

**RULES
OF
GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS**

**CHAPTER 110-35
GEORGIA AGRIBUSINESS AND RURAL JOBS ACT PROGRAM**

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110-35-1-.01 Purpose

The purpose of the Georgia Agribusiness and Rural Jobs Act is to amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general provisions regarding insurance, so as to establish an eligible business investment that may allow certain entities to earn credit against the entity's state tax liability and to establish procedures necessary to complement the tax credit process.

Authority O.C.G.A. §33-1-25

110-35-1-.02 Definitions

(1) '**Affiliate**' means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another entity. For the purposes of this Code section, an entity is 'controlled by' another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership

interest in the controlled entity or has control over the day-to-day operations of the controlled entity by contract or by law.

(2) '**Allocatee**' means a taxpayer who claims the tax credits on its Georgia tax return.

(3) '**Applicable percentage**' means 0 percent for the first two credit allowance dates and 15 percent for the next four credit allowance dates.

(4) '**Capital investment**' means any equity investment in a rural fund by a rural investor that:

(a) Is acquired after the effective date of this Code section at its original issuance solely in exchange for cash;

(b) Has 100 percent of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the second anniversary of the initial credit allowance date; and

(c) Is designated by the rural fund as a capital investment under this Code section and is certified by the Department. This term shall include any capital investment that does not meet the provisions of Rule 110-35-1-.05 if such investment was a capital investment in the hands of a prior holder.

(5) '**Capital investment authority**' means the amount of capital investment approved by the Department for the rural fund.

(6) '**Certification**' means approval by the Department of the rural fund's application for capital investment authority.

(7) '**Certification date**' means the date the Department approves the rural fund's application for capital investment authority.

(8) '**Closing date**' means the date the Department validates the rural fund's receipt of capital investment.

(9) '**Credit allowance date**' means the date on which a capital investment is made and each of the five anniversary dates of such date thereafter.

(10) '**Days**' means calendar days.

(11) '**Department**' means the Georgia Department of Community Affairs.

(12) '**Eligible business**' means a business that, at the time of the initial qualified investment in the company:

(a) Has less than 250 employees;

(b) Has its principal business operations in one or more rural areas in this state; and

(c) Produces or provides any goods or services produced in Georgia normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or to improve the welfare or livelihood of such persons, or is involved in the processing and marketing of agricultural products, farm supplies, and input suppliers, or is engaged in agribusiness as defined by the Department, or is engaged in manufacturing, health care, technology, transportation, or related services, or if not engaged in such industries, the Department determines that such investment will be beneficial to the rural area and the economic growth of the state. Any business which is

classified as an eligible business at the time of the initial qualified investment in said business by a rural fund shall remain classified as an eligible business and may receive follow-on investments from any rural fund, and such follow-on investments shall be qualified investments even though such business may not meet the definition of an eligible business at the time of such follow-on investments.

(13) '**Eligible distribution**' means:

(a) A distribution of cash to one or more equity owners of a rural investor to fully or partially offset a projected increase in the owner's federal or state tax liability, including any penalties and interest, related to the owner's ownership, management, or operation of the rural investor;

(b) A distribution of cash as payment of interest and principal on the debt of the rural investor or rural fund; and

(c) A distribution of cash related to the reasonable costs and expenses of forming, syndicating, managing, and operating the rural investor or the rural fund, or a return of equity to affiliates of a rural investor or rural fund. Such distributions may include reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the rural fund and an annual management fee that shall not exceed 2 percent of the rural fund's capital investment authority.

(14) '**Financial institution**' means an independent company engaged in the business of dealing with monetary transactions.

(15) '**Jobs**' means jobs created or jobs retained, as defined below.

(16) '**Jobs, created**' means any created jobs, requiring a minimum of 35 hours worked each week, directly attributable to initial qualified investment in an eligible business by a rural fund, but does not include any transferred job or replacement job. Jobs created may be counted from the time of the initial qualified investment until the rural fund's petition to exit the program. Part-time jobs may be aggregated to establish full-time equivalents. Full-time equivalents shall be calculated by utilizing the weekly average worked by part-time employees and aggregated to determine the number of full-time equivalent jobs working at least 35 hours per week.

(17) '**Jobs, retained**' means jobs, requiring a minimum of 35 hours worked each week, in Georgia that existed prior to the qualified investment and would otherwise have been eliminated within 180 days of the date of the qualified investment into the business without such injection by a rural fund, but does not include any new job or replacement job. Part-time jobs may be aggregated to establish full-time job equivalents. Full-time equivalents shall be calculated by utilizing the weekly average worked by part-time employees and aggregated to determine the number of full-time equivalent jobs working at least 35 hours per week.

