

House Bill 582

By: Representatives Buck of the 135th, Royal of the 164th and Sims of the 167th

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for certain technical corrections and modifications; to provide for
3 proper administration of certain provisions regarding revenue and taxation; to provide that
4 a member, manager, or employee of a limited liability company and a partner or employee
5 of a limited liability partnership may, under certain circumstances, be held personally liable
6 for tax delinquencies arising from the operation of the limited liability company or limited
7 liability partnership; to clarify that the taxation of limited liability companies is the same only
8 for Georgia income tax purposes as it is for federal income tax purposes; to provide for
9 corresponding revisions in Title 14 of the Official Code of Georgia Annotated, relating to
10 corporations; to further amend said Title 48 so as to clarify that the state revenue
11 commissioner may enter into an allocation and apportionment agreement with taxpayers
12 other than corporations; to revise and change certain provisions regarding income tax credits
13 for businesses located in certain counties and areas designated as less developed areas; to
14 revise and change certain provisions regarding income tax credits for the establishment or
15 relocation of taxpayer headquarters; to authorize the claiming of certain income tax credits
16 on a calendar year basis for a certain tax year; to correct a term; to clarify the relief from joint
17 and several liability on joint returns for innocent spouses when applicable only to state
18 income taxes; to clarify the phased-in exemption of certain repair or replacement parts; to
19 clarify the exemption for tangible personal property acquired under 100 percent common
20 ownership; to clarify the exemption for certain sales or leases of computer equipment to
21 certain high-technology companies; to clarify the exemption with respect to the sale of
22 certain machinery, equipment, and materials incorporated into and used in the construction
23 and operation of certain clean rooms; to clarify the imposition of sales and use taxes; to
24 extend the date for distribution of certain unidentifiable sales and use tax proceeds, so as to
25 remove the requirement that governing authorities base their examination of records relating
26 to excise tax on rooms, lodgings, and accommodations upon the most recent sales tax audit
27 report of the innkeeper as may be furnished by the commissioner; to provide for effective
28 dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

H. B. 582

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION 1.**

3 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
4 amended by striking subsection (a) of Code Section 48-2-52, relating to the personal liability
5 of corporate officers and employees for tax delinquencies of the corporation, and inserting
6 in its place a new subsection (a) to read as follows:

7 "(a) Any officer or employee of any corporation, any member, manager, or employee of
8 any limited liability company, or any partner or employee of any limited liability
9 partnership who has control or supervision of collecting from purchasers or others amounts
10 required under this title or of collecting from employees any taxes required under this title,
11 and of accounting for and paying over the amounts or taxes to the commissioner, and who
12 willfully fails to collect the amounts or taxes or truthfully to account for and pay over the
13 amounts or taxes to the commissioner, or who willfully attempts to evade or defeat any
14 obligation imposed under this title, shall be personally liable for an amount equal to the
15 amount evaded, not collected, not accounted for, or not paid over."

16 **SECTION 2.**

17 Title 14 of the Official Code of Georgia Annotated, relating to corporations, is amended by
18 striking subsection (b) of Code Section 14-8-15, relating to the liability of a partner in a
19 limited liability partnership for debts, obligations, or liabilities of or chargeable to the
20 partnership, and inserting in its place a new subsection (b) to read as follows:

21 "(b) Subject to subsection (c) of this Code section and to any contrary agreement among
22 the partners, a partner in a limited liability partnership is not individually liable or
23 accountable either directly or indirectly by way of indemnification, reimbursement,
24 contribution, assessment, or otherwise for any debts, obligations, or liabilities of or
25 chargeable to the partnership or another partner, whether arising in tort, contract, or
26 otherwise, that are incurred, created, or assumed while such partnership is a limited liability
27 partnership, solely by reason of being such a partner or acting or omitting to act in such
28 capacity or otherwise participating in the conduct of the activities of the limited liability
29 partnership. Notwithstanding the provisions of this subsection, a partner may be personally
30 liable for tax liabilities arising from the operation of the limited liability partnership as
31 provided in Code Section 48-2-52."

SECTION 3.

Said title 14 is further amended by striking subsection (a) of Code Section 14-11-303, relating to the liability to third parties of members, managers, agents, or employees of a limited liability company, and inserting in its place a new subsection (a) to read as follows:

"(a) A person who is a member, manager, agent, or employee of a limited liability company is not liable, solely by reason of being a member, manager, agent, or employee of the limited liability company, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company, whether arising in contract, tort, or otherwise. Notwithstanding the provisions of this subsection, a member, manager, or employee may be personally liable for tax liabilities arising from the operation of the limited liability company as provided in Code Section 48-2-52."

