

House Bill 10

By: Representatives Franklin of the 39th and Coan of the 82nd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, so as to eliminate all state income tax withholding requirements with respect to taxpayers, employees, and employers; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by striking Article 5, relating to current income tax payment, and inserting in its place a new Article 5 to read as follows:

"ARTICLE 5

48-7-100.

As used in this article, the term:

(1) 'Calendar quarter' means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2) ~~'Dependent exemption' means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102~~ Reserved.

(2.1) 'Distribution paid or credited' shall mean any disbursement of funds or recognition or assignment of interest in proceeds or property of a partnership, Subchapter 'S' corporation, or limited liability company which is passed through to the members and which may be subject to Georgia income tax.

(3)(A) 'Doing business in this state' means a person:

(i) Having or maintaining directly or indirectly an office, warehouse, stock of goods, or other established facility or place of business in this state;

1 (ii) Performing services or owning, leasing, or operating tangible property in this
2 state on a more or less permanent and not transitory basis; or

3 (iii) Having an officer, employee, agent, or other representative who has or maintains
4 an office or who regularly or systematically solicits or promotes the person's business
5 in this state.

6 (B) 'Office' as used in this paragraph includes, but is not limited to, the residence of
7 any officer, employee, agent, or representative of a person if the residence is held out
8 to be, or identified in the trade with, the person's business.

9 (C) 'Business' as used in this paragraph includes, but is not limited to, any particular
10 activity, occupation, or employment habitually engaged in whether for financial gain
11 or not.

12 (4) 'Employee' means:

13 (A) Any individual who is a domiciliary or resident of this state and who performs
14 services either within or outside, or both within and outside, this state for an employer;

15 (B) Any individual not a domiciliary or resident of this state who performs services
16 within this state for an employer;

17 (C) An officer, employee, or elected official of any body politic or of any agency or
18 instrumentality of a body politic, and an officer of a corporation; or

19 (D) Any person to whom a payment of wages is made whether or not the person is an
20 employee of the payer of the wages at the time of payment.

21 (5) 'Employer' means any person for whom an individual who is a resident or domiciliary
22 of this state performs or performed any service of whatever nature within or outside this
23 state or for whom a nonresident individual performs or performed any service of
24 whatever nature within this state as the employee of the person, except that:

25 (A) If the person for whom the individual performs or performed the services does not
26 have control of the payment of the wages for the service, the term 'employer' includes
27 the person having control of the payment of the wages; and

28 (B) In the case of a person paying wages on behalf of a nonresident individual, foreign
29 partnership, or foreign corporation not doing business within this state, the term
30 'employer' includes the person paying the wages.

31 (6) ~~'Marital exemption' means the withholding exemption status claimed in a withholding~~
32 ~~exemption certificate in effect under subsection (c) of Code Section 48-7-102~~ Reserved.

33 (6.1) 'Member' shall mean partner, shareholder, or other person to whom the taxpaying
34 obligation of the partnership, Subchapter 'S' corporation, or limited liability company
35 falls.

1 (6.2) 'Nonresident' shall mean an individual member who resides outside this state and
 2 a foreign or domestic corporate member whose headquarters or principal place of
 3 business is located outside this state.

4 ~~(7) 'Number of dependent exemptions claimed' means the number of dependent~~
 5 ~~exemptions claimed in a withholding exemption certificate in effect under subsection (c)~~
 6 ~~of Code Section 48-7-102 Reserved.~~

7 ~~(8) 'Payroll period' means a period for which a payment of wages is ordinarily made to~~
 8 ~~the employee by an employer. The term 'miscellaneous payroll period' means a payroll~~
 9 ~~period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly,~~
 10 ~~semiannual, or annual payroll period Reserved.~~

11 (8.1) 'Periodic payment' means a designated distribution from a pension, annuity, or
 12 similar fund which is one of a series of substantially equal distributions made over:

13 (A) The life or life expectancy of the participant or the joint lives or joint life
 14 expectancies of the participant and his or her beneficiary; or

15 (B) A specified period of ten years or more.

16 ~~(9) 'Single exemption' means the withholding exemption status claimed in a withholding~~
 17 ~~exemption certificate in effect under subsection (c) of Code Section 48-7-102 Reserved.~~

18 (10) 'Wages' means all remuneration paid including, but not limited to, the cash value of
 19 all remuneration paid in any medium other than cash, and shall be computed without any
 20 deduction of any amounts withheld by the employer for any reason and regardless of the
 21 terminology which the employer or employees may apply to the remuneration. The term
 22 does not include remuneration paid:

23 (A) For agricultural labor;

24 (B) For domestic service in a private home, local college club, or local chapter of a
 25 college fraternity or sorority;

26 (C) For services performed by a duly ordained, commissioned, or licensed minister of
 27 a church in the exercise of his ministry or by a member of a religious order in the
 28 exercise of duties required by the order;

29 (D) For services performed for a foreign government or an international organization;

30 (E) For service not in the course of the employer's trade or business performed by an
 31 employee in any calendar quarter unless the cash remuneration paid for the service is
 32 \$50.00 or more and the service is performed by an individual who is regularly
 33 employed, as defined in the rules and regulations of the commissioner, by the employer
 34 to perform the services;

35 (F) For services performed by an individual under the age of 18 in the delivery or
 36 distribution of newspapers or shopping news, not including delivery or distribution to

1 any point for subsequent delivery or distribution, or for services performed by an
 2 individual in, and at the time of, the sale of newspapers or magazines to ultimate
 3 consumers under an arrangement by which the newspapers or magazines are to be sold
 4 by the individual at a fixed price, the individual's compensation being based on his
 5 retention of the excess of such price over the amount at which the newspaper or
 6 magazines are charged to him. This subparagraph shall apply whether or not the
 7 individual is guaranteed a minimum amount of compensation for the service or is
 8 entitled to be credited with the unsold newspapers or magazines returned;

9 (G) For services not in the course of the employer's trade or business to the extent paid
 10 in any medium other than cash;

11 (H) For services for an employer performed by a resident or domiciliary of this state
 12 in another state if at the time of the payment of the remuneration the employer is
 13 required by the law of the other state to withhold income tax from the remuneration;

14 (I) For services performed as a master, officer, or any other seaman who is a member
 15 of the crew on a vessel engaged in foreign, coastal, intercoastal, interstate, or
 16 contiguous trade to the extent withholding from the remuneration is prohibited by the
 17 laws of the United States;

18 (J) To, or on behalf of, any employee:

19 (i) From or to a trust described in Section 401(a) of the Internal Revenue Code of
 20 1986 which is exempt under Code Section 48-7-25 at the time of the payment unless
 21 the payment is made to an employee of the trust as remuneration for services rendered
 22 as an employee and not as a beneficiary of the trust;

23 (ii) Under or to an annuity plan which at the time of the payment meets the
 24 requirements of Section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of
 25 1986;

26 (K) For services performed by a nonresident if the nonresident has been employed
 27 within this state for no more than 23 calendar days during the calendar quarter; or

28 (L) As fees to a public official for services employed by an employee for his employer.

29 48-7-100.1.

30 ~~The commissioner shall, not later than July 1, 1996, enter into an agreement with the~~
 31 ~~federal Office of Personnel Management pursuant to 5 U.S.C. Section 8345 and its~~
 32 ~~implementing regulations, 5 C.F.R. Sections 1901 through 1907, for the withholding of~~
 33 ~~state income tax from the retirement benefits of annuitants under the federal Civil Service~~
 34 ~~Retirement and Disability Fund Reserved.~~

1 48-7-101.

2 ~~(a) Wages subject to withholding.~~ The amount of wages subject to withholding shall be the
 3 amount of each wage payment less the total withholding exemption allowance applicable
 4 to the wage payment as computed under subsection (b) of this Code section and less the
 5 standard deduction allowance applicable to the wage payment, determined according to the
 6 payroll period and marital status of the employee as follows:

	Married		Married
	Filing		Filing
<u>Payroll Period</u>	<u>Jointly</u>	<u>Single</u>	<u>Separately</u>
Weekly	\$ 57.50	\$ 44.25	\$ 28.75
Biweekly	115.00	88.50	57.50
Semimonthly	125.00	95.75	62.50
Monthly	250.00	191.50	125.00
Quarterly	750.00	75.00	375.00
Semiannual	1,500.00	1,150.00	750.00
Annual	3,000.00	2,300.00	1,500.00
Daily or			
Miscellaneous	8.20	6.30	4.10

18 ~~(b) Withholding exemption allowance.~~

19 ~~(1) The withholding exemption allowance applicable to a wage payment to an employee,~~
 20 ~~determined according to the payroll period of the employee, shall be the amount shown~~
 21 ~~in Column 1, below, or the amount shown in Column 2, below, as the withholding~~
 22 ~~exemption status of the employee may be, plus the amount shown in Column 3, below,~~
 23 ~~multiplied by the number of dependency exemptions claimed by the employee.~~

	Col. 1	Col. 2	Col. 3
	Single	Marital	Each Dependent
<u>Payroll Period</u>	<u>Exemption</u>	<u>Exemption</u>	<u>Exemption</u>
Weekly	\$ 51.92	\$ 103.85	\$ 51.92
Biweekly	103.80	207.69	103.85
Semimonthly	112.50	225.00	112.50
Monthly	225.00	450.00	225.00
Quarterly	675.00	1,350.00	675.00

