

House Bill 27

By: Representatives Kendrick of the 93rd, Bennett of the 94th, Smyre of the 135th, Mitchell of the 88th, Hutchinson of the 107th, 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 revise an income tax credit for certain investments to be limited to
3 investments in entrepreneurship programs, centers, and initiatives of historically black
4 colleges and universities of the state; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "48-7-40.30.

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

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

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

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

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

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

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

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

28 (3) 'Investor' means:

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

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

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

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

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

- 43 ~~(6)(7)~~ 'Qualified business' means a registered business that:
- 44 ~~(A) Is either a corporation, limited liability company, or a general or limited~~
45 ~~partnership located in this state;~~
- 46 ~~(B) Was organized no more than three years before the qualified investment was made;~~
- 47 ~~(C) Has its headquarters located in this state at the time the investment was made and~~
48 ~~has maintained such headquarters for the entire time the qualified business benefited~~
49 ~~from the tax credit provided for pursuant to this Code section;~~
- 50 ~~(D) Employs 20 or fewer people in this state at the time it is registered as a qualified~~
51 ~~business;~~
- 52 ~~(E) Has had in any complete fiscal year before registration gross annual revenue as~~
53 ~~determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a~~
54 ~~consolidated basis;~~
- 55 ~~(F) Has not obtained during its existence more than \$1 million in aggregate gross cash~~
56 ~~proceeds from the issuance of its equity or debt investments, not including commercial~~
57 ~~loans from chartered banking or savings and loan institutions;~~
- 58 ~~(G) Has not utilized the tax credit described in Code Section 48-7-40.26;~~
- 59 ~~(H) Is primarily engaged in manufacturing, processing, online and digital warehousing,~~
60 ~~online and digital wholesaling, software development, information technology services,~~
61 ~~or research and development or is a business providing services other than those~~
62 ~~described in subparagraph (I) of this paragraph; and~~
- 63 ~~(I) Does not engage substantially in:~~
- 64 ~~(i) Retail sales;~~
- 65 ~~(ii) Real estate or construction;~~
- 66 ~~(iii) Professional services;~~
- 67 ~~(iv) Gambling;~~
- 68 ~~(v) Natural resource extraction;~~
- 69 ~~(vi) Financial, brokerage, or investment activities or insurance; or~~

70 ~~(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which~~
71 ~~an admission or membership is charged.~~

72 ~~A business shall be substantially engaged in one of the activities if its gross revenue from~~
73 ~~such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established~~
74 ~~pursuant to its articles of incorporation, articles of organization, operating agreement, or~~
75 ~~similar organizational documents to engage in such activity as one of its primary~~
76 ~~purposes.~~

77 an entrepreneurship program, center, or initiative of a postsecondary educational
78 institution established prior to 1964, whose principal mission was, and is, the education
79 of black Americans.

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 purchase of subordinated debt that contains or
89 involves a broker fee or commission or a similar remuneration paid or given, directly or
90 indirectly, for soliciting such investment or purchase shall qualify as a qualified
91 investment. However, the investor shall be allowed the tax credit under this Code section
92 only on the amount of the direct investment in the qualified investment and not on the
93 broker fees or commissions or similar remunerations paid or given, directly or indirectly,
94 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, 2020, 2021, 2022, or 2023~~
118 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the
119 tax imposed by this chapter commencing on January 1 of the second year following the
120 year in which 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, 2020, 2021, 2022, or 2023~~
123 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the

124 tax imposed by this chapter commencing on January 1 of the second year following the
125 year in which the qualified investment was made as provided in this Code section. Each
126 individual who is a shareholder, partner, or member of an entity shall be allocated the credit
127 allowed the pass-through entity in an amount determined in the same manner as the
128 proportionate shares of income or loss of such pass-through entity would be determined.
129 If an 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) In no event shall the amount of the tax credit allowed an individual under this Code
142 section for a taxable year exceed such individual's net income tax liability. Any unused
143 credit amount shall be allowed to be carried forward for five years from the close of the
144 taxable year in which the qualified investment was made. No such credit shall be allowed
145 against prior years' tax liability;

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

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

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

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

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

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

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

- 175 (1) If within two years after the qualified investment was made, the ~~qualified~~ investor
176 transfers any of the securities or subordinated debt received in the qualified investment
177 to another person or entity, other than a transfer resulting from one of the following:
- 178 (A) The death of the ~~qualified~~ investor;
 - 179 (B) A transfer to the spouse of the ~~qualified~~ investor or incident to divorce; or
 - 180 (C) A merger, conversion, consolidation, sale of the qualified business's assets, or
181 similar transaction requiring approval by the owners of the qualified business under
182 applicable law, to the extent the ~~qualified~~ investor does not receive cash or tangible
183 property in such merger, conversion, consolidation, sale, or other similar transaction;
- 184 (2) Except as provided in paragraph (1) of this subsection, if within five years after the
185 qualified investment was made, the qualified business makes a redemption with respect
186 to the securities received or pays any principal of the subordinated debt;
- 187 (3) If within two years after the qualified investment was made, the ~~qualified~~ investor
188 participates in the operation of the qualified business. For the purpose of this paragraph,
189 ~~a qualified an~~ investor participates in the operation of a qualified business if the ~~qualified~~
190 investor, or the ~~qualified~~ investor's spouse, parent, sibling, or child, or a business
191 controlled by any of these individuals, provides services of any nature to the qualified
192 business for compensation, whether as an employee, a contractor, or otherwise.
193 However, a person who provides uncompensated professional advice to a qualified
194 business, whether as an officer, a member of the board of directors or managers or
195 otherwise, or participates in a stock or membership option or stock or membership plan,
196 or both, shall be eligible for the credit;
- 197 (4) The amount of the credit recaptured shall apply only to the qualified investment in
198 the particular qualified business in which the investment was made;
- 199 (5) The amount of the recaptured tax credit determined under this subsection shall be
200 added to the ~~qualified~~ investor's income tax liability for the taxable year in which the
201 recapture occurs under this subsection; and

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

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

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

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

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

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

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

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

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

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

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

241 (I) The total aggregate amount of all tax credits allowed to investors or pass-through
242 entities for investments made in the 2020 calendar year and claimed and allowed in the
243 2022 taxable year shall not exceed \$5 million in such year;

244 (J) The total aggregate amount of all tax credits allowed to investors or pass-through
245 entities for investments made in the 2021 calendar year and claimed and allowed in the
246 2023 taxable year shall not exceed \$5 million in such year;

247 (K) The total aggregate amount of all tax credits allowed to investors or pass-through
248 entities for investments made in the 2022 calendar year and claimed and allowed in the
249 2024 taxable year shall not exceed \$5 million in such year; and

250 (L) The total aggregate amount of all tax credits allowed to investors or pass-through
251 entities for investments made in the 2023 calendar year and claimed and allowed in the
252 2025 taxable year shall not exceed \$5 million in such year.

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

256 applications filed with the commissioner exceed the maximum aggregate limit of tax
257 credits under this subsection, then the tax credits shall be allocated among the ~~qualified~~
258 investors who filed a timely application on a pro rata basis based upon the amounts
259 otherwise allowed by this Code section. Once the tax credit application has been
260 approved and the amount approved has been communicated to the applicant, the ~~qualified~~
261 investor may then apply the amount of the approved tax credit to its tax liability for the
262 tax year for which the approved application applies.

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

265 **SECTION 2.**

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