SECTION 4.

Said title is further amended by striking Code Section 14-11-1104, relating to taxation of limited liability companies, and inserting in its place a new Code Section 14-11-1104 to read as follows:

"14-11-1104.

Each limited liability company and foreign limited liability company shall be classified as a partnership for Georgia income tax purposes unless classified otherwise for federal income tax purposes, in which case the limited liability company or foreign limited liability company shall be classified for Georgia income tax purposes in the same manner as it is classified for federal income tax purposes. A member or an assignee of a member of a limited liability company or foreign limited liability company shall be treated for Georgia income tax purposes as either a resident or nonresident partner in the limited liability company or foreign limited liability company unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status for Georgia income tax purposes as such member or assignee of a member has for federal income tax purposes."

SECTION 5.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by striking subsection (d) of Code Section 48-7-31, relating to allocation and apportionment of income, and inserting in its place a new subsection (d) to read as follows:

1 "(d) Net income of the classes described in subsection (c) of this Code section having been
 2 separately allocated and deducted, the remainder of the net business income shall be
 3 apportioned as follows:

4 ~~(1) For purposes of paragraphs (2) and (3) of this subsection, the commissioner may~~
 5 ~~enter into an agreement with the taxpayer establishing the allocation and apportionment~~
 6 ~~of the taxpayer's income for a limited period, provided that the following conditions are~~
 7 ~~met:~~

8 ~~(A) The taxpayer is planning a new facility in the State of Georgia or an expansion of~~
 9 ~~an existing facility;~~

10 ~~(B) The taxpayer submits a proposal asking the commissioner to enter into a contract~~
 11 ~~under this paragraph requesting a different allocation and apportionment method and~~
 12 ~~stating the reasons for such proposal; and~~

13 ~~(C) Following the commissioner's referral of the proposal to a panel composed of the~~
 14 ~~commissioner of community affairs, the commissioner of industry, trade, and tourism,~~
 15 ~~and the director of the Office of Planning and Budget, said panel, after reviewing the~~
 16 ~~proposal, certifies that:~~

17 ~~(i) The new facility or expansion will have a significant beneficial economic effect~~
 18 ~~on the region for which it is planned; and~~

19 ~~(ii) The benefits to the public from the new facility or expansion exceed its costs to~~
 20 ~~the public;~~

21 ~~(2)~~(1) Where the net business income of the corporation is derived principally from the
 22 manufacture, production, or sale of tangible personal property, the portion of the net
 23 income therefrom attributable to property owned or business done within this state shall
 24 be taken to be the portion arrived at by application of the following formula:

25 (A) Property factor. The property factor is a fraction, the numerator of which is the
 26 average value of the taxpayer's real and tangible personal property owned or rented and
 27 used in this state during the tax period and the denominator of which is the average
 28 value of all the taxpayer's real and tangible personal property owned or rented and used
 29 during the tax period;

30 (i) Property owned by the taxpayer is valued at its original cost. Property rented by
 31 the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate
 32 is the annual rental rate paid by the taxpayer less any annual rental rate received by
 33 the taxpayer from subrentals;

34 (ii) The average value of property shall be determined by averaging the values at the
 35 beginning and end of the tax period, except that the commissioner may require the
 36 averaging of monthly values during the tax period if such averaging is reasonably
 37 required to reflect properly the average value of the taxpayer's property;

1 (B) Payroll factor. The payroll factor is a fraction, the numerator of which is the total
 2 amount paid in this state during the tax period by the taxpayer for compensation and the
 3 denominator of which is the total compensation paid everywhere during the tax period.
 4 The term 'compensation' means wages, salaries, commissions, and any other form of
 5 remuneration paid to employees for personal services. Payments made to an
 6 independent contractor or any other person not properly classified as an employee are
 7 excluded. Compensation is paid in this state if:

8 (i) The employee's service is performed entirely within this state;

9 (ii) The employee's service is performed both within and outside this state and the
 10 service performed outside this state is incidental to the employee's service within this
 11 state; or

12 (iii) Some of the service is performed in this state and either the base of operations
 13 or the place from which the service is directed or controlled is in this state or the base
 14 of operations or the place from which the service is directed or controlled is not in any
 15 state in which some part of the service is performed but the employee's residence is
 16 in this state;