1	Semiannual	1,350.00	2,700.00	1,350.00
2	Annual	2,700.00	5,400.00	2,700.00
3	Daily or			
4	Miscellaneous	7.40	14.79	7.40

~~(2) If wages are paid for a miscellaneous payroll period or with respect to a period which is not a payroll period, the withholding exemption allowance with respect to each payment of wages shall be the exemption allowed for a daily payroll period multiplied by the number of days in the period including, but not limited to, Saturdays and Sundays, with respect to which the wages are paid.~~

~~(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowance with respect to each payment of wages shall be exemption allowance for a daily payroll period multiplied by the number of days, including but not limited to, Saturdays and Sundays, which have elapsed since the last payment of wages by the employer during the calendar year, since the date of commencement of employment with the employer during the year, or since January 1 of the year, whichever is later.~~

~~(c) Requirement of withholding. Every employer making payments of wages shall deduct and withhold from the wages a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the income tax reasonably estimated to be due for the calendar year as a result of including the employee's wages received during the calendar year in the employee's Georgia adjusted gross income. The method of determining the amount to be withheld shall be prescribed by regulations of the commissioner, with due regard for the withholding exemption allowances of the employee provided in this Code section and the sum of any credits allowable against his tax.~~

~~(d) Other employer plans. Upon application by an employer and under conditions the commissioner deems proper, the commissioner may approve any plan of withholding developed by an employer to produce, insofar as practicable, the tax required to be withheld under the regulations prescribed by the commissioner under subsection (c) of this Code section. Any plan authorized under this subsection shall be in lieu of the tax required to be deducted and withheld under the regulations prescribed by the commissioner.~~

~~(e) Included and excluded wages. If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by the employer to the employee for the period shall be deemed to be wages. If the remuneration paid by an~~

1 employer to an employee for services performed during more than one-half of any payroll
2 period of not more than 31 consecutive days does not constitute wages, then none of the
3 remuneration paid by the employer to the employee for the period shall be deemed to be
4 wages.

5 ~~(f) Unusual cases. The commissioner may promulgate regulations for withholding in
6 unusual cases, including the following:~~

7 ~~(1) To authorize an employer to estimate the wages which will be paid to an employee
8 in any quarter of the calendar year and to determine the amount to be deducted and
9 withheld upon each payment of wages to the employee during the quarter as if the
10 appropriate average of the wages so estimated constituted the actual wages paid;~~

11 ~~(2) To authorize the employer to deduct and withhold from any payment of wages to an
12 employee during a quarter the amount necessary to adjust the amount actually deducted
13 and withheld during the quarter to the amount required to be deducted and withheld
14 during the quarter if the payroll period of the employee were quarterly;~~

15 ~~(3) To authorize an employer to deduct and withhold an amount in addition to that
16 otherwise required to be withheld under this article in cases in which the employer and
17 the employee agree to the additional withholding. The additional withholding shall for
18 all purposes be considered tax required to be deducted and withheld under this article;~~

19 ~~(4) To authorize an employer to deduct from wages, before withholding and deducting
20 tax, any amount attributable to travel and other necessary business expenses of employees
21 who are not reimbursed by the employer for the expenses and whose duties require such
22 expenditures, other than traveling to and from the employee's home and place of
23 employment;~~

24 ~~(5) To prescribe the manner and extent to which withholding tax shall apply to extra
25 payments to employees for services rendered, including, but not limited to, bonuses,
26 separation pay, and year-end Christmas, or birthday payments and to authorize, under
27 such conditions as the commissioner deems proper, an employer to compute the tax to
28 be withheld from the payments so as to make adjustments to the annual wages which the
29 employer may pay to the employee. No withholding shall be required with respect to a
30 Christmas payment or a birthday payment to an employee when the amount of the
31 payment is not in excess of \$100.00;~~

32 ~~(6) To prescribe the manner and extent to which withholding tax shall apply to unusual
33 payments of wages; and~~

34 ~~(7) To prescribe the manner and extent to which withholding tax shall apply to the
35 proceeds of any lottery prize of \$5,000.00 or more awarded by the Georgia Lottery
36 Corporation.~~

1 ~~(g) Employees incurring no income tax liability.~~

2 ~~(1) An employer is not required to deduct and withhold any tax under this article from~~
 3 ~~a payment of wages to an employee if there is in effect with respect to the payment a~~
 4 ~~withholding exemption certificate furnished to the employer by the employee certifying~~
 5 ~~that the employee:~~

6 ~~(A) Incurred no liability for income tax under this chapter for his preceding taxable~~
 7 ~~year; and~~

8 ~~(B) Anticipates that he will incur no liability under this chapter for income tax for his~~
 9 ~~current taxable year.~~

10 ~~(2) The withholding exemption certificate for use as provided in this subsection shall be~~
 11 ~~in the form and shall contain such information as required by the commissioner.~~

12 ~~(h) Withholding requirements for periodic payments.~~

13 ~~(1) The payor of any periodic payment as defined in paragraph (8.1) of Code Section~~
 14 ~~48-7-100 shall withhold from such payment the amount which would be required to be~~
 15 ~~withheld if such payment were a payment of wages by an employer to an employee for~~
 16 ~~the appropriate payroll period.~~

17 ~~(2) The payee of any periodic payment may elect to have paragraph (1) of this subsection~~
 18 ~~not apply with respect to periodic payments made to such payee. Such an election shall~~
 19 ~~remain in effect until revoked by the payee.~~

20 ~~(3) The commissioner is authorized to prescribe forms and to promulgate rules and~~
 21 ~~regulations setting forth the requirements for withholding from such periodic payments~~
 22 ~~and the requirements for making elections not to withhold Reserved.~~

23 48-7-102.

24 ~~(a)(1) A zero exemption status shall apply to any employee receiving wages who, on the~~
 25 ~~withholding exemption certificate required under subsection (c) of this Code section,~~
 26 ~~disclaims any exemption status or who fails to file with his employer the withholding~~
 27 ~~exemption certificate required under subsection (c) of this Code section.~~

28 ~~(2) A single exemption status shall be available to any employee receiving wages who~~
 29 ~~at the time cannot qualify for a marital exemption or who disclaims a marital exemption,~~
 30 ~~unless such employee is an individual who is eligible to be claimed as a dependent on~~
 31 ~~another taxpayer's federal income tax return in which case a zero exemption status shall~~
 32 ~~apply.~~

33 ~~(3) A marital exemption status shall be available to any employee receiving wages who~~
 34 ~~at the time is married and living with his spouse, but only if his spouse does not have in~~

1 ~~effect at that time a withholding exemption certificate claiming a single or marital~~
2 ~~exemption.~~

3 ~~(b) An employee receiving wages shall be entitled on any day to one withholding~~
4 ~~dependency exemption for each individual with respect to whom he may reasonably be~~
5 ~~expected to be entitled to an exemption for the taxable year under Code Section 48-7-26.~~

6 ~~(c)(1) On or before the date of the commencement of employment with any employer,~~
7 ~~the employee shall furnish the employer with a signed withholding certificate in the form~~
8 ~~prescribed by the commissioner relating to his withholding exemption status and the~~
9 ~~number of dependency exemptions which the employee claims. No exemption may be~~
10 ~~claimed to which the employee is not entitled. If the employee fails to furnish such~~
11 ~~completed certificate or furnishes erroneous information on such certificate to the~~
12 ~~employer, the employer will withhold as if the exemption status were single and zero~~
13 ~~until a withholding certificate is received which contains complete or corrected~~
14 ~~information, as necessary.~~

15 ~~(2) Except as otherwise provided by rules or regulations of the commissioner, if an~~
16 ~~employee has filed with his employer an exemption certificate as required for federal~~
17 ~~withholding tax purposes, an employer may give effect to the exemption status and~~
18 ~~exemptions claimed on the federal exemption certificate when the certificate contains~~
19 ~~sufficient information to enable the employer to give effect to the withholding~~
20 ~~exemptions allowable under this Code section.~~

21 ~~(3) Whenever during a calendar year the withholding exemption status of an employee~~
22 ~~or the number of dependency exemptions to which an employee is entitled changes or~~
23 ~~whenever an employee reasonably expects such a change before the end of the calendar~~
24 ~~year which would entitle the employee to different withholding exemptions than those~~
25 ~~shown on the exemption certificate in effect for the employee, the employee shall file~~
26 ~~with his employer within ten days of the change or, for the next calendar year, on or~~
27 ~~before December 20 a new certificate indicating the change. In no event shall the~~
28 ~~withholding exemption status or the number of dependency exemptions claimed on a~~
29 ~~certificate exceed the number to which the employee is entitled.~~

30 ~~(4)(A) A withholding exemption certificate furnished the employer when no previous~~
31 ~~certificate is in effect shall take effect as of the beginning of the first payroll period~~
32 ~~ending, or as of the first payment of wages made without regard to a payroll period, on~~
33 ~~or after the date on which the certificate is so furnished.~~

34 ~~(B) A withholding exemption certificate furnished the employer when a previous~~
35 ~~certificate is in effect shall take effect with respect to the first payment of wages made~~
36 ~~on or after the first status determination date which occurs at least 30 days from the date~~

1 on which the certificate is so furnished. At the election of the employer, the certificate
 2 may be made effective with respect to any payment of wages made on or after the date
 3 on which the certificate is so furnished. For purposes of this subparagraph, the term
 4 'status determination date' means January 1 and July 1 of each year.

