

560-7-8-.52 **Qualified Investor Tax Credit**

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.30.

(2) **Definitions.** As used in this regulation:

(a) **Headquarters.** The term “headquarters” means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(b) **Pass-Through Entity.** The term “pass-through entity” means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(c) **Professional Services.** The term “professional services” means those services specified in paragraph (2) of O.C.G.A. § 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board under Title 43 of the O.C.G.A.

(d) **Qualified Business.** The term “qualified business” means a business that:

1. Is either a corporation, limited liability company, or a general or limited partnership located in this state;

2. Was organized no more than three years before the qualified investment was made;

3. Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit under O.C.G.A. § 48-7-40.30.

4. Employs 20 or fewer people in this state at the time it is registered as a qualified business;

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

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

7. Has not utilized the tax credit under O.C.G.A. § 48-7-40.26;

8. Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, research and development, or a business providing services other than those described in subparagraph (2)(d)9. of this regulation; and

9. Does not substantially engage in any of the following:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance; or

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

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

(e) Qualified Investment. The term “qualified investment” means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(f) Qualified Investor. The term “qualified investor” means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

1. An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by O.C.G.A. § 48-7-20; or

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

(g) Qualified Subordinated Debt. The term “qualified subordinated debt” means indebtedness that is not secured, that may or may not be convertible into common or preferred stock or other equity interest, and that is subordinated in payment to all other indebtedness of the quali-

fied business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(3) **Registration.** A qualified business must register with the Commissioner by submitting Form IT-QBR; registration shall constitute certification by the Commissioner for 12 months beginning on the date of the Commissioner's approval. A business shall be permitted to renew its registration with the Commissioner so long as at the time of renewal, the business remains a qualified business. In order to be certified, the qualified business shall provide the Commissioner any information required by the Commissioner.

(a) **Registration Conditions and Limitations.** The registration of a business as a qualified business shall be subject to the following:

1. If the Commissioner finds that any of the information contained in Form IT-QBR is false, the Commissioner shall revoke the registration of such business. The Commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

2. Registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the Commissioner. In such a case, the surviving company which constitutes the qualified business must provide the Commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the Commissioner.

(4) **Credit Amount.** A qualified investor that makes a qualified investment directly in a qualified business in calendar year 2011, 2012, 2013, 2014, or 2015 shall be allowed a tax credit of 35 percent of the amount invested commencing on January 1 of the second year following the year in which the qualified investment was made.

(5) **Per Individual Credit Limitation.** The credit amount allowed under paragraph (4) of this regulation shall be further limited for each individual, for one or more qualified investments whether made directly or by a pass-through entity, for a taxable year and shall not exceed \$50,000.00.

(6) **Credit Cap.** In no event shall the total amount of tax credits allowed under O.C.G.A. § 48-7-40.30 exceed the following amounts:

(a) For investments made in calendar year 2011 and claimed and allowed in taxable year 2013, \$10 million;

(b) For investments made in calendar year 2012 and claimed and allowed in taxable year 2014, \$10 million;

(c) For investments made in calendar year 2013 and claimed and allowed in taxable year 2015, \$10 million;

(d) For investments made in calendar year 2014 and claimed and allowed in taxable year 2016, \$5 million; and

(e) For investments made in calendar year 2015 and claimed and allowed in taxable year 2017, \$5 million.

(7) Claiming the Credit. Any qualified investor seeking to claim the tax credit under O.C.G.A. § 48-7-40.30, must submit the appropriate forms to the Department as provided in this paragraph.

(a) **Application.** A qualified investor seeking to claim the tax credit under O.C.G.A. § 48-7-40.30 shall submit Form IT-QI-AP for tentative approval between September 1 and October 31 of the year for which the tax credit is claimed and allowed. The postmark of Form IT-QI-AP shall be used to determine the date of submission.

(b) **Notification.** The Department will notify each qualified investor of the tax credits, tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted.

(c) **Allocation of Tax Credit.** In the event the credit amounts on applications filed with the Commissioner exceed the maximum aggregate limit of tax credits under paragraph (6) of this regulation, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed under O.C.G.A. § 48-7-40.30 and this regulation.

1. A qualified investor claiming the tax credit under O.C.G.A. § 48-7-40.30 must attach an approved Form IT-QI-AP and Form IT-QI to its Georgia income tax return for each year in which the credit is claimed.

2. In no event shall the amount of credit claimed by an individual for a taxable year exceed such individual's Georgia net income tax liability after all other credits have been applied.

3. In the event it is determined that the qualified investor has not met all the requirements of O.C.G.A. § 48-7-40.30 and this regulation, then the amount of credits shall not be tentatively approved or the tentatively approved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(8) E-Filing Attachment Requirements. If a taxpayer claiming the credit electronically files their tax return, the Form IT-QI-AP shall be required to be attached to the return only if the Internal Revenue Service allows such attachments when the data is transmitted to the Department. In the event the taxpayer files an electronic return and such information is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such information shall be maintained by the taxpayer

and made available upon request by the Commissioner.

(9) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified investment was made. However, any amount in excess of the credit amount limits in paragraphs (4) and (5) of this regulation shall not be eligible for carryover to the qualified investor's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(10) **Pass-Through Entities.** When the qualified investor is a pass-through entity, and has no income tax liability of its own, the tax credit will pass to its individual members, shareholders, or partners in the same manner as they would account for their proportionate shares of income or loss from such entities. The credit forms will initially be filed with the tax return of the pass-through entity to establish the amount of the credit available for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2013. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2013 tax year.

(11) **Qualified Investor's Basis.** The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced by the amount of credit claimed by the qualified investor.

(12) **Qualified Investor Tax Credit Not Transferrable.** The tax credit under O.C.G.A. § 48-7-40.30 is not transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse upon incident of divorce.

(13) **Recapture.** Any credit claimed under O.C.G.A. § 48-7-40.30 shall be recaptured if any of the following occur:

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

1. The death of the qualified investor;

2. A transfer to the spouse of the qualified investor upon incident of divorce; or

3. A merger, conversion, consolidation, sale of the qualified business' assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(b) Except as provided in subparagraph (13)(a) of this regulation, within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt; or

(c) Within two years after the qualified investment was made, the qualified investor participates in the operation of a qualified business, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business whether as an officer, a member of the board of directors or managers or otherwise or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(14) **Recapture Amount.** The amount of credit recaptured:

(a) Shall apply only to the qualified investment in the particular qualified business in which the investment was made; and

(b) Shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs.

(15) **Qualified Business Ceases Business Operations, Dissolves, or Liquidates.** In the event the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under O.C.G.A. § 48-7-40.30 or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both. If the qualified investor claims a capital loss and has already utilized the credit, the credit shall be recaptured.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.30. **History.** Original Rule entitled "Qualified Investor Tax Credit" adopted. F. Dec. 3, 2010; eff. Dec. 23, 2010. **Amended:** F. Aug. 20, 2013; eff. Sept. 9, 2013.