17 (C) Gross receipts factor. The gross receipts factor is a fraction, the numerator of which
 18 is the total gross receipts from business done within this state during the tax period and
 19 the denominator of which is the total gross receipts from business done everywhere
 20 during the tax period. For the purposes of this subparagraph, receipts shall be deemed
 21 to have been derived from business done within this state only if the receipts are
 22 received from products shipped to customers in this state or products delivered within
 23 this state to customers. In determining the gross receipts within this state, receipts from
 24 sales negotiated or effected through offices of the taxpayer outside this state and
 25 delivered from storage in this state to customers outside this state shall be excluded;

26 (D) Apportionment formula. The property factor, the payroll factor, and the gross
 27 receipts factor shall be separately determined and an apportionment fraction shall be
 28 calculated using the following formula:

29 (i) The property factor shall represent 25 percent of the fraction;

30 (ii) The payroll factor shall represent 25 percent of the fraction; and

31 (iii) The gross receipts factor shall represent 50 percent of the fraction.

32 The net income of the corporation shall be apportioned to this state according to such
 33 fraction;

34 ~~(3)(2)~~ Except as otherwise provided in paragraph ~~(3.1) or (3.2)~~ (2.1) or (2.2) of this
 35 subsection, where the net business income is derived principally from business other than
 36 the manufacture, production, or sale of tangible personal property, the net business

1 income of the corporation shall be arrived at by application of the following three factor
2 formula:

3 (A) Property factor. The property factor is a fraction, the numerator of which is the
4 average value of the taxpayer's real and tangible personal property owned or rented and
5 used in this state during the tax period and the denominator of which is the average
6 value of all the taxpayer's real and tangible personal property owned or rented and used
7 during the tax period;

8 (i) Property owned by the taxpayer is valued at its original cost. Property rented by
9 the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate
10 is the annual rental rate paid by the taxpayer less any annual rental rate received by
11 the taxpayer from subrentals;

12 (ii) The average value of property shall be determined by averaging the values at the
13 beginning and end of the tax period, except that the commissioner may require the
14 averaging of monthly values during the tax period if such averaging is reasonably
15 required to reflect properly the average value of the taxpayer's property;

16 (B) Payroll factor. The payroll factor is a fraction, the numerator of which is the total
17 amount paid in this state during the tax period by the taxpayer for compensation and the
18 denominator of which is the total compensation paid everywhere during the tax period.
19 The term 'compensation' means wages, salaries, commissions, and any other form of
20 remuneration paid to employees for personal services. Payments made to an
21 independent contractor or any other person not properly classified as an employee are
22 excluded. Compensation is paid in this state if:

23 (i) The employee's service is performed entirely within this state;

24 (ii) The employee's service is performed both within and outside this state and the
25 service performed outside this state is incidental to the employee's service within this
26 state; or

27 (iii) Some of the service is performed in this state and either the base of operations
28 or the place from which the service is directed or controlled is in this state or the base
29 of operations or the place from which the service is directed or controlled is not in any
30 state in which some part of the service is performed but the employee's residence is
31 in this state;

32 (C) Gross receipts factor. The gross receipts factor is a fraction, the numerator of which
33 is the total gross receipts from business done within this state during the tax period and
34 the denominator of which is the total gross receipts from business done everywhere
35 during the tax period. Gross receipts are in this state if the receipts are derived from
36 customers within this state or if the receipts are otherwise attributable to this state's
37 marketplace;

1 (D) The property factor, payroll factor, and the gross receipts factor shall be separately
 2 determined and an apportionment fraction shall be calculated using the following
 3 formula:

- 4 (i) The property factor shall represent 25 percent of the fraction;
- 5 (ii) The payroll factor shall represent 25 percent of the fraction; and
- 6 (iii) The gross receipts factor shall represent 50 percent of the fraction.

7 The net income of the corporation shall be apportioned to this state according to such
 8 fraction;

9 (E) If the allocation and apportionment provisions provided for in this paragraph do not
 10 fairly represent the extent of the taxpayer's business activity in this state, the taxpayer
 11 may petition the commissioner for, or the commissioner may by regulation require,
 12 with respect to all or any part of the taxpayer's business activity, if reasonable:

- 13 (i) Separate accounting;
- 14 (ii) The exclusion of any one or more of the factors;
- 15 (iii) The inclusion of one or more additional factors that will fairly represent the
 16 taxpayer's business activity within this state; or
- 17 (iv) The employment of any other method to effectuate an equitable allocation and
 18 apportionment of the taxpayer's income.

