in a qualified business; provided, however, that funds

78 constituting a qualified investment cannot have been raised or be raised as a result of

79 other tax incentive programs. ~~Furthermore, no investment of common or preferred stock~~

80 ~~or an equity interest or purchase of subordinated debt shall qualify as a qualified~~

81 ~~investment if a broker fee or commission or a similar remuneration is paid or given~~

82 ~~directly or indirectly for soliciting such investment or purchase.~~ Investment of common

83 or preferred stock or an equity interest or purchase of subordinated debt that contains or

84 involves a broker fee or commission or a similar remuneration paid or given, directly or

85 indirectly, for soliciting such investment or purchase shall qualify as a qualified

86 investment. However, the investor shall be allowed the tax credit under this Code section

87 only on the amount of the direct investment in the qualified investment and not on the

88 broker fees or commissions or similar remunerations paid or given, directly or indirectly,

89 for soliciting such investment or purchase.

90 ~~(8)~~ 'Qualified investor' means an accredited investor as that term is defined by the United

91 States Securities and Exchange Commission who is:

92 ~~(A) An individual person who is a resident of this state or a nonresident who is~~

93 ~~obligated to pay taxes imposed by this chapter; or~~

94 ~~(B) A pass-through entity which is formed for investment purposes, has no business~~

95 ~~operations, has committed capital under management of equal to or less than \$5 million,~~

96 ~~and is not capitalized with funds raised or pooled through private placement~~

97 ~~memoranda directed to institutional investors. A venture capital fund or commodity~~

98 ~~fund with institutional investors or a hedge fund shall not qualify as a qualified investor.~~

99 (9) 'Qualified subordinated debt' means indebtedness that is not secured, that may or may

100 not be convertible into common or preferred stock or other equity interest, and that is

101 subordinated in payment to all other indebtedness of the qualified business issued or to
 102 be issued for money borrowed and no part of which has a maturity date less than five
 103 years after the date such indebtedness was purchased.

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

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

111 (d) Any individual person making a qualified investment directly in a qualified business
 112 in the 2011, 2012, 2013, 2014, ~~or 2015~~, 2016, 2017, 2018, or 2019 calendar year shall be
 113 allowed a tax credit of 35 percent of the amount invested against the tax imposed by this
 114 chapter commencing on January 1 of the second year following the year in which the
 115 qualified investment was made as provided in this Code section.

116 (e) Any pass-through entity making a qualified investment directly in a qualified business
 117 in the 2011, 2012, 2013, 2014, ~~or 2015~~, 2016, 2017, 2018, or 2019 calendar year shall be
 118 allowed a tax credit of 35 percent of the amount invested against the tax imposed by this
 119 chapter commencing on January 1 of the second year following the year in which the
 120 qualified investment was made as provided in this Code section. Each individual who is
 121 a shareholder, partner, or member of an entity shall be allocated the credit allowed the
 122 pass-through entity in an amount determined in the same manner as the proportionate
 123 shares of income or loss of such pass-through entity would be determined. If an
 124 individual's share of the pass-through entity's credit is limited due to the maximum
 125 allowable credit under this Code section for a taxable year, the pass-through entity and its
 126 owners may not reallocate the unused credit among the other owners.

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

129 (1) The ~~qualified~~ investor shall not be eligible for the credit for the taxable year in which
 130 the qualified investment is made but shall be eligible for the credit for the second taxable
 131 year beginning after the qualified investment is made as provided in subsection (d) or (e)
 132 of this Code section;

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

136 (3) In no event shall the amount of the tax credit allowed an individual under this Code
 137 section for a taxable year exceed such individual's net income tax liability. Any unused

138 credit amount shall be allowed to be carried forward for five years from the close of the
 139 taxable year in which the qualified investment was made. No such credit shall be allowed
 140 against prior years' tax liability;

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

144 (5) The credit shall not be transferrable by the ~~qualified~~ investor except to the heirs and
 145 legatees of the ~~qualified~~ investor upon his or her death and to his or her spouse or incident
 146 to divorce.