5 ~~(5) A withholding exemption certificate which takes effect under this subsection shall~~
 6 ~~continue in effect with respect to the employer until another certificate takes effect under~~
 7 ~~this subsection. Each withholding exemption certificate which is in effect is, at the time~~
 8 ~~of the receipt of any wages, a present representation of fact subject to the criminal~~
 9 ~~penalties of Code Section 48-7-127 Reserved.~~

10 48-7-102.1.

11 ~~(a) The commissioner shall have the power to make and publish reasonable rules and~~
 12 ~~regulations:~~

13 ~~(1) Setting forth circumstances under which an employer shall be required to submit to~~
 14 ~~the commissioner copies of withholding exemption certificates furnished to the employer~~
 15 ~~by his employees;~~

16 ~~(2) Establishing a procedure by which the commissioner may notify an employer and~~
 17 ~~employee that any withholding exemption certificate which has been submitted to the~~
 18 ~~commissioner shall be considered defective for purposes of computing amounts of~~
 19 ~~withholding under this article;~~

20 ~~(3) Establishing a procedure by which the commissioner may, after a withholding~~
 21 ~~exemption certificate submitted to him has been determined to be defective, specify to~~
 22 ~~an employer the basis upon which amounts of withholding under this article are to be~~
 23 ~~computed; and~~

24 ~~(4) Governing any and all other matters reasonably considered by the commissioner to~~
 25 ~~be appropriate in addressing those matters set forth in paragraphs (1) through (3) of this~~
 26 ~~subsection.~~

27 ~~(b) For purposes of rules and regulations promulgated under the authority of subsection~~
 28 ~~(a) of this Code section, the term 'employer' may be defined by the commissioner to include~~
 29 ~~an individual authorized by an employer to receive withholding exemption certificates, to~~
 30 ~~make withholding computations, or to make payroll distributions.~~

31 ~~(c) Nothing in this Code section shall be construed to deny additional withholding~~
 32 ~~allowances to an employee who can show that he will have additional deductions because~~
 33 ~~he or his spouse has attained age 65 or is blind, large itemized deductions, deductible~~
 34 ~~alimony payments, moving expenses, employee business expenses, retirement~~
 35 ~~contributions, net losses, or tax credits Reserved.~~

1 48-7-103.

2 ~~(a) Every employer whose tax withheld or required to be withheld is \$200.00 or less per~~
 3 ~~month is required to file and remit payment to the department on or before the last day of~~
 4 ~~the month following the end of the quarter.~~

5 ~~(b) Every employer whose tax withheld or required to be withheld exceeds \$200.00 per~~
 6 ~~month is required to file and remit payment to the department on or before the fifteenth day~~
 7 ~~of the following month; provided, however, that the commissioner shall be authorized to~~
 8 ~~promulgate rules and regulations to permit the filing of such returns on a quarterly basis.~~

9 ~~(c) If the commissioner has reason to believe that the collection of the tax required to be~~
 10 ~~paid under this article is in jeopardy for any reason, he or she may require the employer to~~
 11 ~~make a return and pay the required tax at any time.~~

12 ~~(d) The commissioner is authorized to prescribe forms and to promulgate rules and~~
 13 ~~regulations which the commissioner deems necessary in order to effectuate this Code~~
 14 ~~section, and shall be authorized to permit the filing of returns or the remitting of payments~~
 15 ~~thereunder on an annual basis if agreed to by the taxpayer Reserved.~~

16 48-7-104.

17 ~~(a) *In general.* If for any reason during any period of the calendar year more or less than~~
 18 ~~the correct amount of the tax is withheld or more or less than the correct amount of the tax~~
 19 ~~is paid to the commissioner, proper adjustment without interest may be made in any~~
 20 ~~subsequent period of the same calendar year. No adjustment under this Code section shall~~
 21 ~~be made with respect to an underpayment for any period after receipt from the~~
 22 ~~commissioner of notice and demand for payment of the amount of the underpayment based~~
 23 ~~upon an assessment. The amount of the underpayment shall be paid in accordance with the~~
 24 ~~notice and demand. No adjustment under this Code section shall be made with respect to~~
 25 ~~an erroneous payment or overpayment for any period after the filing of a claim for refund~~
 26 ~~of the payment.~~

27 ~~(b) *Less than correct amount of tax withheld.*~~

28 ~~(1) If no tax or less than the correct amount of the tax is deducted from any wage~~
 29 ~~payment and the error is ascertained prior to the filing of the return for the period in~~
 30 ~~which the wages are paid, the employer shall report on the return and pay to the~~
 31 ~~commissioner the correct amount of the tax required to be withheld. If the error is not~~
 32 ~~ascertained until after the filing of the return for the period in which the wages are paid,~~
 33 ~~the undercollection may be corrected by an adjustment on the return for any subsequent~~
 34 ~~period of the same calendar year subject to the limitations noted in subsection (a) of this~~
 35 ~~Code section. The amount of any undercollection adjusted in accordance with this~~

1 paragraph shall be paid to the commissioner without interest at the time prescribed for
2 payment of the tax for the period in which the adjustment is made.

3 ~~(2) If no tax or less than the correct amount of the tax is withheld from any wage
4 payment, the employer may correct the error by deducting the amount of the
5 undercollection from any remuneration of the employee under the employer's control
6 after the employer ascertains the error. The deduction may be made even though the
7 remuneration, for any reason, does not constitute wages.~~

8 ~~(c) *More than correct amount of tax withheld.*~~

9 ~~(1) If in any period more than the correct amount of tax is deducted from any wage
10 payment, the overcollection may be paid to the employee in any period of the same
11 calendar year. If the amount of the overcollection is so paid, the employer shall obtain
12 and keep as part of his records the endorsed canceled check or written receipt of the
13 employee showing the date and amount of the payment.~~

14 ~~(2) If any overcollection in any period is paid to and receipted for by the employee prior
15 to the time the return for the period is filed with the commissioner, the amount of the
16 overcollection shall not be included in the return for that period.~~

17 ~~(3) Subject to the limitations provided in subsection (a) of this Code section, if an
18 overcollection in any period is paid to and receipted for by the employee after the return
19 for the period is filed and the tax is paid to the commissioner, the overcollection may be
20 corrected by an adjustment on the return for any subsequent period of the same calendar
21 year.~~

22 ~~(4) Every overcollection not paid to and receipted for by the employee as provided in this
23 subsection must be reported and paid to the commissioner with the return for the period
24 in which the overcollection is made Reserved.~~

25 48-7-105.

26 ~~(a) Not later than January 31 in each year and at such other dates as required by the
27 commissioner, each person required to withhold taxes as provided in this article shall
28 furnish each employee for whom taxes have been withheld or to whom remuneration has
29 been paid in that year or other period a statement of wages paid and taxes withheld. The
30 commissioner shall provide by rule for the enforcement and implementation of this Code
31 section.~~

32 ~~(b) The commissioner may grant a reasonable extension of time, not exceeding 30 days,
33 for furnishing the statement required by this Code section Reserved.~~

34 48-7-106.

1 ~~(a) On or before February 28 of each year for the preceding calendar year or on or before~~
 2 ~~the thirtieth day after the date on which the final payment of wages is made by an employer~~
 3 ~~who has ceased to pay wages, an employer shall file with the commissioner an annual or~~
 4 ~~a final return, as the case may be, on a form prescribed by the commissioner. The~~
 5 ~~employer shall attach to the return copies of the statements required to be furnished under~~
 6 ~~Code Section 48-7-105 for the period covered by the return, provided that in lieu of~~
 7 ~~attaching copies, the commissioner may authorize the reporting of such information by~~
 8 ~~electronic or magnetic media.~~

9 ~~(b) The commissioner may grant a reasonable extension of time, not exceeding 30 days,~~
 10 ~~for filing the annual or final return required by this Code section.~~

11 ~~(c) If an employer liable for any withholding tax, interest, or penalty levied pursuant to this~~
 12 ~~chapter sells out his business or stock of goods or equipment or quits the business, he shall~~
 13 ~~file the final return as required in subsection (a) of this Code section. The employer's~~
 14 ~~successor or assigns, if any, shall withhold a sufficient amount of the purchase money to~~
 15 ~~cover the amount of the withholding taxes, interest, and penalties due and unpaid until the~~
 16 ~~former owner provides a receipt from the commissioner showing that the taxes, interest,~~
 17 ~~and penalties have been paid or a certificate from the commissioner stating that no~~
 18 ~~withholding taxes, interest, or penalties are due.~~

19 ~~(d) If the purchaser of a business or stock of goods or equipment fails to withhold the~~
 20 ~~purchase money as required by this Code section, he shall be personally liable for the~~
 21 ~~payment of the withholding tax, interest, and penalties accruing and unpaid by any former~~
 22 ~~owner or assignor. The personal liability of the purchaser in such a case shall not exceed~~
 23 ~~the amount of the total purchase money, but the property being transferred shall in all cases~~
 24 ~~be subject to the full amount of the tax lien arising from the delinquencies of the former~~
 25 ~~owner Reserved.~~

26 48-7-107.