19 The denial of a petition under this paragraph shall be appealable pursuant to either Code
 20 Section 48-2-59 or 50-13-12;

21 ~~(3.1)~~(2.1)(A) Except as otherwise provided in this paragraph, all terms used in this
 22 paragraph shall have the same meaning as such terms are defined in 49 U.S.C. Section
 23 1301 and the United States Department of Transportation's Uniform System of
 24 Accounts and Reports for Large Certificated Air Carriers, 14 C.F.R. Part 241, as now
 25 or hereafter amended.

26 (B) Where the net business income of the corporation is derived principally from
 27 transporting passengers or cargo in revenue flight, the portion of the net income
 28 therefrom attributable to property owned or business done within this state shall be
 29 taken to be the portion arrived at by application of the following three factor formula:

- 30 (i) Revenue air miles factor. The revenue air miles factor is a fraction, the numerator
 31 of which shall be equal to the total, for each flight stage which originates or
 32 terminates in this state, of revenue passenger miles by aircraft type flown in this state
 33 and revenue cargo ton miles by aircraft type flown in this state and the denominator
 34 of which shall be equal to the total, for all flight stages flown everywhere, of total
 35 revenue passenger miles by aircraft type and total revenue cargo ton miles by aircraft
 36 type;

1 (ii) Tons handled factor. The tons handled factor is a fraction, the numerator of which
 2 shall be equal to the total of revenue passenger tons by aircraft type handled in this
 3 state and revenue cargo tons by aircraft type handled in this state and the denominator
 4 of which shall be equal to the total of revenue passenger tons by aircraft type flown
 5 everywhere and revenue cargo tons by aircraft type flown everywhere. For purposes
 6 of this division, the term 'handled' means the product of 60 percent multiplied by the
 7 revenue passenger tons flown on each flight stage which originates in this state or 60
 8 percent multiplied by the revenue cargo tons flown on each flight stage which
 9 originates in this state;

10 (iii) Originating revenue factor. The originating revenue factor is a fraction, the
 11 numerator of which shall be equal to the total of passenger and cargo revenue by
 12 aircraft type which is attributable to this state and the denominator of which shall be
 13 the total of passenger and cargo revenue by aircraft type everywhere. For purposes
 14 of this division, passenger or cargo revenue which is attributable to this state shall be
 15 equal to the product of passenger or cargo revenue everywhere by aircraft type
 16 multiplied by the ratio of revenue passenger miles or revenue cargo ton miles in this
 17 state to total revenue passenger miles everywhere or total revenue cargo ton miles
 18 everywhere for each aircraft type as separately determined in division (i) of this
 19 subparagraph. If records of total passenger revenue everywhere by aircraft type or
 20 total cargo revenue everywhere by aircraft type are not maintained, then for purposes
 21 of this division, total passenger revenue everywhere for all aircraft types or total cargo
 22 revenue everywhere for all aircraft types shall be allocated to each aircraft type based
 23 on the ratio of total revenue passenger miles everywhere for that aircraft type to all
 24 aircraft types or total revenue cargo ton miles everywhere for that aircraft type to all
 25 aircraft types;

26 (iv) The revenue air miles factor, the tons handled factor, and the originating revenue
 27 factor shall be separately determined and an apportionment fraction shall be
 28 calculated using the following formula:

- 29 (I) The revenue air miles factor shall represent 25 percent of the fraction;
- 30 (II) The tons handled factor shall represent 25 percent of the fraction; and
- 31 (III) The originating revenue factor shall represent 50 percent of the fraction.

32 The net income of the corporation shall be apportioned to this state according to such
 33 average fraction;

34 ~~(3.2)~~(2.2)(A) As used in this paragraph, the term:

35 (i) 'Credit card data processing and related services' shall include, but not be limited
 36 to, the provision of infrastructure services for bank credit card and private label card
 37 issuers, such as new account application processing, international and domestic

1 clearing, statement preparation, point-of-sale authorization processing, card
2 embossing, and other related processing services for managing cardholder accounts.

3 (ii) 'Customer' means the banks and institutions to whom credit card data processing
4 and related services are provided.

5 (iii) 'Gross receipts factor' means a fraction, the numerator of which is the total gross
6 receipts from the taxpayer's customers during the tax period, if the principal office of
7 the customer's credit card operation is in this state or if the principal office of the
8 taxpayer's customer is in this state, and the denominator of which is the total gross
9 receipts from all of the taxpayer's customers during the tax period.

