

House Bill 422

By: Representatives Richardson of the 26th, O`Neal of the 117th, Royal of the 140th, Parrish of the 102nd and Stephens of the 123rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of income tax, so as to provide for an
3 income tax credit with respect to certain business enterprises creating certain full-time
4 employee jobs; to provide for definitions; to provide for procedures, conditions, and
5 limitations; to provide for powers, duties, and authority of the state revenue commissioner
6 with respect to the foregoing; to provide an effective date; to repeal conflicting laws; and for
7 other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
11 imposition, rate, and computation of income tax, is amended by adding a new Code section
12 immediately following Code Section 48-7-40.23, to be designated Code Section 48-7-40.24,
13 to read as follows:

14 "48-7-40.24.

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

16 (1) 'Business enterprise' means any business or the headquarters of any such business
17 which is engaged in manufacturing. Such term shall not include retail businesses.

18 (2) 'Eligible full-time employee' means an individual holding a full-time employee job
19 created by a qualified project.

20 (3) 'Force majeure' means any:

21 (A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

22 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail,
23 tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

24 (C) Acts of war (whether or not declared), carnage, blockade, or embargo;

25 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot,
26 public disorder, or violent demonstrations;

1 (E) Strikes or other labor disturbances; or

2 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or
3 compulsory acquisition of the site of a qualified project or any part thereof;

4 but such term shall not include any event or circumstance that could have been prevented,
5 overcome, or remedied in whole or in part by the taxpayer through the exercise of
6 reasonable diligence and due care, nor shall such term include the unavailability of funds.

7 (4) 'Full-time employee job' and 'full-time job' means employment of an individual
8 which:

9 (A) Is located in this state at the site of a qualified project or the manufacturing facility
10 resulting therefrom;

11 (B) Involves a regular work week of 35 hours or more;

12 (C) Has no predetermined end date; and

13 (D) Pays at or above the average wage of the county with the lowest average wage in
14 the state, as reported in the most recently available annual issue of the Georgia
15 Employment and Wages Averages Report of the Department of Labor.

16 For purposes of this paragraph, leased employees will be considered employees of the
17 company using their services and such persons may be counted in determining the
18 company's job tax credits under this Code section if their employment otherwise meets
19 the definition of full-time job contained herein. In addition, an individual's employment
20 shall not be deemed to have a predetermined end date solely by virtue of a mandatory
21 retirement age set forth in a company policy of general application. The employment of
22 any individual in a bona fide executive, administrative, or professional capacity, within
23 the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended,
24 29 U.S.C. § 213(a)(1), as such Act existed on January 1, 2002, shall not be deemed to
25 have a predetermined end date solely by virtue of the fact that such employment is
26 pursuant to a fixed-term contract, provided that such contract is for a term of not less than
27 one year.

28 (5) 'Investment requirement' means the requirement that by the close of the sixth taxable
29 year following the withholding start-date a minimum of \$450 million in qualified
30 investment property will have been purchased or acquired by the business enterprise to
31 be used with respect to a qualified project.

32 (6) 'Job creation requirement' means the requirement that no later than the close of the
33 sixth taxable year following the withholding start-date, the business enterprise will have
34 a minimum of 1,800 eligible full-time employees.

35 (7) 'Job maintenance requirement' means the requirement that, with respect to each year
36 in the recapture period, the monthly average number of eligible full-time employees

1 employed by the business enterprise, determined as prescribed by subsection (l) of this
2 Code section, must equal or exceed 1,800.

3 (8) 'Qualified investment property' means all real and personal property purchased or
4 acquired by a taxpayer for use in a qualified project, including, but not limited to,
5 amounts expended on land acquisition, improvements, buildings, building improvements,
6 and machinery and equipment to be used in the manufacturing facility.

7 (9) 'Qualified project' means the construction of a new manufacturing facility in this state
8 or the expansion of an existing manufacturing facility in this state. For purposes of this
9 paragraph, the term 'manufacturing facility' means a single facility, including contiguous
10 parcels of land, improvements to such land, buildings, building improvements, and any
11 machinery or equipment that is used in the process of making, fabricating, constructing,
12 forming, or assembling a product from components or from raw, unfinished, or
13 semifinished materials, and any support facility. For purposes of this paragraph, the term
14 'support facility' means any warehouses, distribution centers, storage facilities, research
15 and development facilities, laboratories, repair and maintenance facilities, corporate
16 offices, sales or marketing offices, computer operations facilities, or administrative
17 offices, that are contiguous to the manufacturing facility that results from a qualified
18 project, constructed or expanded as part of the same such project, and designed primarily
19 for activities supporting the manufacturing operations at such manufacturing facility.

20 (10) 'Recapture period' means the period of five consecutive taxable years that
21 commences after the first taxable year in which a business enterprise has satisfied both
22 the investment requirement and the job creation requirement.

