

House Bill 386

By: Representatives Kendrick of the 93<sup>rd</sup>, Carter of the 92<sup>nd</sup>, Robichaux of the 48<sup>th</sup>, Marin of the 96<sup>th</sup>, Beverly of the 143<sup>rd</sup>, 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 add a type of investor eligible for certain tax credits; to provide for a  
3 definition; to provide for the submission of a report to the General Assembly; to repeal  
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

10 "48-7-40.30.

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

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

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

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

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

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

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

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

- 27 (3) 'Net income tax liability' means income tax liability reduced by all other credits  
28 allowed under this chapter.
- 29 (4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability  
30 company taxed as a partnership.
- 31 (5) 'Professional services' means those services specified in paragraph (2) of Code  
32 Section 14-7-2 or any service which requires as a condition precedent to the rendering of  
33 such service the obtaining of a license from a state licensing board pursuant to Title 43.
- 34 (6) 'Qualified business' means a registered business that:
- 35 (A) Is either a corporation, limited liability company, or a general or limited  
36 partnership located in this state;
- 37 (B) Was organized no more than three years before the qualified investment was made;
- 38 (C) Has its headquarters located in this state at the time the investment was made and  
39 has maintained such headquarters for the entire time the qualified business benefited  
40 from the tax credit provided for pursuant to this Code section;
- 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 the Internal Revenue Code of \$500,000.00 or less on a  
45 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, online and digital warehousing,  
51 online and digital wholesaling, software development, information technology services,  
52 or research and development or is a high growth business providing services other than  
53 those described in subparagraph (I) of this paragraph; and
- 54 (I) Does not engage substantially 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 A business shall be substantially engaged in one of the ~~above~~ activities listed in  
 64 subparagraph (H) or (I) of this paragraph if its gross revenue from such activity exceeds  
 65 25 percent of its gross revenues in any fiscal year or it is established pursuant to its  
 66 articles of incorporation, articles of organization, operating agreement, or similar  
 67 organizational documents to engage in such activity as one of its primary purposes.

68 (7) 'Qualified investment' means an investment by a qualified or sophisticated investor  
 69 of cash in a qualified business for common or preferred stock or an equity interest or a  
 70 purchase for cash of qualified subordinated debt in a qualified business; provided,  
 71 however, that funds constituting a qualified investment cannot have been raised or be  
 72 raised as a result of other tax incentive programs. ~~Furthermore, no investment of~~  
 73 ~~common or preferred stock or an equity interest or purchase of subordinated debt shall~~  
 74 ~~qualify as a qualified investment if a broker fee or commission or a similar remuneration~~  
 75 ~~is paid or given directly or indirectly for soliciting such investment or purchase.~~  
 76 Investment of common or preferred stock or an equity interest or a purchase of  
 77 subordinated debt that contains or involves a broker fee or commission or a similar  
 78 remuneration paid or given, directly or indirectly, for soliciting such investment or  
 79 purchase shall qualify as a qualified investment. However, the qualified or sophisticated  
 80 investor shall be allowed the tax credit under this Code section only on the amount of the  
 81 direct investment in the qualified investment and not on the broker fees or commissions  
 82 or similar remunerations paid or given, directly or indirectly, for soliciting such  
 83 investment or purchase.

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

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

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

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

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

100 (11) 'Sophisticated investor' means an investor with sufficient knowledge and experience  
101 in financial and business matters which make him or her capable of evaluating the merits  
102 and risk of the prospective investment.

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

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

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

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

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

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

133 (3) In no event shall the amount of the tax credit allowed an individual under this Code  
134 section for a taxable year exceed such individual's net income tax liability. Any unused  
135 credit amount shall be allowed to be carried forward for five years from the close of the

136 taxable year in which the qualified investment was made. No such credit shall be allowed  
 137 against prior years' tax liability;

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

141 (5) The credit shall not be transferrable by the qualified or sophisticated investor except  
 142 to the heirs and legatees of ~~the qualified~~ such investor upon his or her death and to his or  
 143 her spouse or incident to divorce.