10 (B) Where more than 60 percent of the total gross receipts of a corporation are derived
11 from the provision of credit card data processing and related services to banks and other
12 institutions, the portion of the net income attributable to business done in this state shall
13 be determined by multiplying the corporation's net income by the gross receipts factor
14 in division (iii) of subparagraph (A) of this paragraph;

15 ~~(4)~~(3) For the purposes of this subsection, the term 'sale' shall include, but not be limited
16 to, an exchange, and the term 'manufacture' shall include, but not be limited to, the
17 extraction and recovery of natural resources and all processes of fabricating and curing."

18 SECTION 6.

19 Said title is further amended by adding a new Code section immediately following Code
20 Section 48-7-31, to be designated Code Section 48-7-31.1, to read as follows:

21 "48-7-31.1.

22 For purposes of paragraphs (1) and (2) of subsection (d) of Code Section 48-7-31, the
23 commissioner may enter into an agreement with a taxpayer establishing the allocation and
24 apportionment of the taxpayer's income for a limited period, provided that the following
25 conditions are met:

26 (1) The taxpayer is planning a new facility in the State of Georgia or an expansion of an
27 existing facility;

28 (2) The taxpayer submits a proposal asking the commissioner to enter into a contract
29 under this Code section requesting a different allocation and apportionment method and
30 stating the reasons for such proposal; and

31 (3) Following the commissioner's referral of the proposal to a panel composed of the
32 commissioner of community affairs, the commissioner of industry, trade, and tourism,
33 and the director of the Office of Planning and Budget, said panel, after reviewing the
34 proposal, certifies that:

35 (A) The new facility or expansion will have a significant beneficial economic effect
36 on the region for which it is planned; and

1 (B) The benefits to the public from the new facility or expansion exceed its costs to the
2 public."

3 SECTION 7.

4 Said title is further amended by striking subsection (e) of Code Section 48-7-40, relating to
5 the allowance of tax credits for business enterprises in less developed areas, and inserting in
6 its place a new subsection (e) to read as follows:

7 "(e) Business enterprises in counties designated by the commissioner of community affairs
8 as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to
9 \$3,500.00 annually per eligible new full-time employee job for five years beginning with
10 years two through six after the creation of such job; provided, however, that where the
11 amount of such credit exceeds a business enterprise's liability for such taxes in a taxable
12 year, the excess may be taken as a credit against such business enterprise's quarterly or
13 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year
14 \$3,500.00 for each new full-time employee job when aggregated with the credit applied
15 against taxes under this article. Each employee whose employer receives credit against
16 such business enterprise's quarterly or monthly payment under Code Section 48-7-103
17 shall receive credit against his or her income tax liability under Code Section 48-7-20 for
18 the corresponding taxable year for the full amount which would be credited against such
19 liability prior to the application of the credit provided for in this subsection. Credits against
20 quarterly or monthly payments under Code Section 48-7-103 and credits against liability
21 under Code Section 48-7-20 established by this subsection shall not constitute income to
22 the taxpayer. Business enterprises in counties designated by the commissioner of
23 community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed
24 under this article equal to \$2,500.00 annually, business enterprises in counties designated
25 by the commissioner of community affairs as tier 3 counties shall be allowed a job tax
26 credit for taxes imposed under this article equal to \$1,250.00 annually, and business
27 enterprises in counties designated by the commissioner of community affairs as tier 4
28 counties shall be allowed a job tax credit for taxes imposed under this article equal to
29 \$750.00 annually for each new full-time employee job for five years beginning with years
30 two through six after the creation of the job. The number of new full-time jobs shall be
31 determined by comparing the monthly average number of full-time employees subject to
32 Georgia income tax withholding for the taxable year with the corresponding period of the
33 prior taxable year. In tier 1 counties, those business enterprises that increase employment
34 by five or more shall be eligible for the credit. In tier 2 counties, only those business
35 enterprises that increase employment by ten or more shall be eligible for the credit. In tier
36 3 counties, only those business enterprises that increase employment by 15 or more shall

