

House Bill 8

By: Representative Kendrick of the 95<sup>th</sup>

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 renew and revise an income tax credit for certain investments in  
3 qualified businesses; to remove the requirement that the investment be made by a qualified  
4 investor; to provide for an aggregate cap; to allow such credit to be transferred; to provide  
5 a reporting requirement; to provide for definitions; to provide for sunset; to provide for an  
6 effective date and applicability; to provide for related matters; to repeal conflicting laws; and  
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,  
11 is amended by revising Code Section 48-7-40.30, relating to tax credits for certain qualified  
12 investments for limited period of time, as follows:

13 "48-7-40.30.

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

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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~~ high-paying jobs within this state  
19 both to attract qualified individuals to move to and work within this state and to retain  
20 young 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 high-growth business and other businesses seeking to commercialize  
24 technology invented in Georgia's universities and colleges.

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

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

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

30 (3) 'Investor' means:

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

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

38 ~~(3)~~(4) 'Net income tax liability' means income tax liability reduced by all other credits  
39 allowed under this chapter.

40 ~~(4)~~(5) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability  
41 company taxed as a partnership.

42 ~~(5)~~(6) 'Professional services' means those services of a profession specified in  
43 paragraph (2) of Code Section 14-7-2 or any service which requires as a condition  
44 precedent to the rendering of such service the obtaining of a license from a state licensing  
45 board pursuant to Title 43.

46 ~~(6)~~(7) 'Qualified business' means a registered business that:

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

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

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

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

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

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

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

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

66 (I) Does not engage substantially in:

67 (i) Retail sales;

68 (ii) Real estate or construction;

- 69 (iii) Professional services;  
70 (iv) Gambling;  
71 (v) Natural resource extraction;  
72 (vi) Financial, brokerage, or investment activities or insurance; or  
73 (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which  
74 an admission or membership is charged.

75 A business shall be substantially engaged in one of the ~~above~~ activities listed in  
76 subparagraph (H) or (I) of this paragraph if its gross revenue from such activity exceeds  
77 25 percent of its gross revenues in any fiscal year or it is established pursuant to its  
78 articles of incorporation, articles of organization, operating agreement, or similar  
79 organizational documents to engage in such activity as one of its primary purposes.

80 ~~(7)(8)~~ 'Qualified investment' means an investment by a ~~qualified~~ an investor of cash in  
81 a qualified business for common or preferred stock or an equity interest or a purchase for  
82 cash of qualified subordinated debt in a qualified business; provided, however, that funds  
83 constituting a qualified investment cannot have been raised or be raised as a result of  
84 other tax incentive programs. ~~Furthermore, no investment of common or preferred stock~~  
85 ~~or an equity interest or purchase of subordinated debt shall qualify as a qualified~~  
86 ~~investment if a broker fee or commission or a similar remuneration is paid or given~~  
87 ~~directly or indirectly for soliciting such investment or purchase.~~ Investment of common  
88 or preferred stock or an equity interest or a purchase of qualified subordinated debt that  
89 contains or involves a broker fee or commission or a similar remuneration paid or given,  
90 directly or indirectly, for soliciting such investment or purchase shall qualify as a  
91 qualified investment. However, the investor shall be allowed the tax credit under this  
92 Code section only on the amount of the direct investment in the qualified investment and  
93 not on the broker fees or commissions or similar remunerations paid or given, directly or  
94 indirectly, for soliciting such investment or purchase.

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

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

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

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

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

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

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

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

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

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

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

141 ~~(3)~~(2) In no event shall the amount of the tax credit allowed an individual under this  
142 Code section for a taxable year exceed such individual's net income tax liability. Any  
143 unused credit amount shall be allowed to be carried forward for three years from the close  
144 of the taxable year in which the qualified investment was made. No such credit shall be  
145 allowed against prior years' tax liability;

146 ~~(4)~~(3) The qualified investor's basis in the common or preferred stock, equity interest,  
147 or qualified subordinated debt acquired as a result of the qualified investment shall be  
148 reduced for purposes of this chapter by the amount of the allowable credit; and

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

152 (4) Any tax credit earned and previously claimed but not used against its income tax may  
153 be transferred or sold, in whole or in part, by the investor to another Georgia taxpayer.

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

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

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

169 (3) The commissioner shall report to the House Committee on Ways and Means and the  
170 Senate Finance Committee each year all of the businesses that have registered with the  
171 commissioner as a qualified business. ~~The~~ Such report shall include the name and  
172 address of each business, the location of its headquarters, a description of the types of

173 business in which it engages, the number of jobs created by the business during the period  
174 covered by the report, and the average wages paid by ~~these~~ such jobs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

244 The aggregate amount of tax credits allowed pursuant to this Code section shall not  
245 exceed \$5 million in a calendar year.

246 (3) The commissioner shall notify each qualified investor of the tax credits tentatively  
247 approved and allocated to such qualified investor by December 31 of the year in which  
248 the application was submitted. In the event that the credit amounts on the tax credit  
249 applications filed with the commissioner exceed the maximum aggregate limit of tax  
250 credits under this subsection, then the tax credits shall be allocated among the qualified  
251 investors who filed a timely application on a pro rata basis based upon the amounts  
252 otherwise allowed by this Code section. Once the tax credit application has been

253 approved and the amount approved has been communicated to the applicant, the qualified  
254 investor may then apply the amount of the approved tax credit to its tax liability for the  
255 tax year for which the approved application applies.

256 (j) The commissioner shall report annually to the House Committee on Ways and Means  
257 and the Senate Finance Committee on the percentage of tax credits for the previous taxable  
258 year utilized under this Code section.

259 (k) The commissioner shall promulgate any rules and regulations necessary to implement  
260 and administer this Code section.

261 (l) This Code section shall stand repealed and reserved on December 31, 2031."

262 **SECTION 2.**

263 This Act shall become effective on July 1, 2025, and shall be applicable to taxable years  
264 beginning on or after such date.

265 **SECTION 3.**

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