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

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

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

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

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

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

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

172 (B) A transfer to the spouse of the ~~qualified~~ investor 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 ~~qualified~~ investor does not receive cash or tangible  
176 property in 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) If within two years after the qualified investment was made, the qualified or  
181 sophisticated investor participates in the operation of the qualified business. For the  
182 purpose of this paragraph, a qualified or sophisticated investor participates in the  
183 operation of a qualified business if ~~the qualified~~ such investor, or ~~the qualified~~ such  
184 investor's spouse, parent, sibling, or child, or a business controlled by any of these  
185 individuals, provides services of any nature to the qualified business for compensation,  
186 whether as an employee, a contractor, or otherwise. However, a person who provides  
187 uncompensated professional advice to a qualified business, whether as an officer, a  
188 member of the board of directors or managers or otherwise, or participates in a stock or  
189 membership option or stock or membership plan, or both, shall be eligible for the credit;  
190 (4) The amount of the credit recaptured shall apply only to the qualified investment in  
191 the particular qualified business in which the investment was made;  
192 (5) The amount of the recaptured tax credit determined under this subsection shall be  
193 added to the qualified or sophisticated investor's income tax liability for the taxable year  
194 in which the recapture occurs under this subsection; and  
195 (6) In the event the credit is recaptured because the qualified business ceases business  
196 operations, dissolves, or liquidates, the qualified or sophisticated investor may claim  
197 either the credit authorized under this Code section or any capital loss ~~the qualified~~ such  
198 investor otherwise would be able to claim regarding that qualified business, but shall not  
199 be authorized to claim and be allowed both.

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

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

211 (A) The total aggregate amount of all tax credits allowed to qualified investors,  
212 sophisticated investors, or pass-through entities for investments made in the 2011  
213 calendar year and claimed and allowed in the 2013 taxable year shall not exceed \$10  
214 million in such year;

215 (B) The total aggregate amount of all tax credits allowed to qualified investors,  
216 sophisticated investors, or pass-through entities for investments made in the 2012  
217 calendar year and claimed and allowed in the 2014 taxable year shall not exceed \$10  
218 million in such year;

219 (C) The total aggregate amount of all tax credits allowed to qualified investors,  
220 sophisticated investors, or pass-through entities for investments made in the 2013  
221 calendar year and claimed and allowed in the 2015 taxable year shall not exceed \$10  
222 million in such year;

223 (D) The total aggregate amount of all tax credits allowed to qualified investors,  
224 sophisticated investors, or pass-through entities for investments made in the 2014  
225 calendar year and claimed and allowed in the 2016 taxable year shall not exceed \$5  
226 million in such year;

227 (E) The total aggregate amount of all tax credits allowed to qualified investors,  
228 sophisticated investors, or pass-through entities for investments made in the 2015  
229 calendar year and claimed and allowed in the 2017 taxable year shall not exceed \$5  
230 million in such year;

231 (F) The total aggregate amount of all tax credits allowed to qualified investors,  
232 sophisticated investors, or pass-through entities for investments made in the 2016  
233 calendar year and claimed and allowed in the 2018 taxable year shall not exceed \$5  
234 million in such year;

235 (G) The total aggregate amount of all tax credits allowed to qualified investors,  
236 sophisticated investors, or pass-through entities for investments made in the 2017  
237 calendar year and claimed and allowed in the 2019 taxable year shall not exceed \$5  
238 million in such year; and

239 (H) The total aggregate amount of all tax credits allowed to qualified investors,  
240 sophisticated investors, or pass-through entities for investments made in the 2018  
241 calendar year and claimed and allowed in the 2020 taxable year shall not exceed \$5  
242 million in such year.

243 (3) The commissioner shall notify each qualified investor or sophisticated investor of the  
244 tax credits tentatively approved and allocated to such ~~qualified~~ investor by December 31  
245 of the year in which the application was submitted. In the event that the credit amounts

246 on the tax credit applications filed with the commissioner exceed the maximum aggregate  
247 limit of tax credits under this subsection, then the tax credits shall be allocated among the  
248 qualified investors or sophisticated investors who filed a timely application on a pro rata  
249 basis based upon the amounts otherwise allowed by this Code section. Once the tax  
250 credit application has been approved and the amount approved has been communicated  
251 to the applicant, ~~the qualified~~ such investor may then apply the amount of the approved  
252 tax credit to its tax liability for the tax year for which the approved application applies.  
253 (j) The commissioner shall report to the House Committee on Ways and Means and the  
254 Senate Finance Committee every three years on the annual percentage of tax credits  
255 utilized under this Code section.  
256 (k) The commissioner shall promulgate any rules and regulations necessary to implement  
257 and administer this Code section."

258

**SECTION 2.**

259

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