27 ~~(a) Each return shall be signed by or for the employer required to deduct and withhold the~~
 28 ~~tax under this article and shall contain or be verified by a written declaration that the return~~
 29 ~~is made under the penalties for false swearing. The return shall be signed and verified by~~
 30 ~~the employer, by a person having control of the payment of wages for the employer, or by~~
 31 ~~a person authorized to make the return for the employer. The fact that a name appears to~~
 32 ~~be signed to a return shall be prima-facie evidence that the name was actually signed by the~~
 33 ~~person named. The fact that a person appears to have signed for an employer shall be~~
 34 ~~prima-facie evidence that the person was authorized to sign for the employer.~~

1 ~~(b) The commissioner, as far as possible, shall furnish employers, regularly and without~~
 2 ~~application, copies of the prescribed forms required to be used under this article. No~~
 3 ~~employer is excused from making a return or furnishing a receipt by the fact that no forms~~
 4 ~~had been furnished to the employer Reserved.~~

5 48-7-108.

6 ~~(a) *In general.* The employer shall be liable for the payment of the tax required to be~~
 7 ~~deducted and withheld under this article whether or not the employer has deducted and~~
 8 ~~withheld the tax as required under this article.~~

9 ~~(b) *Withheld tax.* The amount of tax deducted and withheld by an employer from an~~
 10 ~~employee's wages under this article shall be held to be a special fund in trust for the state;~~
 11 ~~and the employer's liability for the tax shall be discharged only by payment of the tax to~~
 12 ~~the commissioner. To the extent that the tax is deducted and withheld, the employer shall~~
 13 ~~not be liable to any other person for the amount of the tax and shall be indemnified against~~
 14 ~~the claims and demands of any person for the payment of any amounts made to the~~
 15 ~~commissioner in accordance with this article.~~

16 ~~(c) *Assessment, collection, and payment.* Except as otherwise provided by law, the liability~~
 17 ~~of an employer under subsection (a) of this Code section and the amount of the fund~~
 18 ~~described in subsection (b) of this Code section shall be assessed, collected, and paid in the~~
 19 ~~same manner and subject to the same provisions and limitations including, but not limited~~
 20 ~~to, penalties as are income taxes. In the event any employer is delinquent in payment of~~
 21 ~~the tax imposed by this article, the commissioner may give notice of the amount of the~~
 22 ~~delinquency by registered or certified mail or statutory overnight delivery to all persons~~
 23 ~~having in their possession or under their control any credits or other personal property~~
 24 ~~belonging to the employer and to all persons owing any debts to the employer at the time~~
 25 ~~of receipt by them of the notice. In lieu of registered or certified mail or statutory~~
 26 ~~overnight delivery, the notice may be served and the recipient may acknowledge service~~
 27 ~~thereof by telephonic facsimile transmission or by other means of instantaneous electronic~~
 28 ~~transmission. Thereafter, no person so notified shall transfer or make any other disposition~~
 29 ~~of the credits, other personal property, or debts until the commissioner has consented to a~~
 30 ~~transfer or disposition or until 30 days have elapsed after receipt of the notice. Each person~~
 31 ~~so notified must advise the commissioner, within five days after receipt of the notice, of~~
 32 ~~any and all credits, other personal property, or debts in such person's possession, under~~
 33 ~~such person's control, or owing by such person as provided in this Code section.~~

34 ~~(d) *Amount due on face of return.* The filing of any return by an employer in compliance~~
 35 ~~with this article which shows on its face an amount due shall by operation of law constitute~~

1 an assessment of the amount shown to be due on the return against the employer filing the
 2 return as of the date the return is filed. For the purposes of this Code section, an entry on
 3 a return showing the date of receipt by the department shall be prima-facie evidence that
 4 the return was actually received and filed on the date indicated. If payment is not made
 5 either with the return or on or before the due date of the return, whichever is later, the
 6 amount shown to be due shall be in default and the commissioner may issue an execution
 7 for the collection of the amount due.

8 ~~(e) *Protest of proposed assessment.* Each protest of a proposed assessment of taxes due~~
 9 ~~under this article shall be filed within ten days of the notice of the proposed assessment~~
 10 ~~unless the commissioner authorizes additional time. The filing of a protest and the filing~~
 11 ~~of a request for additional time for the filing of a protest shall toll the period of limitations~~
 12 ~~for making an assessment until the protest or request is withdrawn by the employer or~~
 13 ~~denied by the commissioner Reserved.~~

14 48-7-109.

15 ~~(a) If the employer fails to deduct and withhold the required tax in violation of this article~~
 16 ~~and thereafter the income tax liability of the employee under Code Section 48-7-20, against~~
 17 ~~which the amount, if withheld, would have been a credit, is paid by the employee, the tax~~
 18 ~~required to be deducted and withheld shall not be collected from the employer. This Code~~
 19 ~~section in no way shall relieve the employer from the liability for any penalties or additions~~
 20 ~~to the tax otherwise applicable with respect to such failure.~~

21 ~~(b) The income tax liability of an employee shall in no way be affected by the failure of~~
 22 ~~his employer to withhold the tax required under this article Reserved.~~

23 48-7-109.1.

24 ~~(a) Whenever an employer required to deduct and withhold taxes as required under this~~
 25 ~~article fails, at the time and in the manner prescribed by law or regulation, to deduct and~~
 26 ~~withhold, collect, account truthfully for, or pay over to the commissioner the amount of~~
 27 ~~taxes due as required by this article, upon being notified of the failure by the commissioner~~
 28 ~~by notice served upon him, personally or by registered or certified mail or statutory~~
 29 ~~overnight delivery addressed to his last known address, he shall comply with the~~
 30 ~~requirement of special accounting as set forth in subsection (b) of this Code section.~~

31 ~~(b) Beginning at the time of service upon him of the notice provided for in subsection (a)~~
 32 ~~of this Code section, the employer shall deduct and withhold the tax required under this~~
 33 ~~article and, not later than the second banking day after any amount of such tax is deducted~~
 34 ~~and withheld, shall:~~

1 ~~(1) Deposit the tax in a special and separate account in any state or national bank~~
 2 ~~designated as a state depository and keep the amount of such taxes in such account until~~
 3 ~~payment over to the commissioner or to the department. Each such account shall be a~~
 4 ~~special fund in trust for the state payable only to the commissioner or the department; or~~
 5 ~~(2) Purchase a postal money order or other certified or bankable paper for such amount,~~
 6 ~~payable only to the commissioner or the department. The order or paper shall be handled~~
 7 ~~and dealt with under such rules and regulations as the commissioner may prescribe.~~

8 ~~(c) Whenever the commissioner is satisfied that the special accounting prescribed under~~
 9 ~~subsections (a) and (b) of this Code section is no longer necessary to effect future~~
 10 ~~compliance with law or regulations, he may cancel the notice requiring compliance with~~
 11 ~~subsection (b) of this Code section at such time and under such conditions as he may~~
 12 ~~specify Reserved.~~

13 48-7-110.

14 ~~The fact of an employer's voluntary compliance with the requirements of this article shall~~
 15 ~~not of itself constitute any admission that the employer is doing business within this state~~
 16 ~~for any other purpose, but it shall be taken as conferring jurisdiction upon this state for~~
 17 ~~purposes of collecting amounts withheld under this article Reserved.~~

18 48-7-111.

19 ~~(a) Each employer required to deduct and withhold taxes under this article shall keep~~
 20 ~~accurate records of all remuneration paid to his employees, including, but not limited to,~~
 21 ~~remuneration paid in forms other than cash. The records shall contain the information~~
 22 ~~required by rules issued by the commissioner.~~

23 ~~(b) The records required to be kept pursuant to subsection (a) of this Code section and~~
 24 ~~records relating to refunds shall be preserved and maintained for a period of at least four~~
 25 ~~years after the date the tax to which they relate becomes due or the date the tax is paid,~~
 26 ~~whichever is later Reserved.~~

27 48-7-112.

28 ~~(a) *Credit*. The amount of tax deducted or withheld during any calendar year with respect~~
 29 ~~to an employee shall be allowed as a credit to the employee against his income tax liability~~
 30 ~~under Code Section 48-7-20 for the taxable year beginning in the calendar year.~~

31 ~~(b) *Overpayment*.~~

32 ~~(1) To the extent that the credit provided in subsection (a) of this Code section together~~
 33 ~~with other credits allowed by law is in excess of the employee's income tax liability for~~

1 the taxable year as shown on an income tax return filed by the employee for that year, the
2 overpayment shall be considered as taxes erroneously paid and shall be credited or
3 refunded as provided in this Code section. An overpayment shall be credited to the
4 person's estimated income tax liability for the succeeding taxable year unless the person
5 claims a refund for the overpayment. The commissioner may consider any final return
6 showing an overpayment as a claim for refund per se. An overpayment shall bear no
7 interest if credit is given for the overpayment. Amounts refunded as overpayments shall
8 bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the
9 filing date of the final return showing the overpayment or from the due date of the final
10 return, whichever is later.