23 (11) 'Withholding start-date' means the date on which the business enterprise begins to
24 withhold Georgia income tax from the wages of its employees located at the site of a
25 qualified project.

26 (b) A business enterprise that is planning a qualified project shall be allowed to take the
27 job tax credit provided by this Code section under the following conditions:

28 (1) An application is filed with the commissioner that:

29 (A) Describes the qualified project to be undertaken by the business enterprise,
30 including when such project will commence and the expected withholding start-date;

31 (B) Certifies that such project will meet the investment requirement and the job
32 creation requirement prescribed by this Code section; and

33 (C) Certifies that during the recapture period applicable to such project the business
34 enterprise will meet the job maintenance requirement prescribed by this Code section;

35 (2) Following the commissioner's referral of the application to a panel composed of the
36 commissioner of community affairs, the commissioner of industry, trade, and tourism,
37 and the director of the Office of Planning and Budget, said panel, after reviewing the

1 application, certifies that the new facility or expansion will have a significant beneficial
2 economic effect on the region for which it is planned. The panel shall make its
3 determination within 30 days after receipt from the commissioner of the taxpayer's
4 application and any necessary supporting documentation. Although the panel's
5 certification may be based upon other criteria, a project that meets the minimum
6 employment and investment requirements specified in paragraph (1) of this subsection
7 will have a significant beneficial economic effect on the region for which it is planned
8 if one of the following additional criteria is met:

9 (A) The project will create new full-time employee jobs with average wages that are,
10 as determined by the Department of Labor, for all jobs for the county in question:

- 11 (i) Twenty percent above such average wage for projects located in tier 1 counties;
12 (ii) Ten percent above such average wage for projects located in tier 2 counties; or
13 (iii) Five percent above such average wage for projects located in tier 3 or tier 4
14 counties; or

15 (B) The project demonstrates high growth potential based upon the prior year's
16 Georgia net taxable income growth of over 20 percent from the previous year, if the
17 taxpayer's Georgia net taxable income in each of the two preceding years also grew by
18 20 percent or more.

19 (c) Any lease for a period of five years or longer of any real or personal property used in
20 a new or expanded manufacturing facility which would otherwise constitute qualified
21 investment property shall be treated as the purchase or acquisition thereof by the lessee.
22 The taxpayer may treat the full value of the leased property as qualified investment
23 property in the year in which the lease becomes binding on the lessor and the taxpayer.

24 (d) A business enterprise whose application is approved shall be allowed a tax credit for
25 taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time
26 employee job for five years beginning with the year in which such job is created through
27 year five after such creation; provided, however, that where the amount of such credit
28 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be
29 taken as a credit against such business enterprise's quarterly or monthly payment under
30 Code Section 48-7-103. The taxpayer may file an election with the commissioner to take
31 such credit against quarterly or monthly payments under Code Section 48-7-103 that
32 become due before the due date of the income tax return on which such credit may be
33 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
34 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
35 the taxpayer may begin to take the credit against such quarterly or monthly payments. For
36 any one taxable year the amounts taken as a credit against taxes imposed under this article
37 and against the business enterprise's quarterly or monthly payments under Code Section

1 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job.
2 Each employee whose employer receives credit against such business enterprise's quarterly
3 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
4 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
5 full amount which would be credited against such liability prior to the application of the
6 credit provided for in this subsection. Credits against quarterly or monthly payments under
7 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
8 by this subsection shall not constitute income to the taxpayer. To qualify for a credit under
9 this subsection, the employer must make health insurance coverage available to the
10 employee filling the new full-time job; provided, however, that nothing in this subsection
11 shall be construed to require the employer to pay for all or any part of health insurance
12 coverage for such an employee in order to claim the credit provided for in this subsection
13 if such employer does not pay for all or any part of health insurance coverage for other
14 employees.

15 (e) The number of new full-time jobs to which this Code section shall be applicable shall
16 be determined each month by comparing the number of full-time employees subject to
17 Georgia income tax withholding as of the last payroll period of such month or as the
18 payroll period during each month used for the purpose of reports to the Department of
19 Labor with the number of such employees for the previous month.

20 (f) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create
21 new eligibility in any succeeding business entity, but any unused job tax credit may be
22 transferred and continued by any transferee of the business enterprise.

23 (g) To qualify for the credit provided by this Code section a new full-time job must be
24 created by the close of the seventh taxable year following the business enterprise's
25 withholding start-date. In no event may a credit be claimed under this Code section for
26 more than 3,300 new full-time employee jobs created by any one project; provided,
27 however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and
28 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions
29 thereof.

30 (h) Any credit claimed under this Code section but not fully used in the manner prescribed
31 in subsection (d) of this Code section may be carried forward for ten years from the close
32 of the taxable year in which the qualified job was established.

