

House Bill 237 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Dudgeon of the 25th, Hamilton of the 24th,
Martin of the 49th, Ramsey of the 72nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of and exemptions from state income tax,
3 so as to extend the angel investor tax credit; to repeal conflicting laws; and for other
4 purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
8 imposition, rate, and computation of and exemptions from state income tax, is amended by
9 revising Code Section 48-7-40.30, relating to an income tax credit for certain qualified
10 investments for a limited period of time, as follows:

11 "48-7-40.30.

12 (a) The General Assembly finds that entrepreneurial businesses significantly contribute
13 to the economy of ~~the~~ 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 ~~the~~ 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;

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 ~~subparagraph~~
25 paragraph (3) of 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) 'Net income tax liability' means income tax liability reduced by all other credits
29 allowed under this chapter.
- 30 (4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability
31 company taxed as a partnership.
- 32 (5) 'Professional services' means those services specified in paragraph (2) of Code
33 Section 14-7-2 or any service which requires as a condition precedent to the rendering of
34 such service the obtaining of a license from a state licensing board pursuant to Title 43.
- 35 (6) 'Qualified business' means a registered business that:
- 36 (A) Is either a corporation, limited liability company, or a general or limited
37 partnership located in this state;
- 38 (B) Was organized no more than three years before the qualified investment was made;
- 39 (C) Has its headquarters located in this state at the time the investment was made and
40 has maintained such headquarters for the entire time the qualified business benefited
41 from the tax credit provided for pursuant to this Code section;
- 42 (D) Employs 20 or fewer people in this state at the time it is registered as a qualified
43 business;
- 44 (E) Has had in any complete fiscal year before registration gross annual revenue as
45 determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a
46 consolidated basis;
- 47 (F) Has not obtained during its existence more than \$1 million in aggregate gross cash
48 proceeds from the issuance of its equity or debt investments, not including commercial
49 loans from chartered banking or savings and loan institutions;
- 50 (G) Has not utilized the tax credit described in Code Section 48-7-40.26;
- 51 (H) Is primarily engaged in manufacturing, processing, online and digital warehousing,
52 online and digital wholesaling, software development, information technology services,
53 or research and development; or is a business providing services other than those
54 described in subparagraph (I) of this paragraph; and
- 55 (I) Does not engage substantially in:
- 56 (i) Retail sales;
- 57 (ii) Real estate or construction;
- 58 (iii) Professional services;
- 59 (iv) Gambling;
- 60 (v) Natural resource extraction;
- 61 (vi) Financial, brokerage, or investment activities or insurance; or

62 (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which
63 an admission or membership is charged.

64 A business shall be substantially engaged in one of the above activities if its gross
65 revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or
66 it is established pursuant to its articles of incorporation, articles of organization, operating
67 agreement, or similar organizational documents to engage in such activity as one of its
68 primary purposes.

69 (7) 'Qualified investment' means an investment by a qualified investor of cash in a
70 qualified business for common or preferred stock or an equity interest or a purchase for
71 cash of qualified subordinated debt in a qualified business; provided, however, that funds
72 constituting a qualified investment cannot have been raised or be raised as a result of
73 other tax incentive programs. Furthermore, no investment of common or preferred stock
74 or an equity interest or purchase of subordinated debt shall qualify as a qualified
75 investment if a broker fee or commission or a similar remuneration is paid or given
76 directly or indirectly for soliciting such investment or purchase.

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

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

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

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

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

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

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

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

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

116 (1) The qualified investor shall not be eligible for the credit for the taxable year in which
117 the qualified investment is made but shall be eligible for the credit for the second taxable
118 year beginning after the qualified investment is made as provided in subsection (d) or (e)
119 of this Code section;

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

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

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

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

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

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

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

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

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

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

160 (A) The death of the qualified investor;

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

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

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

169 (3) If within two years after the qualified investment was made, the qualified investor
170 participates in the operation of the qualified business. For the purpose of this paragraph,

171 a qualified investor participates in the operation of a qualified business if the qualified
172 investor, or the qualified investor's spouse, parent, sibling, or child, or a business
173 controlled by any of these individuals, provides services of any nature to the qualified
174 business for compensation, whether as an employee, a contractor, or otherwise.
175 However, a person who provides uncompensated professional advice to a qualified
176 business, whether as an officer, a member of the board of directors or managers or
177 otherwise, or participates in a stock or membership option or stock or membership plan,
178 or both, shall be eligible for the credit;

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

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

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

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

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

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

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

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

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

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

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

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

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

223 (3) The commissioner shall notify each qualified investor of the tax credits tentatively
 224 approved and allocated to such qualified investor by December 31 of the year in which
 225 the application was submitted. In the event that the credit amounts on the tax credit
 226 applications filed with the commissioner exceed the maximum aggregate limit of tax
 227 credits under this subsection, then the tax credits shall be allocated among the qualified
 228 investors who filed a timely application on a pro rata basis based upon the amounts
 229 otherwise allowed by this Code section. Once the tax credit application has been
 230 approved and the amount approved has been communicated to the applicant, the qualified
 231 investor may then apply the amount of the approved tax credit to its tax liability for the
 232 tax year for which the approved application applies.

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

235 **SECTION 2.**

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