(18) '**Principal business operations**' means the location where at least 60 percent of a business's employees work or where employees who are paid at least 60 percent of such business's payroll work. A business that has agreed to relocate employees using the proceeds of a qualified investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in such new location if it satisfies these requirements no later than 180 days after receiving a qualified investment.

(19) '**Purchase price**' means the amount paid to the rural fund that issues a capital investment which shall not exceed the amount of capital investment authority certified by the Department.

(20) '**Qualified investment**' means any investment in an eligible business or any loan to an eligible business. Revolving lines of credit and senior secured debt may be eligible when the eligible business has a credit refusal letter or similar correspondence from a depository institution or a referral letter or similar correspondence from a depository institution referring the business to a rural fund. With respect to any one eligible business, the maximum amount of investments made in such business by one or more rural funds, on a collective basis with all of the businesses' affiliates, with the proceeds of capital investments shall be the greater of 20 percent of the rural fund's capital investment authority or \$6.5 million, exclusive of investments made with repaid or redeemed investments or interest or profits realized thereon. The minimum term on any extension of credit shall be at least one year after the date of issuance.

(21) '**Rural area**' means any county, or county equivalent, that has a population of less than 50,000 according to the latest decennial census of the United States.

(22) '**Rural fund**' means an entity certified by the Department.

(23) '**Rural investor**' means an entity that makes a capital investment in a rural fund.

(24) '**Senior secured debt**' means debt that has the benefit of a 1st lien security interest or mortgage on assets of an eligible business and takes priority over other junior obligations owed by the business.

(25) '**State tax liability**' means any liability incurred by any entity under Code Sections 33-3-26 and 33-8-4 or Code Sections 48-7-21 and 48-7-27, or, if such taxes are eliminated or reduced, the term shall also mean any tax liability imposed on an entity or other person that had tax liability under the laws of this state.

Authority O.C.G.A. §33-1-25

110-35-1-.03 Eligible Applicants

(1) Eligible applicants under this program are rural funds or affiliates with a proven track record of making investments together with their affiliates of at least \$100 million in nonpublic companies located in rural areas within the United States.

(2) Rural funds or their affiliates must possess either a license as a rural business investment company under 7 U.S.C. Section 2009cc or as a small business investment company under 15 U.S.C. Section 681 at the time of application. An executive officer of the applicant shall attest that such license remains in effect and has not been revoked.

(3) Applicants must have the capacity to receive the certified capital investment authority from rural investors within 60 days of the certification date from the Department and carry out qualified investments within rural areas of this state.

Authority O.C.G.A. §33-1-25

110-35-1-.04 Application Process

(1) All applications shall be received on forms promulgated by the Department, with all attachments and supporting documentation required in order to be deemed complete.

(2) Applications shall contain all elements required for statutory compliance, as well as any other elements required by the Department.

(3) The Department will begin accepting applications on April 2, 2018. Prospective applicants may submit applications to the Department in advance of that date; however, any submission received in advance of the date will be deemed as having arrived on the date in which applications will first be accepted. Applications will be deemed received when a paper-copy of the application is received by the Department. Applications received after 5:00 pm (Eastern) will be deemed to be received on the following business day.

(4) Eligible applicants under the Georgia Agribusiness and Rural Jobs Act must apply in a format and manner prescribed by the Department. Applications must be submitted in paper-copy format to the Department at:

Georgia Department of Community Affairs
Georgia Agribusiness and Rural Jobs Act Program
Community Development & Finance Division
60 Executive Park South, NE
Atlanta, Georgia 30329-2231

Authority O.C.G.A. §33-1-25

110-35-1-.05 Certification of the Rural Fund

(1) Upon receipt of an application for certification of a rural fund, the Department shall review the application for completeness and compliance with required elements.