1 be eligible for the credit. In tier 4 counties, only those business enterprises that increase
 2 employment by 25 or more shall be eligible for the credit. ~~In tier 1 counties, the The~~
 3 ~~average wage of the new jobs created must be above the average wage of the county where~~
 4 ~~the new jobs are located that has the lowest average wage of any county in the state to~~
 5 ~~qualify as reported in the most recently available annual issue of the Georgia Employment~~
 6 ~~and Wages Averages Report of the Department of Labor. In tier 2 counties, the average~~
 7 ~~wage of the new jobs created must be 5 percent above the average wage of the county~~
 8 ~~where the new jobs are located to qualify as reported in the most recently available annual~~
 9 ~~issue of the Georgia Employment and Wages Averages Report of the Department of Labor.~~
 10 ~~In tier 3 counties, the average wage of the new jobs created must be 10 percent above the~~
 11 ~~average wage of the county where the new jobs are located to qualify as reported in the~~
 12 ~~most recently available annual issue of the Georgia Employment and Wages Averages~~
 13 ~~Report of the Department of Labor. In tier 4 counties, the average wage of the new jobs~~
 14 ~~created must be 15 percent above the average wage of the county where the new jobs are~~
 15 ~~located to qualify as reported in the most recently available annual issue of the Georgia~~
 16 ~~Employment and Wages Averages Report of the Department of Labor. To qualify for a~~
 17 ~~credit under this subsection, the employer must make health insurance coverage available~~
 18 ~~to the employee filling the new full-time job; provided, however, that nothing in this~~
 19 ~~subsection shall be construed to require the employer to pay for all or any part of health~~
 20 ~~insurance coverage for such an employee in order to claim the credit provided for in this~~
 21 ~~subsection if such employer does not pay for all or any part of health insurance coverage~~
 22 ~~for other employees. Credit shall not be allowed during a year if the net employment~~
 23 ~~increase falls below the number required in such tier. Any credit received for years prior~~
 24 ~~to the year in which the net employment increase falls below the number required in such~~
 25 ~~tier shall not be affected. The state revenue commissioner shall adjust the credit allowed~~
 26 ~~each year for net new employment fluctuations above the minimum level of the number~~
 27 ~~required in such tier."~~

28 SECTION 8.

29 Said title is further amended by striking subsection (e) of Code Section 48-7-40.1, relating
 30 to the allowance of tax credits for business enterprises in less developed areas, and inserting
 31 in its place a new subsection (e) to read as follows:

32 "(e) Business enterprises in areas designated by the commissioner of community affairs
 33 as less developed areas shall be allowed a job tax credit for taxes imposed under this article
 34 equal to \$3,500.00 annually per eligible new full-time employee job for five years
 35 beginning with years two through six after the creation of such job; provided, however, that
 36 where the amount of such credit exceeds 50 percent of a business enterprise's liability for

1 such taxes in a taxable year, the excess may be taken as a credit against such business
 2 enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed
 3 in any one taxable year \$3,500.00 for each new full-time employee job when aggregated
 4 with the credit applied against taxes under this article. Each employee whose employer
 5 receives credit against such business enterprise's quarterly or monthly payment under Code
 6 Section 48-7-103 shall receive credit against his or her income tax liability under Code
 7 Section 48-7-20 for the corresponding taxable year for the full amount which would be
 8 credited against such liability prior to the application of the credit provided for in this
 9 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103
 10 and credits against liability under Code Section 48-7-20 established by this subsection shall
 11 not constitute income to the taxpayer. The number of new full-time jobs shall be
 12 determined by comparing the monthly average number of full-time employees subject to
 13 Georgia income tax withholding for the taxable year with the corresponding period of the
 14 prior taxable year. Only those business enterprises that increase employment by five or
 15 more in a less developed area shall be eligible for the credit. The average wage of the new
 16 jobs created must be above the average wage of the county that has the lowest wage of any
 17 county in the state to qualify as reported in the most recently available annual issue of the
 18 Georgia Employment and Wages Averages Report of the Department of Labor. To qualify
 19 for a credit under this subsection, the employer must make health insurance coverage
 20 available to the employee filling the new full-time job; provided, however, that nothing in
 21 this subsection shall be construed to require the employer to pay for all or any part of health
 22 insurance coverage for such an employee in order to claim the credit provided for in this
 23 subsection if such employer does not pay for all or any part of health insurance coverage
 24 for other employees. In addition, not less than 30 percent of such new full-time jobs must
 25 be held by a resident of the less developed area for which the credit is sought or another
 26 such designated less developed area. Credit shall not be allowed during a year if the net
 27 employment increase falls below five. Any credit received for years prior to the year in
 28 which the net employment increase falls below five shall not be affected. The state
 29 revenue commissioner shall adjust the credit allowed each year for net new employment
 30 fluctuations above the minimum level of five."

31 **SECTION 9.**

32 Said title is further amended by striking Code Section 48-7-40.17, relating to income tax
 33 credits for establishment or relocation of a headquarters, and inserting in its place a new
 34 Code Section 48-7-40.17 to read as follows:

35 "48-7-40.17.