11 (2) A refund shall be deemed to have been made when the commissioner issues a check
12 for the refund payable to the claimant. The record in the office of the commissioner as
13 to the time of issuance of the refund shall be prima-facie evidence of the time the refund
14 is made. Whenever a check is issued for a refund claimed or shown due on a final return
15 and no separate claim has been filed for the refund, the check shall be sent by first-class
16 mail to the claimant at the address shown on the return in an envelope instructing return
17 of the envelope if not delivered in ten days. The commissioner shall publish the names
18 of claimants whose checks are returned. If a refund check is not claimed in accordance
19 with the commissioner's instructions within 90 days after the publication, the refund
20 claim covered by the check shall be deemed to have been abandoned. Any refund check
21 which is not presented for payment within 180 days after the date of the check shall be
22 void and the refund claim covered by the check shall be deemed to have been abandoned.
23 When any claim for refund has been abandoned, any funds which may have been
24 designated or set aside for its payment shall be returned to the Office of Treasury and
25 Fiscal Services and the claimant's right to the refund shall be barred. This subsection
26 shall not apply to a claim for refund filed with, but separately from, a final return under
27 general law and shall not affect the period of limitations allowed by general law
28 applicable to a claim for refund when filed separately from a final return.

29 (c) *Limitation on refund or credit.* No refund or credit shall be allowed unless the
30 employee attaches to and files with his final income tax return a copy of the employer's
31 receipt as provided for in Code Section 48-7-105 for the amount of tax deducted and
32 withheld from his wages for that taxable year. If an employee submits satisfactory proof
33 that his employer deducted and withheld taxes from his wages and that the employer failed
34 or refused to furnish the employee with the prescribed receipt, the proof so furnished may
35 be taken to establish a credit or refund under this Code section.

1 ~~(d) *Setoffs*. Notwithstanding any other provision of this subsection, a refund or a portion~~
 2 ~~thereof may be transferred to a claimant agency to set off a debt due and owing to the~~
 3 ~~claimant agency as provided in Article 7 of this chapter. When any action pursuant to~~
 4 ~~Article 7 of this chapter is taken, that article shall govern all aspects of right and~~
 5 ~~entitlement to refunds covered thereunder. Funds transferred to claimant agencies shall not~~
 6 ~~bear interest. If there is a final determination that the taxpayer alleged to be a debtor is~~
 7 ~~entitled to receive all or part of the funds transferred to a claimant agency, the amount to~~
 8 ~~which the taxpayer is entitled shall bear interest at the rate provided in Code Section~~
 9 ~~48-2-35 beginning 30 days after the final determination Reserved.~~

10 48-7-113.

11 ~~If more than the correct amount of tax, penalty, or interest is paid to the commissioner by~~
 12 ~~an employer, the employer may file a claim for refund of the overpayment or may take~~
 13 ~~credit for the overpayment against the tax reported on any quarterly return which the~~
 14 ~~employer subsequently files. A refund or credit of the overpayment, however, shall be~~
 15 ~~made only to the extent that the amount of overpayment exceeds the tax actually withheld~~
 16 ~~and the penalty and interest on the tax. If more than the correct amount of tax, penalty, or~~
 17 ~~interest is assessed and is not paid to the commissioner, the employer against whom the~~
 18 ~~assessment is made may file a claim for abatement of the overassessment Reserved.~~

19 48-7-114.

20 (a) *'Estimated tax' defined*. For purposes of this Code section, the term 'estimated tax'
 21 means the amount which the individual estimates as the amount of income tax imposed by
 22 Code Section 48-7-20 less the amount which the individual estimates as the sum of credits
 23 allowable by law against the tax.

24 (b) *Requirement of estimated tax*. Except as otherwise provided in subsection (d) of this
 25 Code section, every resident individual and every taxable nonresident individual shall file
 26 his estimated tax for the current taxable year if he can be reasonably expected to be
 27 required to file a Georgia income tax return for the current taxable year and his gross
 28 income can reasonably be expected to:

29 (1) Include more than \$1,000.00 from sources other than wages as defined in paragraph
 30 (10) of Code Section 48-7-100; and

31 (2) Exceed:

32 (A) One thousand five hundred dollars if the individual is single or the individual is
 33 married and not living with his spouse or the individual is married and expects to claim
 34 only \$1,500.00 of the marital exemption; or

1 (B) Three thousand dollars if the individual is married and living with his spouse and
2 expects to claim the full marital exemption.

3 (c) *Return as estimated tax.* If on or before January 31 of the succeeding taxable year or,
4 in the case of an individual referred to in subsection (b) of Code Section 48-7-115, relating
5 to income from farming and fishing, on or before March 1 of the succeeding taxable year,
6 the taxpayer files a return for the taxable year for which the estimated tax is required and
7 pays in full the amount computed on the return as payable and the estimate is not required
8 to be filed during the taxable year but is required to be filed on or before January 15, then
9 the return shall be considered as the estimate.

10 (d) *Exemptions.* This Code section shall not apply to an individual in a given tax year if:

11 (1) The sum of the allowable credits shown on the individual's income tax return for the
12 tax year exceeds the individual's tax liability shown on the return before the tax liability
13 is reduced by the amount of the allowable credits; and

14 (2) The individual reasonably expected at the time estimated tax was otherwise required
15 to be filed with respect to the tax year that the conditions of paragraph (1) of this
16 subsection would be met for the tax year.

17 (e) *Applicability to fiduciaries.* With respect to taxable years beginning on or after January
18 1, 1988, fiduciaries shall be subject to all requirements of this article in the same manner
19 as individuals.

20 48-7-115.

21 (a) *In general.* Estimated tax required by Code Section 48-7-114 from an individual not
22 regarded as a farmer or fisherman shall be filed with the commissioner on or before April
23 15 of the taxable year, except that if the requirements of subsection (b) of Code Section
24 48-7-114 are first met:

25 (1) On or after April 1 and before June 1 of the taxable year, the estimated tax shall be
26 filed on or before June 15 of the taxable year;

27 (2) On or after June 1 and before September 1 of the taxable year, the estimated tax shall
28 be filed on or before September 15 of the taxable year; or

29 (3) On or after September 1 of the taxable year, the estimated tax shall be filed on or
30 before January 15 of the succeeding year.

31 (b) *Farmers and fishermen.* Estimated tax required by Code Section 48-7-114 from
32 individuals whose estimated gross income from farming or fishing for the taxable year is
33 at least two-thirds of the total estimated gross income from all sources for the taxable year
34 may be filed, in lieu of the time prescribed in subsection (a) of this Code section, at any
35 time on or before January 15 of the succeeding taxable year.

1 (c) *Short taxable years.* In the application of this Code section to a taxable year beginning
2 on any date other than January 1, there shall be substituted for the months specified in this
3 Code section the months which correspond to the months specified in this Code section.

4 48-7-116.

5 (a) *In general.* The amount of estimated tax required to be paid by an individual shall be
6 paid as follows:

7 (1) If the estimate is filed on or before April 15 of the taxable year, the estimated tax
8 shall be paid in four equal installments. The first installment shall be paid on or before
9 April 15. The second and third installments shall be paid on or before June 15 and
10 September 15, respectively, of the taxable year. The fourth installment shall be paid on
11 January 15 of the succeeding year;

12 (2) If the estimate is filed after April 15 and not after June 15 of the taxable year and is
13 not required by subsection (a) of Code Section 48-7-115 to be filed on or before April 15
14 of the taxable year, the estimated tax shall be paid in three equal installments. The first
15 installment shall be paid at the time of the filing of the estimate, the second installment
16 shall be paid on September 15 of the taxable year, and the third installment shall be paid
17 on January 15 of the succeeding year;

18 (3) If the estimate is filed after June 15 and not after September 15 of the taxable year
19 and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before
20 June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The
21 first installment shall be paid at the time of the filing of the estimate and the second
22 installment shall be paid on January 15 of the succeeding year;

23 (4) If the estimate is filed after September 15 of the taxable year and is not required by
24 subsection (a) of Code Section 48-7-115 to be filed on or before September 15 of the
25 taxable year, the estimated tax shall be paid in full at the time of the filing of the estimate;
26 or

27 (5) If the estimate is filed after the time prescribed in subsection (a) of Code Section
28 48-7-115 including, but not limited to, cases in which an extension of time for filing has
29 been granted, paragraphs (2), (3), and (4) of this subsection shall not apply, and all
30 installments of estimated tax which would have been payable on or before such time if
31 the estimate had been filed within the time prescribed in subsection (a) of Code Section
32 48-7-115 shall be paid at the time of the filing. The remaining installments shall be paid
33 at the times at which, and in the amounts in which, they would have been payable if the
34 estimate had been so filed.

1 (b) *Farmers and fishermen.* If an individual referred to in subsection (b) of Code Section
 2 48-7-115, relating to income from farming and fishing, files estimated tax after September
 3 15 of the taxable year and on or before January 15 of the succeeding year, the estimated tax
 4 shall be paid in full at the time of the filing.