33 (i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to
34 and takes credits provided by this Code section with respect to a qualified project shall not
35 be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1,
36 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10,
37 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 with respect to jobs, investments, child

1 care, or ground-water usage shifts created by, arising from, related to, or connected in any
2 way with the same project. Such taxpayer may take any credit authorized by Code Section
3 48-7-40.5 for the costs of retraining an employee located at the site of such project or the
4 manufacturing facility resulting therefrom, but only with respect to costs incurred more
5 than five years after the date the manufacturing facility first becomes operational.

6 (j) Except under those circumstances described in subsection (k) of this Code section, the
7 taxpayer shall, not more than 60 days after the close of the sixth taxable year following its
8 withholding start-date, file a report with the commissioner concerning the number of
9 eligible full-time employee jobs created by such project; the wages of such jobs; the
10 qualified investment property purchased or acquired by the taxpayer for the project; and
11 any other information that the commissioner may reasonably require in order to determine
12 whether the taxpayer has met both the investment requirement and job creation requirement
13 with respect to such project. If the taxpayer has failed to meet either such requirement, the
14 taxpayer will forfeit the right to claim any credits provided by this Code section for such
15 project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes
16 imposed by this article and all past payments under Code Section 48-7-103 that were
17 foregone by the state as a result of the credits, plus interest at the rate established by Code
18 Section 48-2-40 computed from the date such taxes or payments would have been due if
19 the credits had not been taken. No later than 90 days after notification from the
20 commissioner that either the investment requirement or the job creation requirement was
21 not met, the taxpayer shall file amended income tax and withholding tax returns for all
22 affected periods that recalculate those liabilities without regard to the forfeited credits and
23 shall pay any additional amounts shown on such returns, with interest as provided herein.
24 On such amended returns the taxpayer may claim any credit to which it would have been
25 entitled under this article but for having taken the credit provided by this Code section.

26 (k) If the recapture period applicable to a qualified project begins with or before the sixth
27 taxable year following the taxpayer's withholding start-date, the taxpayer shall, not later
28 than 60 days after the close of the taxable year immediately preceding the recapture period,
29 file a report with the commissioner concerning the number of eligible full-time employee
30 jobs created by such project; the wages of such jobs; the qualified investment property
31 purchased or acquired by the taxpayer for the project; and any other information that the
32 commissioner may reasonably require in order to verify that the taxpayer met both the
33 investment requirement and job creation requirement in such preceding year.

34 (l) Not more than 60 days after the close of each taxable year within the recapture period,
35 the taxpayer shall file a report, using such form and providing such information as the
36 commissioner may reasonably require, concerning whether it met the job maintenance
37 requirement for such year. For purposes of this subsection, whether such requirement has

1 been satisfied shall be determined by comparing the monthly average number of eligible
2 full-time employees subject to Georgia income tax withholding for the taxable year with
3 1,800. If the taxpayer has failed to meet the job maintenance requirement for such year,
4 the taxpayer will forfeit the right to 20 percent of all credits provided by this Code section
5 for such project. A taxpayer that forfeits such right is liable for 20 percent of all past taxes
6 imposed by this article and all past payments under Code Section 48-7-103 that were
7 foregone by the state as a result of the credits provided by this Code section, plus interest
8 at the rate established by Code Section 48-2-40 computed from the date such taxes or
9 payments would have been due if the credits had not been taken. No later than 90 days
10 after notification by the commissioner that the taxpayer has failed to meet the job
11 maintenance requirement for such year, the taxpayer shall file amended income tax and
12 withholding tax returns for all affected periods that recalculate those liabilities without
13 regard to the forfeited credits and shall pay any additional amounts shown on such returns,
14 with interest as provided herein.

15 (m) A taxpayer who fails to meet the job maintenance requirement for any taxable year
16 within the recapture period because of force majeure may petition the commissioner for
17 relief from such requirement. Such a petition must be made with and at the same time as
18 the report required by subsection (l) of this Code section. If the commissioner determines
19 that force majeure materially affected the taxpayer's ability to meet the job maintenance
20 requirement for such year, but that the portion of the year so affected was six months or
21 less, the commissioner shall calculate the taxpayer's monthly average number of eligible
22 full-time employees for purposes of subsection (l) of this Code section by disregarding the
23 affected months. If the commissioner determines that the affected portion of the year was
24 more than six months, the taxable year shall be disregarded in its entirety for purposes of
25 the job maintenance requirement and the recapture period applicable to the qualified
26 project shall be extended for an additional year.

27 (n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the
28 commissioner may make any assessment attributable to the forfeiture of credits claimed
29 under this Code section for the periods covered by any amended returns filed by a taxpayer
30 pursuant to subsection (j) or (l) of this Code section within one year from the date such
31 returns are filed. If the taxpayer fails to file the reports or any amended return required by
32 subsection (j) or (l) of this Code Section, the commissioner may assess additional tax or
33 other amounts attributable to the forfeiture of credits claimed under this Code section at
34 any time.

35 (o) The commissioner shall promulgate any rules and regulations necessary to implement
36 and administer this Code section."