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

1 (1) 'Average wage' means the average wage of the county in which a full-time job is
 2 located as reported in the most recently available annual issue of the Georgia
 3 Employment and Wages Averages Report of the Department of Labor.

4 (2) 'Full-time job' means employment for an individual which:

5 (A) Is located at a headquarters;

6 (B) Has a regular work week of 30 hours or more;

7 (C) Pays at or above:

8 (i) In tier 1 counties, the average wage of the county in which it is located;

9 (ii) In tier 2 counties, 105 percent of the average wage of the county in which it is
 10 located;

11 (iii) In tier 3 counties, 110 percent of the average wage of the county in which it is
 12 located; and

13 (iv) In tier 4 counties, 115 percent of the average wage of the county in which it is
 14 located; and

15 (D) Has no predetermined end date.

16 (3) 'Headquarters' means the principal central administrative office of a taxpayer.

17 (4) 'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.

18 (b) A taxpayer establishing its headquarters in this state or relocating its headquarters into
 19 this state which:

20 (1) Within one year of the first date on which it withholds wages for employees at such
 21 headquarters pursuant to the provisions of Code Section 48-7-101 employs at least 100
 22 persons in new full-time jobs at such headquarters;

23 (2) Within ~~Prior to~~ one year ~~from~~ of the first date on which it withholds wages for
 24 employees at such headquarters pursuant to the provisions of Code Section 48-7-101
 25 incurs within the state a minimum of \$1 million in construction, renovation, leasing, or
 26 other costs related to such establishment or relocation; and

27 (3) Elects not to receive the tax credits provided for by Code Sections 48-7-40,
 28 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such
 29 jobs or such investment

30 shall be allowed a credit for taxes imposed under this article equal to \$2,500.00 annually
 31 per eligible new full-time job, or \$5,000.00 if the average wage of the new full-time jobs
 32 created is 200 percent or more of the average wage of the county in which such jobs are
 33 located per eligible new full-time job; provided, however, that where the amount of such
 34 credit exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be
 35 taken as a credit against such taxpayer's quarterly or monthly payment under Code Section
 36 48-7-103 but not to exceed in any one taxable year \$2,500.00 annually per eligible new
 37 full-time job, or \$5,000.00 if the average wage of the new full-time jobs created is 200

1 percent or more of the average wage of the county in which such jobs are located for each
 2 new full-time job when aggregated with the credit applied against taxes under this article.
 3 Each employee whose employer receives credit against such taxpayer's quarterly or
 4 monthly payment under Code Section 48-7-103 shall receive credit against his or her
 5 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
 6 full amount which would be credited against such liability prior to the application of the
 7 credit provided for in this subsection. Credits against quarterly or monthly payments under
 8 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
 9 by this subsection shall not constitute income to the taxpayer. The credit established by
 10 this subsection may be taken for the first taxable year in which the ~~taxpayer first becomes~~
 11 ~~eligible for such credit~~ new full-time job is created and for the four immediately succeeding
 12 taxable years, and the taxpayer shall thereafter be ineligible for such credit; provided,
 13 however, that such new full-time jobs must be created within seven years from the close
 14 of the taxable year in which the taxpayer first becomes eligible for such credit. Credit shall
 15 not be allowed during a year if the net employment increase falls below the 100 new
 16 full-time jobs required. Any credit received for years prior to the year in which the net
 17 employment increase falls below the 100 new full-time jobs required shall not be affected.
 18 The commissioner shall adjust the credit allowed each year for net new employment
 19 fluctuations above the 100 new full-time jobs required.
 20 (c) The number of new full-time jobs to which this Code section shall be applicable shall
 21 be determined by comparing the monthly average of full-time jobs subject to Georgia
 22 income tax withholding for the taxable year with the corresponding average for the prior
 23 taxable year.
 24 ~~(c)~~(d) Any credit claimed under this Code section but not used in any taxable year may be
 25 carried forward for ten years from the close of the taxable year in which the qualified jobs
 26 were established.
 27 ~~(d)~~(e) The commissioner shall promulgate any rules and regulations necessary to
 28 implement and administer this Code section."

29 SECTION 10.

30 Said title is further amended by adding a new Code section immediately following Code
 31 Section 48-7-40.20, to be designated Code Section 48-7-40.21, to read as follows:

32 "48-7-40.21.