5 (c) *Fiscal years.* In the application of this Code section to a taxable year beginning on any
 6 date other than January 1, there shall be substituted for the months specified in this Code
 7 section the months which correspond to the months specified in this Code section.

8 (d) *Installments paid in advance.* At the election of the individual, any installment of the
 9 estimated tax may be paid prior to the date prescribed for its payment.

10 48-7-117.

11 (a) *'Estimated tax' defined.* For purposes of this Code section, the term 'estimated tax'
 12 means the amount which the corporation estimates as the amount of income tax imposed
 13 by Code Section 48-7-21 less the amount which the corporation estimates as the sum of
 14 credits allowable by law against the tax.

15 (b) *In general.* Every domestic and foreign corporation subject to taxation under Code
 16 Section 48-7-21 shall pay estimated tax for the taxable year if its net income for the taxable
 17 year as defined in Code Section 48-7-31 can reasonably be expected to exceed \$25,000.00.

18 48-7-118.

19 Reserved.

20 48-7-119.

21 If the requirements of Code Section 48-7-117 are first met as shown in the left-hand
 22 column of the following table, then the estimated tax shall be due as shown in the
 23 remaining columns:

24 The following percentages of the
 25 estimated tax shall be paid on
 26 the fifteenth day of the:

27	fourth	sixth	ninth	twelfth
28	month	month	month	month
29	of the	of the	of the	of the
30	taxable	taxable	taxable	taxable
31	<u>year</u>	<u>year</u>	<u>year</u>	<u>year</u>

1	Before the first day of the fourth month				
2	of the taxable year	25	25	25	25
3	After the last day of the third month				
4	and before the first day of the				
5	sixth month of the taxable year		33 1/3	33 1/3	33 1/3
6	After the last day of the fifth month				
7	and before the first day of the				
8	ninth month of the taxable year			50	50
9	After the last day of the eighth month				
10	and before the first day of the				
11	twelfth month of the taxable year				100

12 48-7-120.

13 (a) *Addition to the tax.* In case of any underpayment of estimated tax by a taxpayer, except
 14 as provided in subsection (d) of this Code section, an amount computed at the rate of 9
 15 percent per annum upon the amount of the underpayment, determined under subsection (b)
 16 of this Code section, for the period of the underpayment, determined under subsection (c)
 17 of this Code section, shall be added to the tax under Code Section 48-7-21 for the taxable
 18 year.

19 (b) *Amount of underpayment.* For purposes of subsection (a) of this Code section, the
 20 amount of the underpayment shall be the excess of paragraph (1) of this subsection over
 21 paragraph (2) of this subsection when those paragraphs are as follows:

22 (1) The amount of the installment which would be required to be paid if the estimated
 23 tax were equal to 70 percent (66 2/3 percent in the case of individuals referred to in
 24 subsection (b) of Code Section 48-7-115, relating to income from farming and fishing)
 25 of the tax shown on the return for the taxable year or, if no return was filed, 70 percent
 26 (66 2/3 percent in the case of individuals referred to in subsection (b) of Code Section
 27 48-7-115, relating to income from farming and fishing) of the tax for the year; and

28 (2) Any amount of the installment paid on or before the last date prescribed for payment.

29 (c) *Period of underpayment.* The period of the underpayment shall run from the date the
 30 installment was required to be paid to whichever of the following dates is the earlier:

31 (1) The fifteenth day of the fourth month following the close of the taxable year; or

32 (2) With respect to any portion of the underpayment, the date on which the portion is
 33 paid. For the purposes of this paragraph, a payment of estimated tax on the installment
 34 date or, in the case of a corporation, on the fifteenth day of the first month of the
 35 succeeding taxable year shall be considered a payment of any previous underpayment

1 only to the extent the payment exceeds the amount of the installment determined under
2 paragraph (1) of subsection (b) of this Code section for the installment date or, in the case
3 of a corporation, for the fifteenth day of the first month of the succeeding taxable year.

4 (d) *Exception.* Notwithstanding subsections (a) through (c) of this Code section, the
5 addition to the tax with respect to any underpayment of any installment shall not be
6 imposed if the total amount of all payments of estimated tax made on or before the last date
7 prescribed for the payment of the installment equals or exceeds the amount which would
8 have been required to be paid on or before the last date prescribed for the payment if the
9 estimated tax were the least of the following:

10 (1) The tax shown on the return for the preceding taxable year, if a return showing a
11 liability for tax was filed by the taxpayer for the preceding taxable year and the preceding
12 year was a taxable year of 12 months;

13 (2) An amount equal to the tax computed at the rates applicable to the taxable year on
14 the basis of the taxpayer's status with respect to Code Section 48-7-26 for the taxable
15 year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and
16 under the law applicable to, the preceding taxable year; or

17 (3) An amount equal to 70 percent, or 66 2/3 percent in the case of individuals referred
18 to in subsection (b) of Code Section 48-7-115, relating to income from farming and
19 fishing, of the tax for the taxable year computed by placing on an annualized basis the
20 taxable income for the months in the taxable year ending before the month in which the
21 installment is required to be paid. For purposes of this paragraph, the taxable income shall
22 be placed on an annualized basis by:

23 (A) Multiplying by 12 or, in the case of a taxable year of less than 12 months, by the
24 number of months in the taxable year the taxable income (computed without deduction
25 of personal exemptions) for the months in the taxable year ending before the month in
26 which the installment is required to be paid;

27 (B) Dividing the resulting amount by the number of months in the taxable year ending
28 before the month in which the installment date falls; and

29 (C) Deducting from the amount the deductions for any personal exemptions allowable
30 for the taxable year, such personal exemptions to be determined as of the last date
31 prescribed for payment of the installment.

32 (4) In the case of an individual, an amount equal to 90 percent of the tax computed at the
33 rates applicable to the taxable year on the basis of the actual taxable income for the
34 months in the taxable year ending before the month in which the installment is required
35 to be paid.

1 (e) ~~Application to individual.~~ For purposes of applying this Code section in the case of an
 2 individual:

3 (1) ~~The estimated tax shall be computed without any reduction for the amount which the~~
 4 individual estimates as his credit under subsection (a) of Code Section 48-7-112; and

5 (2) ~~The amount of the credit allowed under subsection (a) of Code Section 48-7-112 for~~
 6 the taxable year shall be deemed a payment of estimated tax, and an equal part of the
 7 amount shall be deemed paid on each installment date as determined under Code Section
 8 48-7-116 for the taxable year. If the taxpayer establishes the dates on which all amounts
 9 were actually withheld, the amounts so withheld shall be deemed payments of estimated
 10 tax on the dates on which the amounts were actually withheld Reserved.

11 (f) *'Tax' defined.* For purposes of subsections (b) and (d) of this Code section, the term 'tax'
 12 means the tax imposed by Code Section 48-7-20 reduced by the credits against the tax
 13 allowed by law other than the credit against tax provided by subsection (a) of Code Section
 14 48-7-112, relating to tax withheld on wages.

15 48-7-121.

16 (a) The amount of estimated tax paid under this article for any taxable year shall be
 17 allowed as a credit to the taxpayer against the taxpayer's income tax liability under Code
 18 Section 48-7-20 or 48-7-21 for the taxable year.

19 (b) To the extent that the estimated tax credit, together with other credits allowed by law,
 20 is in excess of the taxpayer's income tax liability for a taxable year as shown on an income
 21 tax return filed by the taxpayer for that year, the overpayment shall be considered as taxes
 22 erroneously paid and shall be credited or refunded as provided in this subsection. The
 23 overpayment shall be credited to the taxpayer's estimated income tax liability for the
 24 succeeding taxable year unless the taxpayer claims a refund for the overpayment. The
 25 commissioner may consider any final return showing an overpayment as a claim for refund
 26 per se. An overpayment shall bear no interest if credit is given for the overpayment.
 27 Amounts refunded as overpayments shall bear interest at the rate provided in Code Section
 28 48-2-35 but only after 90 days from the filing date of the final return showing the
 29 overpayment or 90 days from the due date of the final return, whichever is later.

30 48-7-122.

31 ~~The tax deducted and withheld under this article shall not be allowed as a deduction to the~~
 32 employer Reserved.

1 48-7-123.

2 The commissioner may disregard a fractional part of a dollar in the allowance of any
3 amount as a credit or refund or in the assessment or collection of any amount as a
4 deficiency or underpayment.

5 48-7-124.

6 In the administration and enforcement of this article with respect to a taxpayer whose
7 income may be subject to the current income tax payment laws of two or more tax
8 jurisdictions, including this state, the commissioner may make reciprocal arrangements
9 with the tax authorities of the other jurisdictions for the relief of the taxpayer from the
10 multiple burden imposed by the operation of several current income tax payment laws.

11 48-7-125.

12 The application of this article to taxable years of less than 12 months shall be in accordance
13 with regulations prescribed by the commissioner.

14 48-7-126.