(2) Failure to provide any of the following elements within the application will result in the application being deemed incomplete:

- (a) The amount of capital investment authority requested;
 - (b) A copy of the applicant or affiliate's license as a rural business investment company under 7 U.S.C. Section 2009cc or as a small business investment company under 15 U.S.C. Section 681 and a certificate executed by an executive officer of the applicant attesting that such license remains in effect and has not been revoked;
 - (c) A comprehensive list of any and all affiliates of the applicant pertinent to a rural fund's satisfaction of subsection (b) and (d);
 - (d) Evidence, as required by the application, that the applicant or its affiliates have invested at least \$100 million in nonpublic companies located in rural areas within the United States;
 - (e) An estimate of the number of jobs that will be created in the state as a result of the applicant's qualified investments;
 - (f) An estimate of the number of jobs that will be retained in the state as a result of the applicant's qualified investments;
 - (g) A business plan that includes a revenue impact assessment prepared by a nationally recognized, third-party, independent economic forecasting firm using a dynamic input-output forecasting model that analyzes the applicant's business plan over the ten years following the date the application is submitted to the Department. This business plan must demonstrate a positive economic impact on the state of Georgia over this period;
 - (h) Acknowledgement that only qualified investments made within the 118 eligible rural counties shall be eligible qualified investments under the program;
 - (i) A nonrefundable application fee of \$5,000 payable to the Department; and
 - (j) Any other information required by the Department in the application.
- (3) Within 30 days after receipt of a completed application, the Department shall grant or deny the application in full or in part.
- (4) The Department will certify capital investments in the order the applications were received or deemed received by the Department. Applications received on the same day shall be deemed to have been received simultaneously.
- (5) Should the total amount requested by rural funds certifiable by the Department exceed the maximum allowable certification, the Department shall certify applications in proportionate percentages based upon the ratio of the amount of capital investments requested in an application to the total amount of capital investments requested in all applications. The Department shall certify up to \$100 million in capital investments pursuant to this Code section.
- (6) The Department shall provide written notice of the certification to the rural fund within 30 days of receipt of a completed application. Such written notice shall be provided in electronic and paper formats.
- (7) Applications shall be denied if:
- (a) The applicant fails to satisfy all statutory requirements;

- (b) The applicant fails to demonstrate that the applicant's business plan will result in a positive economic impact on the state of Georgia over a ten-year period that exceeds the cumulative amount of tax credits that would be issued to the applicant if the application were approved; or
- (c) The Department has already approved the maximum amount of capital investment authority of \$100 million.
- (8) Within 15 days of receipt of an application that will be denied, the Department shall inform the applicant of the grounds for denial. This notification shall be delivered in electronic format.
- (9) Applicants of denied applications shall have 15 days following the notice of denial to provide additional information requested by the Department or otherwise complete the application. Applicants successfully providing required information within the 15-day period shall be deemed complete as of the original date of submission. Applicants failing to provide the information or failing to complete the application within the 15-day period will remain denied and must be resubmitted in full with a new submission date.

Authority O.C.G.A. §33-1-25

110-35-1-.06 Certification of Capital Investment

- (1) Within 60 days of the applicant receiving notification of certification, the rural fund shall issue the capital investment to and receive cash in the amount of the certified amount from the rural investor(s). Such transactions shall be received into a depository account that is segregated from other accounts of the applicant and specifically designated for capital investments received in connection with the Georgia Agribusiness and Rural Jobs Act Program at a financial institution of the applicant's choosing.
- (2) At least 50 percent of the rural investor's capital investment shall be composed of capital raised by the rural investor from sources, including directors, members, employees, officers, and affiliates of the rural investor, other than the amount of capital invested by the allocatees claiming the tax credits in exchange for such allocation of tax credits.
- (3) Within 65 days of receiving notice of certification, the applicant shall provide the Department with evidence of the receipt of the cash investment. Such investment shall be documented with bank statements or financial institution documentation acceptable to the Department, as well as through verification by an officer of the rural fund on a form promulgated by the Department. Failure to transmit complete documentation shall result in a lapsed certification.

- (4) The rural fund must notify the Department which taxpayers will ultimately claim the tax credit within 65 days of the applicant receiving notice of certification.
- (5) The rural fund shall provide evidence that the capital invested by the allocatees of tax credits is no more than 50 percent of the rural investor's capital investment. Any report filed pursuant to Section 110-35-1-.10(4) notifying the Department of a change in the utilization of tax credits shall include information with respect to capital provided to the rural investor, if any, by such new allocatee sufficient to enable this calculation to be completed with respect to such new allocatee.
- (6) Any rural fund which does not receive the cash investment and issue the capital investment within such time-period following receipt of the certification notice, the certification shall lapse and the rural fund shall not issue the capital investment without reapplying to the Department for certification.
- (7) Lapsed certifications revert to the Department and shall be reissued pro rata to applicants whose capital investment allocations were reduced and then in accordance with the application process.

