

House Bill 437

By: Representatives Martin of the 47th, Fludd of the 66th, and Royal of the 171st

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 imposition and computation of income taxes, so as to provide for state income and
3 financial institutions tax credits with respect to certain qualified low-income community
4 investments and long-term debt securities; to define terms; to provide for allocation of credits
5 by the Department of Economic Development; to provide for recapture; to provide for rules
6 and regulations; to provide for related matters; to provide for an effective date and
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
11 imposition and computation of income taxes, is amended by adding a new Code section to
12 read as follows:

13 "48-7-29.13.

14 (a) As used in this Code section, the term:

15 (1) 'Adjusted purchase price' means the product of:

16 (A) The amount paid to the issuer of a qualified equity investment for such qualified
17 equity investment; and

18 (B) The following fraction:

19 (i) The numerator shall be the dollar amount of qualified low-income community
20 investments held by the issuer in this state as of the credit allowance date during
21 applicable tax year; and

22 (ii) The denominator shall be the total dollar amount of qualified low-income
23 community investments held by the issuer as of the credit allowance date during the
24 applicable tax year.

25 For purposes of calculating the amount of qualified low-income community
26 investments held by an issuer, an investment shall be considered held by an issuer even

1 if the investment has been sold or repaid, provided that the issuer reinvests an amount
2 equal to the capital returned to or recovered by the issuer from the original investment,
3 exclusive of any profits realized, in another qualified low-income community
4 investment within 12 months of the receipt of such capital. An issuer will not be
5 required to reinvest capital returned from qualified low-income community investments
6 after the sixth anniversary of the issuance of the qualified equity investment, the
7 proceeds of which were used to make the qualified low-income community investment,
8 and the qualified low-income community investment shall be considered held by the
9 issuer through the seventh anniversary of the qualified equity investment's issuance.

10 (2) 'Applicable percentage' means 7 percent for each of the credit allowance dates.

11 (3) 'Credit allowance date,' with respect to any qualified equity investment, means:

12 (A) The date on which such investment is initially made; and

13 (B) Each of the six anniversary dates of such date thereafter.

14 (4) 'Long-term debt security' means any debt instrument issued by a qualified community
15 development entity, at par value or a premium, with an original maturity date of at least
16 seven years from the date of its issuance, with no acceleration of repayment,
17 amortization, or prepayment features prior to its original maturity date, and with no
18 distribution, payment, or interest features related to the profitability of the qualified
19 community development entity or the performance of the qualified community
20 development entity's investment portfolio. The foregoing shall in no way limit the
21 holder's ability to accelerate payments on the debt instrument in situations where the
22 issuer has defaulted on covenants designed to ensure compliance with this Code section
23 or Section 45D of the Internal Revenue Code of 1986, as amended.

24 (5) 'Qualified active low-income community business' has the meaning given such term
25 in Section 45D of the Internal Revenue Code of 1986, as amended, provided that any
26 business that derives or projects to derive 15 percent of more of its annual revenue from
27 the rental or sale of real estate shall not be considered to be a qualified active low-income
28 community business.

29 (6) 'Qualified community development entity' has the meaning given such term in
30 Section 45D of the Internal Revenue Code of 1986, as amended, provided that such entity
31 has entered into an allocation agreement with the Community Development Financial
32 Institutions Fund of the United States Treasury Department with respect to credits
33 authorized by Section 45D of the Internal Revenue Code of 1986, as amended.

34 (7) 'Qualified equity investment' means any equity investment in, or long-term debt
35 security issued by, a qualified community development entity that:

36 (A) Is acquired after January 1, 2008, at its original issuance solely in exchange for
37 cash;

1 (B) Has at least 85 percent of its cash purchase price used by the issuer to make
2 qualified low-income community investments; and

3 (C) Is designated by the issuer as a qualified equity investment pursuant to the
4 provisions of this Code section, regardless of whether it also has been designated as a
5 qualified equity investment under Section 45D of the Internal Revenue Code of 1986,
6 as amended.

7 This term shall include any qualified equity investment that does not meet the provisions
8 of subparagraph (A) of this paragraph if such investment was a qualified equity
9 investment in the hands of a prior holder.

10 (8) 'Qualified low-income community investment' means any capital or equity
11 investment in, or loan to, any qualified active low-income community business. With
12 respect to any one qualified active low-income community business, on a collective basis
13 with all of its affiliates, the maximum amount of investment that any qualified
14 community development entity, on an aggregate basis with all of its affiliates, may use
15 for the calculation of any numerator described in division (a)(1)(B)(i) of this Code section
16 shall be \$10 million.

17 (9) 'Tax credit' means a credit against the tax otherwise due under this chapter, excluding
18 withholding tax or the tax imposed in Article 4 of Chapter 6 of this title.

19 (10) 'Taxpayer' means any individual or entity subject to the tax imposed in this chapter,
20 excluding withholding tax or the tax imposed in Article 4 of Chapter 6 of this title.

21 (b) A taxpayer that holds a qualified equity investment on a credit allowance date of such
22 qualified equity investment shall be entitled to a tax credit during the taxable year including
23 such credit allowance date. The tax credit amount shall be equal to the applicable
24 percentage of the adjusted purchase price paid to the issuer of such qualified equity
25 investment. The amount of the tax credit that may be redeemed in any tax year shall not
26 exceed the amount of the taxpayer's state tax liability for such tax year. No tax credit
27 authorized under this Code section shall be refundable or transferable. Tax credits earned
28 by a partnership, limited liability company, Subchapter 'S' corporation, or other
29 'pass-through' entity may be allocated to the partners, members, or shareholders of such
30 entity for their direct redemption in accordance with the provisions of any agreement
31 among such partners, members, or shareholders. Any amount of tax credit that the
32 taxpayer is prohibited by this Code section from redeeming in a taxable year may be
33 carried forward to any of the taxpayer's subsequent taxable years. The amount of tax
34 credits that may be allocated by the Department of Economic Development under this Code
35 section in each fiscal year shall not exceed \$20 million.

36 (c) The issuer of the qualified equity investment shall certify to the Department of
37 Economic Development the anticipated dollar amount of such investments to be made in

1 this state during the first 12 month period following the initial credit allowance date. If on
2 the second credit allowance date, the actual dollar amount of such investments is different
3 from the amount estimated, the Department of Economic Development shall adjust the
4 credits arising on the second allowance date to account for such difference.

5 (d) The Department of Economic Development shall recapture the tax credit allowed under
6 this Code section with respect to such qualified equity investment under this Code section
7 if:

8 (1) Any amount of the federal tax credit available with respect to a qualified equity
9 investment that is eligible for a tax credit under this Code section is recaptured under
10 Section 45D of the Internal Revenue Code of 1986, as amended; or

11 (2) The issuer redeems or makes any principal repayment with respect to a qualified
12 equity investment prior to the seventh anniversary of the issuance of such qualified equity
13 investment.

14 Any tax credit that is subject to recapture shall be recaptured from the taxpayer that
15 claimed the tax credit on a return.

16 (e) The Department of Economic Development shall promulgate rules to implement the
17 provisions of this Code section, including recapture provisions on a scaled proportional
18 basis and to administer the allocation of tax credits issued for qualified equity investments
19 which shall be conducted on a first-come, first-serve basis."

20 **SECTION 2.**

21 This Act shall become effective January 1, 2008, and shall apply with respect to taxable
22 years beginning on or after that date.

23 **SECTION 3.**

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