15 (a) *Assessable as tax.* The liabilities specified in this Code section shall be paid upon
16 notice and demand by the commissioner and shall be assessed and collected in the same
17 manner as are income taxes. Except as otherwise provided by law, any reference to 'tax'
18 imposed under this article shall be deemed also to refer to the liabilities specified in this
19 Code section.

20 (b) ~~*Failure to withhold tax.* Any person required to deduct and withhold the tax imposed~~
21 ~~by Code Section 48-7-101 who, with respect to each wage payment to each employee, fails~~
22 ~~to deduct and withhold the required tax shall pay a penalty of \$10.00 unless it is shown that~~
23 ~~the failure is due to reasonable cause and not to willful neglect. The penalty shall not~~
24 ~~exceed \$10.00 quarterly for each employee with respect to whose wages the failure~~
25 ~~occurred~~ Reserved.

26 (c) ~~*Failure to file employer return or pay tax.* If an employer fails to file within the~~
27 ~~prescribed time a return required under this article or fails to pay when due the tax required~~
28 ~~under this article, or both, unless it is shown that the failure is due to reasonable cause and~~
29 ~~not to willful neglect, there shall be assessed a penalty of \$25.00 against any employer for~~
30 ~~each such failure plus 5 percent of the amount of the tax if the failure is for not more than~~
31 ~~one month and an additional 5 percent for each additional month or fraction of a month~~
32 ~~during which the failure continues. The penalty shall not exceed \$25.00 plus 25 percent in~~
33 ~~the aggregate of the tax and in no event shall the penalty be less than \$25.00. If any check~~

1 or money order in payment of any amount is not paid when duly presented for payment,
 2 it shall constitute a failure to pay under this subsection Reserved.

3 (d) *Fraudulent withholding receipt.* Any person required to furnish an employee with a
 4 withholding receipt required by Code Section 48-7-105 who willfully furnishes a false or
 5 fraudulent receipt shall for each such receipt be subject to a penalty of \$50.00 Reserved.

6 (e) *Interest.* If the tax imposed by this article on employers is not paid on the date
 7 prescribed for payment in Code Section 48-7-103 and is not adjusted as authorized in Code
 8 Section 48-7-104, interest on the unpaid amount at the rate specified in Code Section
 9 48-2-40 shall be paid for the period from the due date of the tax, irrespective of any
 10 extension of time for payment, until the date of payment. The interest shall be assessed and
 11 collected as part of the tax Reserved.

12 (f) *Failure of corporation to pay estimated tax.* If a corporation fails to timely pay
 13 estimated tax, a penalty shall be assessed against the corporation in an amount equal to 5
 14 percent of the Georgia income tax imposed on the corporation for the taxable year.

15 48-7-127.

16 (a) *Willful failure to withhold tax:*

17 (1) It shall be unlawful for any person who is required to deduct and withhold the tax
 18 imposed by Code Section 48-7-101 willfully to fail, in making payments of wages for any
 19 payroll period, to deduct and withhold the required tax from the wages paid to any
 20 employee.

21 (2) In addition to any other penalties provided by law, any person who violates paragraph
 22 (1) of this subsection shall be guilty of a misdemeanor for each such payroll period
 23 Reserved.

24 (b) *Willful failure to pay over withheld tax:*

25 (1) It shall be unlawful for any person who has deducted and withheld any amount from
 26 an employee's wages as a tax required under Code Section 48-7-101 willfully to fail,
 27 within the prescribed time, to pay the amount over to the commissioner as required under
 28 Code Section 48-7-103.

29 (2) In addition to any other penalties provided by law, any person who violates paragraph
 30 (1) of this subsection shall be guilty of a misdemeanor.

31 (3) For purposes of this subsection, a lack of funds existing immediately after the
 32 payment of wages, whether or not created by the payment of the wages, shall not negate
 33 willfulness Reserved.

34 (c) *Willful failure to file return or pay estimated tax.*

1 (1) It shall be unlawful for any person who is required under this article or regulations
 2 pursuant to this article to file any return of any tax or pay estimated tax or to keep any
 3 record, willfully to fail to file the return or pay the tax or to keep the records at the time
 4 or times required by law or regulation.

5 (2) In addition to any other penalties provided by law, any person who violates paragraph
 6 (1) of this subsection shall be guilty of a misdemeanor.

7 ~~(d) False exemption certificate or failure to supply information.~~

8 ~~(1) It shall be unlawful for any individual who is required to supply information to his
 9 employer under Code Section 48-7-102 willfully to supply false or fraudulent information
 10 or willfully to fail to supply information under Code Section 48-7-102 which would
 11 require an increase in the tax to be withheld under Code Section 48-7-102.~~

12 ~~(2) In lieu of any penalty otherwise provided, any individual who violates paragraph (1)
 13 of this subsection shall be guilty of a misdemeanor. Reserved.~~

14 ~~(e) False withholding receipts or failure to furnish receipts.~~

15 ~~(1) It shall be unlawful for any person who is required to furnish to an employee the
 16 receipt prescribed in Code Section 48-7-105 willfully to furnish a false or fraudulent
 17 receipt or willfully to fail to furnish the receipt at the time, in the manner, and showing
 18 the information required by law or regulation.~~

19 ~~(2) In lieu of any other penalty provided by law, except the penalty provided in
 20 subsection (d) of Code Section 48-7-126, any person who violates paragraph (1) of this
 21 subsection shall be guilty of a misdemeanor for each such receipt or failure. Reserved.~~

22 (f) *Attempts to evade or defeat tax.*

23 (1) It shall be unlawful for any person willfully to attempt in any manner to evade or
 24 defeat any tax imposed under this article or the payment of any tax imposed under this
 25 article.

26 (2) In addition to any other penalties provided by law, any person who violates paragraph
 27 (1) of this subsection shall be guilty of a misdemeanor.

28 (g) *Willful failure to pay corporate estimated tax.*

29 (1) It shall be unlawful for any officer, director, or employee of a corporation required
 30 under this article or regulations pursuant to this article to file estimated tax willfully to
 31 be responsible for the failure of the corporation to pay any installment of estimated tax
 32 due.

33 (2) In addition to any other penalties provided by law, any individual who violates any
 34 provision of paragraph (1) of this subsection shall be guilty of a misdemeanor for each
 35 such failure.

36 (h) *Violation of notice of delinquency.*

1 (1) It shall be unlawful for any person to violate the provisions of subsection (c) of Code
2 Section 48-7-108 with respect to notice of delinquency.

3 (2) Any person who violates paragraph (1) of this subsection with respect to notice of
4 delinquency shall be guilty of a misdemeanor.

5 ~~(i) Failure to comply with notice of special accounting:~~

6 ~~(1) It shall be unlawful for any person to fail to comply with a notice of the~~
7 ~~commissioner requiring compliance with subsection (b) of Code Section 48-7-109.1,~~
8 ~~providing for special accounting under the current income tax payment law.~~

9 ~~(2) In addition to other penalties provided by law, any person who violates paragraph (1)~~
10 ~~of this subsection shall be guilty of a misdemeanor unless there was a reasonable doubt~~
11 ~~as to whether the law required collection of the tax or as to who was required by law to~~
12 ~~collect the tax or the failure to comply was due to circumstances beyond his control.~~

13 ~~(3) For the purposes of this subsection, a lack of funds existing immediately after the~~
14 ~~payment of wages, whether or not created by the payment of such wages, shall not be~~
15 ~~considered to be circumstances beyond the control of a person.~~

16 48-7-128.

17 ~~(a) As used in this Code section, the term 'nonresident of Georgia' shall include~~
18 ~~individuals, trusts, partnerships, corporations, and unincorporated organizations. Any~~
19 ~~seller or transferor who meets all of the following conditions and who provides the buyer~~
20 ~~or transferee with an affidavit signed under oath swearing or affirming that the following~~
21 ~~conditions are met will be deemed a resident for purposes of this Code section:~~

22 ~~(1) The seller or transferor has filed Georgia income tax returns or appropriate extensions~~
23 ~~have been received for the two income tax years immediately preceding the year of sale;~~

24 ~~(2) The seller or transferor is in business in Georgia and will continue substantially the~~
25 ~~same business in Georgia after the sale or the seller or transferor has real property~~
26 ~~remaining in the state at the time of closing of equal or greater value than the withholding~~
27 ~~tax liability as measured by the 100 percent property tax assessment of such remaining~~
28 ~~property;~~

29 ~~(3) The seller or transferor will report the sale on a Georgia income tax return for the~~
30 ~~current year and file it by its due date; and~~

31 ~~(4) If the seller or transferor is a corporation or limited partnership, it is registered to do~~
32 ~~business in Georgia.~~

33 ~~(b)(1) Except as otherwise provided in this Code section, in the case of any sale or~~
34 ~~transfer of real property and related tangible personal property located in Georgia by a~~
35 ~~nonresident of Georgia, the buyer or transferee shall be required to withhold and remit~~

1 to the commissioner on forms provided by the commissioner a withholding tax equal to
 2 3 percent of the purchase price or consideration paid for the sale or transfer; provided,
 3 however, that if the amount required to be withheld pursuant to this subsection exceeds
 4 the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold
 5 and pay over to the commissioner only the net proceeds otherwise payable to the seller
 6 or transferor. Any buyer or transferee who fails to withhold such amount shall be
 7 personally liable for the amount of such tax.