Authority O.C.G.A. §33-1-25

110-35-1-.07 Qualified Investments & Eligible Businesses

- (1) Qualified investments include loans or equity investments that meet the threshold requirements set forth as qualified investments.
- (2) The Department shall produce a list, available to rural funds and placed on the Department's website, identifying business classifications that shall be considered eligible businesses. The NAICS code of the business entity in which a qualified investment is proposed to be made shall be used to determine the eligibility of such businesses under the Georgia Agribusiness and Rural Jobs Act program.
- (3) The rural fund may make a request of the Department, on a case-by-case basis, to determine eligibility of a business and whether the business is engaged in agribusiness. The Department shall permit or deny eligibility within 20 days of receiving the request for consideration on forms promulgated by the Department. If the rural fund has not received notification from the Department of its determination within 20 days of receiving the request for consideration, the business in which the rural fund proposes to invest shall be considered an eligible business.
- (4) All qualified investments shall be documented by the rural fund by completion of a certification form as promulgated by the Department, that includes all transactional documents, and verification of the investment of said funds through bank statements or other financial institution documents.

Authority O.C.G.A. §33-1-25

110-35-1-.08 Recaptured Credits

(1) The Department may recapture, from an allocatee, the credit allowed under O.C.G.A. §33-1-25 if:

(a) The rural fund does not invest 100 percent of its capital investment authority in qualified investments in the state of Georgia within two years of the closing date, with at least 10 percent of its capital investment authority initially invested in eligible businesses engaged in agribusiness as defined by the Department and at least 10 percent of such investment in agribusiness shall be equity investments;

(b) The rural fund, after satisfying the agribusiness and equity investment requirements above, fails to maintain qualified investments equal to 100 percent of its capital investment authority until the fifth anniversary of the credit allowance date. Qualified investments are considered maintained if the qualified investment was sold or repaid if the rural fund reinvests an amount equal to the capital returned or recovered by the rural fund from the original investment, exclusive of any profits realized, in other qualified investments in the state of Georgia within 12 months of the receipt of such capital. Amounts received periodically by a rural fund shall be treated as continually invested in qualified investments if the amounts are reinvested in one or more qualified investments by the end of the following calendar year. A rural fund is not required to reinvest capital returned from qualified investments after the fourth anniversary of the credit allowance date, and such qualified investments shall be considered held continuously by the rural fund through the fifth anniversary of the credit allowance date;

(c) Should the rural fund fail to meet the conditions of sections (a) and (b) until the fifth anniversary of the credit allowance date, the Department shall recapture credits based upon the following schedule:

(i) If the rural fund fails to invest, or fails to maintain said qualified investments at a percentage of at least 90 percent, all credits will be subject to recapture.

(ii) If the rural fund fails to invest, or fails to maintain said qualified investments at a percentage above 90 percent, but below 100 percent, the percentage subject to recapture will be equal to the amount by which the rural fund failed to achieve 100 percent investment.

(d) The rural fund, before exiting the program in accordance with Section 110-35-1-.11, makes a distribution or payment that results in the rural fund having less than 100 percent of its capital investment authority invested in qualified investments in this state or available for investment in qualified investments and held in cash and other marketable securities; or

(e) The rural fund makes an investment in a business that directly or indirectly owns or has the right to acquire an ownership interest in a rural fund or member or affiliate of a rural fund, including, but not limited to, a holder of a capital investment issued by the

rural fund; or loan to or invest in a rural fund or member or affiliate of a rural fund, including, but not limited to, a holder of a capital investment issued by a rural fund, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a capital investment under O.C.G.A. §33-1-25.

(2) Enforcement of the recapture provisions of subsections (a), (b), (c), and (d) of Section 1 herein shall be subject to a six-month cure period. No recapture shall occur until the rural fund has received notice of noncompliance and has been afforded six months from the date of receipt of such notice to cure the noncompliance.

(f) In the event that losses occur due to an eligible business' inability to meet their investment obligation, the rural fund shall satisfy the 100% investment requirements by reinvesting any capital that is recovered, exclusive of any profits realized. Investment amounts not recovered will not have to be reinvested to satisfy the 100% investment requirements.

