

House Bill 992

By: Representatives Scott of the 76th, Kendrick of the 93rd, Thomas of the 39th, Thomas of the 56th, and Jackson of the 64th

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 provide for an income tax credit for investors in women owned
3 businesses; to provide for definitions; to provide for registration with the commissioner of
4 revenue; to provide for conditions and limitations; to provide for recapture; to provide for
5 rules and regulations; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
10 is amended by adding a new Code section to read as follows:

11 "48-7-40.37.

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

13 (1) 'Allowable credit' means the credit as it may be reduced pursuant to paragraph (3) of
14 subsection (h) of this Code section.

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

17 (3) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability
18 company taxed as a partnership.

19 (4) 'Professional services' means those services specified in paragraph (2) of Code
20 Section 14-7-2 or any service which requires the obtaining of a license from a state
21 licensing board pursuant to Title 43 as a condition to the rendering of such service.

22 (5) 'Qualified business' means a registered business that:

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

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

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

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

31 (E) Has had in any complete fiscal year before registration gross annual revenue of
32 \$500,000.00 or less on a consolidated basis, as determined in accordance with the
33 Internal Revenue Code;

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

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

38 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
39 logistics, online and digital wholesaling, software development, information technology
40 services, research and development, or a business providing services other than those
41 described in subparagraph (I) of this paragraph;

42 (I) Is owned and controlled by one or more women; and

43 (J) Does not engage substantially in:

44 (i) Real estate;

45 (ii) Gambling;

46 (iii) Natural resource extraction;

47 (iv) Financial, brokerage, or investment activities or insurance; or

48 (v) Amusement, recreation, or athletic or fitness activity for which an admission or
49 membership is charged.

50 A business shall be substantially engaged in one of the activities listed in this paragraph
51 if its gross revenue from such activity exceeds 25 percent of its gross revenues in any
52 fiscal year or it is established pursuant to its articles of incorporation, articles of
53 organization, operating agreement, or similar organizational documents to engage in such
54 activity as one of its primary purposes.

55 (6) 'Qualified investment' means an investment by a qualified investor of cash in a
56 qualified business for common or preferred stock or an equity interest or purchase for
57 cash of qualified subordinated debt in a qualified business; provided, however, that funds
58 constituting a qualified investment cannot have been raised or be raised as a result of
59 other tax incentive programs. Furthermore, no investment of common or preferred stock
60 or an equity interest or purchase for cash of qualified subordinated debt shall qualify as
61 a qualified investment if a broker fee or commission or a similar remuneration is paid or
62 given directly or indirectly for soliciting such investment or purchase.

63 (7) 'Qualified investor' means an accredited investor as that term is defined by the United
64 States Securities and Exchange Commission who is:

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

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

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

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

79 (b) A qualified business shall register with the commissioner for purposes of this Code
80 section. Approval of such registration shall constitute certification by the commissioner
81 for 12 months after being issued. A business shall be permitted to renew its registration
82 with the commissioner so long as, at the time of renewal, the business remains a qualified
83 business.

84 (c) Any individual person making a qualified investment directly in a qualified business
85 in a particular calendar year shall be allowed a tax credit of 25 percent of the amount
86 invested against the tax imposed by this chapter commencing on January 1 of the second
87 year following the year in which the qualified investment was made as provided in this
88 Code section, 15 percent of the amount invested against the tax imposed by this chapter
89 commencing on January 1 of the third year following the year in which the qualified
90 investment was made as provided in this Code section, and 10 percent of the amount
91 invested against the tax imposed by this chapter commencing on January 1 of the fourth
92 year following the year in which the qualified investment was made as provided in this
93 Code section.