8 (2) The liability imposed by this subsection shall be paid upon notice and demand by the
 9 commissioner or the commissioner's delegate and shall be assessed and collected in the
 10 same manner as all other withholding taxes imposed by this article.

11 (c) If the seller or transferor determines that the amount required to be withheld pursuant
 12 to paragraph (1) of subsection (b) of this Code section will result in excess withholding on
 13 any gain required to be recognized from the sale, the seller or transferor may provide the
 14 buyer or transferee with an affidavit signed under oath swearing or affirming to the amount
 15 of the gain required to be recognized from the sale, and the buyer or transferee shall
 16 withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the
 17 affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section.
 18 If, however, the amount required to be withheld pursuant to this subsection exceeds the net
 19 proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay
 20 over to the commissioner only the net proceeds otherwise payable to the seller or
 21 transferor.

22 (d) Subsection (b) of this Code section shall not apply where:-

23 (1) The real property being sold or transferred is a principal residence of the seller or
 24 transferor within the meaning of Section 1034 of the Internal Revenue Code;

25 (2) The seller or transferor is a mortgagor conveying the mortgaged property to a
 26 mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional
 27 consideration; or

28 (3) The transferor or transferee is an agency or authority of the United States of America,
 29 an agency or authority of the State of Georgia, the Federal National Mortgage
 30 Association, the Federal Home Loan Mortgage Corporation, or the Government National
 31 Mortgage Association, or a private mortgage insurance company.

32 The commissioner may by regulation set a purchase price amount below which no
 33 withholding is required.

34 (e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter
 35 'S' corporation or other unincorporated organization which certifies to the buyer or
 36 transferee that a composite return is being filed on behalf of the nonresident partners,

1 ~~shareholders, or members and that the partnership, Subchapter 'S' corporation, or~~
 2 ~~unincorporated organization remits the tax on the gain on behalf of the nonresident~~
 3 ~~partners, shareholders, or members, the buyer or transferee shall not be required to~~
 4 ~~withhold as provided in this Code section. Any nonresident partner, shareholder, or~~
 5 ~~member who falsely certifies that a composite return is being filed on behalf of such~~
 6 ~~partner, shareholder, or member shall be liable for a penalty in the amount of \$500.00 or~~
 7 ~~10 percent of the amount required to be withheld, whichever is greater.~~

8 ~~(2) The penalty imposed by this subsection shall be paid upon notice and demand by the~~
 9 ~~commissioner or the commissioner's delegate and shall be assessed and collected in the~~
 10 ~~same manner as the withholding tax imposed by this article.~~

11 ~~(f) Every buyer or transferee of real property located in Georgia who is required to deduct~~
 12 ~~and withhold the withholding tax imposed by subsection (b) of this Code section shall file~~
 13 ~~the required return and remit payment to the department on or before the last day of the~~
 14 ~~calendar month following the calendar month within which the sale or transfer giving rise~~
 15 ~~to the withholding tax occurred Reserved.~~

16 48-7-129.

17 ~~(a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which~~
 18 ~~owns property or does business within this state shall be subject to a withholding tax.~~
 19 ~~Such tax shall be withheld from any distributions paid or credited to members who are~~
 20 ~~not residents of Georgia, except as provided in subsection (c) of Code Section 48-7-24.~~

21 ~~(2) The amount of tax to be withheld for each nonresident member shall be determined~~
 22 ~~by multiplying the distribution paid or credited by a rate of 4 percent. To the extent that~~
 23 ~~the partnership, Subchapter 'S' corporation, or limited liability company remits~~
 24 ~~withholding tax during the course of the tax year which exceeds the Georgia income tax~~
 25 ~~liability of a nonresident member, that member shall be entitled to a refund of the excess~~
 26 ~~withholding at the end of the taxable year.~~

27 ~~(3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails~~
 28 ~~to withhold and pay over to the commissioner any amount required to be withheld under~~
 29 ~~this Code section may be liable for a penalty equal to the amount not withheld and paid~~
 30 ~~over. Any penalty imposed under this subsection shall be paid upon notice and demand~~
 31 ~~by the commissioner or the commissioner's delegate and shall be assessed and collected~~
 32 ~~in the same manner as the withholding taxes imposed by this article.~~

33 ~~(4) The partnership, Subchapter 'S' corporation, or limited liability company and its~~
 34 ~~members shall be jointly and severally liable for the withholding tax liability imposed~~
 35 ~~under this subsection and shall be assessed accordingly.~~

1 ~~(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this~~
 2 ~~Code section, the commissioner may allow the filing of composite returns by~~
 3 ~~partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their~~
 4 ~~nonresident members and may provide for the requirements of filing composite returns~~
 5 ~~by regulation. For purposes of this subsection, the term 'composite return' shall mean a~~
 6 ~~return filed by a partnership, Subchapter 'S' corporation, or limited liability company on~~
 7 ~~behalf of all of its nonresident members which reports and remits the Georgia income tax~~
 8 ~~of the nonresident members.~~

9 ~~(2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses~~
 10 ~~to file a composite return and meets all the requirements of filing the composite return,~~
 11 ~~such partnership, Subchapter 'S' corporation, or limited liability company shall be exempt~~
 12 ~~from the withholding requirements imposed under subsection (a) of this Code section.~~

13 ~~(3) The liability imposed by this subsection shall be paid upon notice and demand by the~~
 14 ~~commissioner or the commissioner's delegate and shall be assessed and collected in the~~
 15 ~~same manner as all other withholding taxes imposed by this article.~~

16 ~~(c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to~~
 17 ~~remit withholding for a nonresident member and the commissioner determines that such~~
 18 ~~failure is due to a false representation that the member is a resident of Georgia, there shall~~
 19 ~~be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the~~
 20 ~~amount which should have been withheld. The partnership, Subchapter 'S' corporation,~~
 21 ~~or limited liability company and the nonresident member shall be jointly and severally~~
 22 ~~liable for any such penalty imposed.~~

23 ~~(2) The penalty imposed by this subsection shall be paid upon notice and demand by the~~
 24 ~~commissioner or the commissioner's delegate and shall be assessed and collected in the~~
 25 ~~same manner as withholding tax imposed by this article.~~

26 ~~(d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which~~
 27 ~~is required to deduct and withhold the withholding tax imposed by subsection (a) of this~~
 28 ~~Code section shall file the required return on a form approved by the commissioner and~~
 29 ~~remit payment to the department on or before the last day of the calendar month~~
 30 ~~following the calendar month within which the distribution was paid or credited.~~

31 ~~(2) Every partnership, Subchapter 'S' corporation, or limited liability company required~~
 32 ~~to deduct and withhold tax under this article shall furnish, within 30 days of the close of~~
 33 ~~its taxable year, to each nonresident member for which tax is withheld a written statement~~
 34 ~~in duplicate, showing the name of the partnership, Subchapter 'S' corporation, or limited~~
 35 ~~liability company, the name of the member of the partnership, Subchapter 'S' corporation,~~
 36 ~~or limited liability company, the member's federal tax identification number, the total~~

1 amount of distributions paid to the member during the taxable year, and the total amount
 2 of tax deducted and withheld with respect to the member during the taxable year. The
 3 written statement shall be in a form approved by the commissioner and shall contain such
 4 additional information as the commissioner may prescribe. The partnership, Subchapter
 5 'S' corporation, or limited liability company shall file copies of all such written statements
 6 with the commissioner.

7 (3) Any partnership, Subchapter 'S' corporation, or limited liability company required to
 8 furnish a nonresident member with the written statement required by this subsection
 9 which furnishes a false or fraudulent statement or which fails to furnish the statement
 10 shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The
 11 penalty imposed by this subsection shall be paid upon notice and demand by the
 12 commissioner or the commissioner's delegate and shall be assessed and collected in the
 13 same manner as the withholding tax imposed by this article.

14 (e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S'
 15 corporation, or limited liability company shall not be required to deduct and withhold tax
 16 for a nonresident member if:

17 (A) A composite return is filed on behalf of nonresident members pursuant to the
 18 requirements of filing such composite returns as set by the commissioner;

19 (B) The aggregate annual distributions made to a member are less than \$1,000.00;

20 (C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of
 21 subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit
 22 corporate income tax;

23 (D) Compliance will cause undue hardship on the partnership, Subchapter 'S'
 24 corporation, or limited liability company, provided that no partnership, Subchapter 'S'
 25 corporation, or limited liability company shall be exempt from complying with the
 26 withholding requirements imposed under subsection (a) of this Code section unless the
 27 commissioner approves in writing a written petition for exemption from the
 28 withholding requirements based on undue hardship. The commissioner may prescribe
 29 the form and contents of such a petition and specify standards for when a partnership,
 30 Subchapter 'S' corporation, or limited liability company will not be required to comply
 31 with the withholding requirements due to undue hardship;

32 (E) The partnership is a publicly traded partnership as defined in Section 7704 of the
 33 Internal Revenue Code of 1986; or

34 (F) The member meets one of the exceptions as set forth in the rules and regulations
 35 promulgated by the commissioner.