Authority O.C.G.A. §33-1-25

110-35-1-09 Reporting requirements

(1) Rural funds shall submit a report to the Department within the first 15 business days after the second anniversary of the initial credit allowance date. This report shall include documentation as to the investment of 100 percent of the investments made under the Georgia Agribusiness and Rural Jobs Act. Such report shall include:

- (a) The county of each eligible business receiving a qualified investment;
- (b) Bank statements of such rural fund evidencing each qualified investment;
- (c) Certification form promulgated by the Department verifying receipt of each qualified investment by the eligible recipient business;
- (d) If requested of the Department, a copy of the written opinion of the Department that such business was an eligible business at the time of such qualified investment, or evidence that the Department failed to respond to a request for eligibility within 20 days of such request (as evidenced by a signed certification of the fund manager of such request and the Department's failure to respond), as applicable;
- (e) The number of jobs created as a result of each qualified investment;
- (f) The number of jobs retained as a result of each qualified investment;
- (g) The average annual salary of jobs created as a result of each qualified investment;
- (h) The average annual salary of jobs retained as a result of each qualified investment;
- (i) The median salary of jobs created as a result of each qualified investment;
- (j) The median salary of jobs retained as a result of each qualified investment;
- (k) The salary range of jobs created as a result of each qualified investment;
- (l) The salary range of jobs retained as a result of each qualified investment;

- (m) Documentation of all distributions during the rural fund's first two years related to the reasonable costs and expenses of forming, syndicating, managing, and operating the rural investor or the rural fund. Such distributions may include reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the rural fund and an annual management fee that shall not exceed 2 percent of the rural fund's qualified capital investment authority; and
 - (n) Any additional information requested by the Department.
- (2) Thereafter, rural funds shall submit an annual report to the Department within 45 days of the beginning of each calendar year during the compliance period. The report shall include, but is not limited to:
- (a) All elements contained in the rural fund's initial report;
 - (b) Documentation of all subsequent investments made by the rural fund; and
 - (c) Documentation of all distributions related to the formation, oversight, and management of the rural fund.

Authority O.C.G.A. §33-1-25

110-35-1-10 Claiming Credits

- (1) Upon making a capital investment in a rural fund, a rural investor earns a vested right to a credit against such entity's Georgia state tax liability that may be utilized on each credit allowance date of such capital investment in an amount equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the rural fund for the capital investment. The applicable percentages that may be claimed are:
- (a) Credit Allowance Date #1 – 0%;
 - (b) Credit Allowance Date #2 – 0%;
 - (c) Credit Allowance Date #3 – 15%;
 - (d) Credit Allowance Date #4 – 15%;
 - (e) Credit Allowance Date #5 – 15%;
 - (f) Credit Allowance Date #6 – 15%; and
 - (g) No subsequent credits apply.
- (2) The amount of the credit claimed by an allocatee shall not exceed the amount of such entity's Georgia state tax liability for the tax year for which the credit is claimed. Any amount of credit that an allocatee is prohibited from claiming in a taxable year as a result of this Code section may be carried forward for use in any subsequent taxable year.
- (3) No allocatee claiming a credit under any applicable code section is required to pay any additional tax that may arise as a result of claiming such credit.

(4) No credit claimed under O.C.G.A §33-1-25 shall be refundable or saleable on the open market. Credits earned by or allocated to a partnership, limited liability company, or S-corporation may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders, and a rural fund must notify the Department of the names of the entities that are eligible to utilize credits pursuant to an allocation of credits or a change in allocation of credits or due to a transfer of a capital investment upon such allocation, change, or transfer. Such allocation shall not be considered a sale.

Authority O.C.G.A. §33-1-25

110-35-1-.11 Exiting the Program

(1) On or after the sixth anniversary of the closing date, a rural fund may apply to the Department to exit the program and no longer be subject to regulation under O.C.G.A §33-1-25. Such application shall be made on forms promulgated by the Department.

(2) The Department shall review each application to determine whether credits have been recaptured or whether the rural fund has received a notice of recapture that has not been cured.

(3) The Department shall notify the rural fund within 30 days of receipt of application to exit the program as to whether the request is approved or denied.

(4) Denial notices shall include the reason(s) for the determination.

(5) The state shall receive a 10 percent share of any distributions annually from a rural fund that made a capital investment, other than the amount in excess of equity invested in the rural fund and tax distributions made by the rural fund.

(6) A rural fund shall distribute all amounts not held in qualified investments no later than the fourteenth anniversary of the closing date.

Authority O.C.G.A. §33-1-25

110-35-1-.12 Prohibitions

(1) No allocatee shall receive distributions, directly or indirectly from distribution or payments made by the rural fund, in excess of an amount that would result in an internal rate of return on capital invested that is more than 20 percent if the number of jobs created is:

(a) Less than 60 percent of the projected jobs in the rural fund's approved business plan, then the state shall receive a penalty of 10 percent of the total tax credits distributed to the rural fund; or

(b) Greater than 60 percent but less than 80 percent of the projected jobs in the rural fund's approved business plan, then the state shall receive a penalty of 5 percent of the total tax credits distributed to the rural fund.

Authority O.C.G.A. §33-1-25