33 Notwithstanding any provision to the contrary of Code Sections 48-7-40 and 48-7-40.1,
 34 business enterprises may apply to the commissioner to make a one-time election to
 35 calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs
 36 created during calendar year 2001. Such one-time election may be made by claiming job

1 tax credits calculated on the basis set forth in Code Sections 48-7-40 and 48-7-40.1 in
 2 connection with any 2002 state income tax return filed after the effective date of this Code
 3 section. Such election will not change the taxable year of the business enterprise."

4 **SECTION 11.**

5 Said title is further amended by striking paragraph (2) of subsection (a) of Code Section
 6 48-7-42, relating to affiliated entity defined, assignment of corporate income tax credit,
 7 carryover of unused credit, and joint and severable liability, and inserting in its place a new
 8 paragraph (2) to read as follows:

9 "(2) An entity affiliated with a corporation, business, partnership, or limited liability
 10 ~~corporation~~ company taxpayer, which entity:

11 (A) Owns or leases the land on which a project is constructed;

12 (B) Provides capital for construction of the project; and

13 (C) Is the grantor or owner under a management agreement with a managing company
 14 of the project."

15 **SECTION 12.**

16 Said title is further amended by striking subsection (g) of Code Section 48-7-86, relating to
 17 penalty for failure to pay or for underpayment of income taxes, and inserting in its place a
 18 new subsection (g) to read as follows:

19 "(g)(1) Notwithstanding any other provision of this Code section to the contrary, if:

20 (A) A joint return has been made for a taxable year;

21 (B) On such return there is an understatement of tax attributable to erroneous items of
 22 one individual filing the joint return;

23 (C) The other individual filing the joint return establishes that in signing the return he
 24 or she did not know, and had no reason to know, that there was such understatement;

25 (D) Taking into account all the facts and circumstances, it is inequitable to hold the
 26 other individual liable for the deficiency in tax for such taxable year attributable to such
 27 understatement; and

28 (E) The other individual has made the proper election pursuant to Section 6015 of the
 29 Internal Revenue Code, if applicable

30 then the other individual shall be relieved of liability for tax, including interest, penalties,
 31 and other amounts, for such taxable year to the extent such liability is attributable to such
 32 understatement, if such other individual has been relieved of liability for federal income
 33 taxes pursuant to Section 6015 of the Internal Revenue Code, if applicable.

34 (2) The commissioner shall promulgate any rules and regulations necessary to implement
 35 and administer this subsection."

1 precedent to the issuance of the certificate, the commissioner, at such commissioner's
 2 discretion, may require a good and valid bond with a surety company authorized to do
 3 business in this state as surety or may require legal securities, in an amount fixed by the
 4 commissioner, conditioned upon payment by the purchaser of all taxes due under this
 5 article in the event it should be determined that the sale fails to meet the requirements
 6 of this subparagraph.

7 (C) As used in this paragraph, the term 'computer equipment' means any individual
 8 computer terminal or organized assembly of hardware, including, but not limited to,
 9 central processing units and related peripheral equipment such as scanners, printers,
 10 electronic data storage devices, memory chips, data transmission equipment, and
 11 software products, including operating systems and library and maintenance routines;".

12 SECTION 16.

13 Said title is further amended by striking paragraph (69) of Code Section 48-8-3, relating to
 14 exemptions, and inserting in its place a new paragraph (69) to read as follows:

15 "(69) The sale of machinery, equipment, and materials incorporated into and used in the
 16 construction or operation of a clean room of Class 100 or less in this state, not to include
 17 the building or any permanent, nonremovable component of the building that houses such
 18 clean room, provided that such clean room is used directly in the manufacture of tangible
 19 personal property in this state;"

20 SECTION 17.

21 Said title is further amended by striking subsection (g) of Code Section 48-8-30, relating to
 22 imposition of sales and use tax, and inserting in its place a new subsection (g) to read as
 23 follows:

24 "(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of
 25 this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this
 26 Code section, or a purchaser of ~~tangible~~ taxable services under subsection (f) of this Code
 27 section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who
 28 ~~rents is~~ is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer
 29 himself or herself and the commissioner, whenever he or she has reason to believe that a
 30 purchaser or lessee has not so paid the tax, may assess and collect the tax directly against
 31 and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that
 32 the retailer, lessor, or dealer who ~~rents is~~ is involved in the transaction has nevertheless
 33 remitted to the commissioner the tax imposed on the transaction. If payment is received
 34 directly from the purchaser, it shall not be collected a second time from the retailer, lessor,
 35 or dealer who ~~rents is~~ is involved."