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

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

154 (2) A registration as a qualified business may not be sold or otherwise transferred, except
 155 that, if a qualified business enters into a merger, conversion, consolidation, or other
 156 similar transaction with another business and the surviving company would otherwise
 157 meet the criteria for being a qualified business, the surviving company retains the
 158 registration for the 12 month registration period without further application to the
 159 commissioner. In such a case, the qualified business must provide the commissioner with
 160 written notice of the merger, conversion, consolidation, or similar transaction and such
 161 other information as required by the commissioner; and

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

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

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

173 (A) The death of the ~~qualified~~ investor;

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

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

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

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

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

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

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

202 (i)(1) ~~A qualified~~ An investor seeking to claim a tax credit provided for under this Code
 203 section shall submit an application to the commissioner for tentative approval of such tax
 204 credit between September 1 and October 31 of the year for which the tax credit is claimed
 205 or allowed. The commissioner shall promulgate the rules and forms on which the
 206 application is to be submitted. Amounts specified on such application shall not be
 207 changed by the ~~qualified~~ investor after the application is approved by the commissioner.
 208 The commissioner shall review such application and shall tentatively approve such
 209 application upon determining that it meets the requirements of this Code section.

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

- 212 (A) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
 213 pass-through entities for investments made in the 2011 calendar year and claimed and
 214 allowed in the 2013 taxable year shall not exceed \$10 million in such year;
- 215 (B) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
 216 pass-through entities for investments made in the 2012 calendar year and claimed and
 217 allowed in the 2014 taxable year shall not exceed \$10 million in such year;
- 218 (C) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
 219 pass-through entities for investments made in the 2013 calendar year and claimed and
 220 allowed in the 2015 taxable year shall not exceed \$10 million in such year;
- 221 (D) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
 222 pass-through entities for investments made in the 2014 calendar year and claimed and
 223 allowed in the 2016 taxable year shall not exceed \$5 million in such year; ~~and~~
- 224 (E) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
 225 pass-through entities for investments made in the 2015 calendar year and claimed and
 226 allowed in the 2017 taxable year shall not exceed \$5 million in such year.;
- 227 (F) The total aggregate amount of all tax credits allowed to investors or pass-through
 228 entities for investments made in the 2016 calendar year and claimed and allowed in the
 229 2018 taxable year shall not exceed \$10 million in such year;
- 230 (G) The total aggregate amount of all tax credits allowed to investors or pass-through
 231 entities for investments made in the 2017 calendar year and claimed and allowed in the
 232 2019 taxable year shall not exceed \$10 million in such year;
- 233 (H) The total aggregate amount of all tax credits allowed to investors or pass-through
 234 entities for investments made in the 2018 calendar year and claimed and allowed in the
 235 2020 taxable year shall not exceed \$10 million in such year; and
- 236 (I) The total aggregate amount of all tax credits allowed to investors or pass-through
 237 entities for investments made in the 2019 calendar year and claimed and allowed in the
 238 2021 taxable year shall not exceed \$10 million in such year.
- 239 (3) The commissioner shall notify each ~~qualified~~ investor of the tax credits tentatively
 240 approved and allocated to such ~~qualified~~ investor by December 31 of the year in which
 241 the application was submitted. In the event that the credit amounts on the tax credit
 242 applications filed with the commissioner exceed the maximum aggregate limit of tax
 243 credits under this subsection, then the tax credits shall be allocated among the ~~qualified~~
 244 investors who filed a timely application on a pro rata basis based upon the amounts
 245 otherwise allowed by this Code section. Once the tax credit application has been
 246 approved and the amount approved has been communicated to the applicant, the ~~qualified~~
 247 investor may then apply the amount of the approved tax credit to its tax liability for the
 248 tax year for which the approved application applies.

249 (j) The commissioner shall promulgate any rules and regulations necessary to implement
250 and administer this Code section."

251 **SECTION 2.**

252 This Act shall become effective on July 1, 2015.

253 **SECTION 3.**

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