

House Bill 26

By: Representatives Kendrick of the 93rd, Bennett of the 94th, Scott of the 76th, Hutchinson of the 107th, and Schofield of the 60th

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 relative to an income tax credit
3 for certain investments; to provide for related matters; to repeal conflicting laws; and for
4 other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **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, 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 and high growth businesses;

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.

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) 'Investor' means:

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

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

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

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

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

42 ~~(6)~~(7) 'Qualified business' means a registered business that:

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

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

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

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

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

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

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

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

62 (I) Does not engage substantially in:

63 (i) Retail sales;

64 (ii) Real estate or construction;

65 (iii) Professional services;

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

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

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

73 25 percent of its gross revenues in any fiscal year or it is established pursuant to its

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

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

76 Additionally, an entrepreneurship program, center, or initiative of a postsecondary

77 educational institution established prior to 1964, whose principal mission was, and is, the

78 education of black Americans shall also constitute a qualified business.

79 ~~(7)(8)~~ 'Qualified investment' means an investment by a ~~qualified~~ an investor of cash in

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

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

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

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

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

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

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

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

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

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

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

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

92 broker fees or commissions or similar remunerations paid or given, directly or indirectly,
93 for soliciting such investment or purchase.

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

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

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

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

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

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

115 (d) Any individual person making a qualified investment directly in a qualified business
116 in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018, 2020, 2021, 2022, or 2023
117 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the

118 tax imposed by this chapter commencing on January 1 of the second year following the
119 year in which the qualified investment was made as provided in this Code section.

120 (e) Any pass-through entity making a qualified investment directly in a qualified business
121 in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, ~~or 2018~~, 2020, 2021, 2022, or 2023
122 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the
123 tax imposed by this chapter commencing on January 1 of the second year following the
124 year in which the qualified investment was made as provided in this Code section. Each
125 individual who is a shareholder, partner, or member of an entity shall be allocated the credit
126 allowed the pass-through entity in an amount determined in the same manner as the
127 proportionate shares of income or loss of such pass-through entity would be determined.
128 If an individual's share of the pass-through entity's credit is limited due to the maximum
129 allowable credit under this Code section for a taxable year, the pass-through entity and its
130 owners may not reallocate the unused credit among the other owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 225 (D) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
226 pass-through entities for investments made in the 2014 calendar year and claimed and
227 allowed in the 2016 taxable year shall not exceed \$5 million in such year;
- 228 (E) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
229 pass-through entities for investments made in the 2015 calendar year and claimed and
230 allowed in the 2017 taxable year shall not exceed \$5 million in such year;
- 231 (F) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
232 pass-through entities for investments made in the 2016 calendar year and claimed and
233 allowed in the 2018 taxable year shall not exceed \$5 million in such year;
- 234 (G) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
235 pass-through entities for investments made in the 2017 calendar year and claimed and
236 allowed in the 2019 taxable year shall not exceed \$5 million in such year; ~~and~~
- 237 (H) The total aggregate amount of all tax credits allowed to ~~qualified~~ investors or
238 pass-through entities for investments made in the 2018 calendar year and claimed and
239 allowed in the 2020 taxable year shall not exceed \$5 million in such year.;
- 240 (I) The total aggregate amount of all tax credits allowed to investors or pass-through
241 entities for investments made in the 2020 calendar year and claimed and allowed in the
242 2022 taxable year shall not exceed \$5 million in such year;
- 243 (J) The total aggregate amount of all tax credits allowed to investors or pass-through
244 entities for investments made in the 2021 calendar year and claimed and allowed in the
245 2023 taxable year shall not exceed \$5 million in such year;
- 246 (K) The total aggregate amount of all tax credits allowed to investors or pass-through
247 entities for investments made in the 2022 calendar year and claimed and allowed in the
248 2024 taxable year shall not exceed \$5 million in such year; and
- 249 (L) The total aggregate amount of all tax credits allowed to investors or pass-through
250 entities for investments made in the 2023 calendar year and claimed and allowed in the
251 2025 taxable year shall not exceed \$5 million in such year.

252 (3) The commissioner shall notify each ~~qualified~~ investor of the tax credits tentatively
253 approved and allocated to such ~~qualified~~ investor by December 31 of the year in which
254 the application was submitted. In the event that the credit amounts on the tax credit
255 applications filed with the commissioner exceed the maximum aggregate limit of tax
256 credits under this subsection, then the tax credits shall be allocated among the ~~qualified~~
257 investors who filed a timely application on a pro rata basis based upon the amounts
258 otherwise allowed by this Code section. Once the tax credit application has been
259 approved and the amount approved has been communicated to the applicant, the ~~qualified~~
260 investor may then apply the amount of the approved tax credit to its tax liability for the
261 tax year for which the approved application applies.

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

264

SECTION 2.

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