94 (d) Any pass-through entity making a qualified investment directly in a qualified business
95 in a particular calendar year shall be allowed a tax credit of 25 percent of the amount
96 invested against the tax imposed by this chapter commencing on January 1 of the second
97 year following the year in which the qualified investment was made as provided in this
98 Code section, 15 percent of the amount invested against the tax imposed by this chapter
99 commencing on January 1 of the third year following the year in which the qualified

100 investment was made as provided in this Code section, and 10 percent of the amount
101 invested against the tax imposed by this chapter commencing on January 1 of the fourth
102 year following the year in which the qualified investment was made as provided in this
103 Code section. Each individual who is a shareholder, partner, or member of an entity shall
104 be allocated the credit allowed the pass-through entity in an amount determined in the same
105 manner as the proportionate shares of income or loss of such pass-through entity would be
106 determined. If an individual's share of the pass-through entity's credit is limited due to the
107 maximum allowable credit under this Code section for a taxable year, the pass-through
108 entity and its owners may not reallocate the unused credit among the other owners.

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

111 (1) The qualified investor shall not be eligible for the credit for the taxable year in which
112 the 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 (c) or (d)
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 \$100,000.00;

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 Georgia net income tax liability. Any
120 unused credit amount shall be allowed to be carried forward for five years from the close
121 of the taxable year in which the qualified investment was made. No such credit shall be
122 allowed against prior years' tax liability;

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

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

129 (f) The registration of a business as a qualified business shall be subject to the following
130 conditions and limitations:

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

136 (2) A registration as a qualified business may not be sold or otherwise transferred, except
137 that, if a qualified business enters into a merger, conversion, consolidation, or other
138 similar transaction with another business and the surviving company would otherwise
139 meet the criteria for being a qualified business, the surviving company retains the
140 registration for the 12 month registration period without further application to the
141 commissioner. In such a case, the qualified business must provide the commissioner with
142 written notice of the merger, conversion, consolidation, or similar transaction and such
143 other information as required by the commissioner; and

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

150 (g) Any credit claimed under this Code section shall be recaptured in the following
151 situations and shall be subject to the following conditions and limitations:

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

156 (A) The death of the investor;

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

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

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

165 (3) If within two years after the qualified investment was made, the investor participates
166 in the operation of the qualified business. For the purposes of this paragraph, a qualified
167 investor participates in the operation of a qualified business if the qualified investor, or
168 the qualified investor's spouse, parent, sibling, or child, or a business controlled by any
169 of these individuals, provides services of any nature to the qualified business for
170 compensation, whether as an employee, a contractor, or otherwise; provided, however,
171 that a person who provides uncompensated professional advice to a qualified business,
172 whether as an officer, a member of the board of directors or managers, or otherwise, or

173 participates in a stock or membership option or stock or membership plan, or both, shall
174 be eligible for the credit;

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

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

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

185 (h)(1) A qualified investor seeking to claim a tax credit provided for under this Code
186 section shall submit an application to the commissioner for tentative approval of such tax
187 credit between September 1 and October 31 of the year for which the tax credit is claimed
188 or allowed. The commissioner shall promulgate the rules and forms on which the
189 application is to be submitted. Amounts specified on such application shall not be
190 changed by the qualified investor after the application is approved by the commissioner.
191 The commissioner shall review such application and shall tentatively approve such
192 application upon determining that it meets the requirements of this Code section.

193 (2) The commissioner shall provide tentative approval of the applications by the date
194 provided in paragraph (3) of this subsection, provided that the total aggregate amount of
195 all tax credits allowed to investors or pass-through entities for investments made in a
196 calendar year and claimed and allowed in the following taxable year shall not exceed \$5
197 million in such year.

198 (3) The commissioner shall notify each qualified investor of the tax credits tentatively
199 approved and allocated to such qualified investor by December 31 of the year in which
200 the application was submitted. In the event that the credit amounts on the tax credit
201 applications filed with the commissioner exceed the maximum aggregate limit of tax
202 credits under this subsection, then the tax credits shall be allocated among the qualified
203 investors who filed a timely application on a pro rata basis based upon the amounts
204 otherwise allowed by this Code section. Once the tax credit application has been
205 approved and the amount approved has been communicated to the applicant, the qualified
206 investor may then apply the amount of the approved tax credit to its tax liability for the
207 tax year for which the approved application applies.

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

210

SECTION 2.

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