

House Bill 43 (AS PASSED HOUSE AND SENATE)

By: Representative Channell of the 77th

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 enact the "State and Local Tax Revision Act of 2003"; to provide for the
3 comprehensive revision of provisions relating to Georgia taxes; to define the terms "Internal
4 Revenue Code" and "Internal Revenue Code of 1986" and thereby to incorporate provisions
5 of federal law into Georgia law; to provide that terms used in the Georgia law shall have the
6 same meaning as when used in a comparable provision or context in federal law; to provide
7 for applicability; to adjust the threshold and due dates for electronic funds transfer of
8 withholding taxes; to increase the amount of the retirement income exclusion for state
9 income tax purposes; to provide for a three-year phase in of such exclusion; to provide that
10 military income received by a member of the national guard or any reserve component of the
11 armed services of the United States stationed in a combat zone as a result of military orders
12 shall not be subject to state income tax; to provide for conditions and limitations; to change
13 certain provisions regarding income tax credits with respect to certain vehicles and certain
14 electric vehicle chargers; to change the income tax credit regarding establishing or relocating
15 headquarters, so as to change a definition; to change certain procedures, conditions, and
16 limitations; to provide for an income tax credit for full-time employee jobs created by certain
17 business enterprises and an income tax credit for investments made by certain business
18 enterprises in building new manufacturing facilities in this state; to provide for definitions;
19 to provide for procedures, conditions, and limitations; to provide for powers, duties, and
20 authority of the state revenue commissioner with respect to the foregoing; to provide for
21 additional withholding and filing requirements; to change certain provisions regarding sales
22 and use tax definitions; to provide that the distribution of contact lenses by a manufacturer
23 as free samples to licensed dispensers shall not be subject to sales and use tax; to provide that
24 the sale of certain school supplies, clothing, footwear, computers, and computer related
25 accessories shall not be subject to sales and use tax for a limited period of time; to provide
26 that sales of certain tangible personal property to, or used in the construction of, certain
27 aquariums shall not be subject to sales and use tax for a limited period of time; to provide for
28 conditions and limitations; to provide that certain taxes shall be excluded in computing the

1 limitation on the total amount of local sales and use taxes which may be levied; to provide
2 certain exemptions from certain local sales and use taxes; to change certain provisions with
3 respect to taxation of motor fuels; to change certain provisions regarding dealers' sales and
4 use tax returns and compensation; to provide for prepayments of certain taxes with respect
5 to motor fuels; to provide for procedures, conditions, and limitations; to change certain
6 provisions regarding penalties; to provide for an excise tax with respect to loose or smokeless
7 tobacco; to change the rate of such tax with respect to little cigars, other cigars, and
8 cigarettes; to change certain definitions; to change certain provisions regarding excise taxes;
9 to change certain provisions regarding collection of such tax by stamps; to change certain
10 provisions regarding licensure, suspension, and revocation; to change certain provisions
11 regarding licensing of nonresident distributors; to change certain provisions regarding sale
12 or possession prohibitions; to change certain provisions regarding seizure of contraband; to
13 change certain provisions regarding monthly reports; to change certain provisions regarding
14 records; to change certain provisions regarding assessment of deficiencies and penalties; to
15 change certain provisions regarding certain use, consumption, or storage taxes; to change
16 certain provisions regarding registration, reports, and tax payments; to change certain
17 provisions regarding claims for refunds; to change certain provisions regarding the status of
18 unpaid tax as a lien; to change certain provisions regarding hearings by the state revenue
19 commissioner; to change certain provisions regarding powers and duties of special agents
20 and enforcement officers; to change certain provisions regarding transportation of certain
21 cigarettes or cigars; to change certain provisions regarding additional requirements and
22 seizure and forfeiture of contraband; to change certain provisions regarding criminal
23 penalties; to provide for powers, duties, and authority of the state revenue commissioner; to
24 provide for delayed implementation of certain provisions relating to state insurance premium
25 tax credits with respect to certified capital companies; to amend Article 1 of Chapter 3 of
26 Title 35 of the Official Code of Georgia Annotated, relating to general provisions regarding
27 the Georgia Bureau of Investigation, so as to change certain provisions regarding powers of
28 agents generally; to amend Title 50 of the Official Code of Georgia Annotated, relating to
29 state government, so as to change certain provisions regarding tax stamps; to change certain
30 provisions regarding examinations by the state auditor; to amend Title 36 of the Official
31 Code of Georgia Annotated, relating to local government, so as to require appropriation of
32 funds for homeowner tax relief grants; to provide for related matters; to provide for effective
33 dates and applicability; to repeal conflicting laws; and for other purposes.

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION 1.**

3 This Act shall be known and may be cited as the "State and Local Tax Revision Act of
4 2003."

5 **SECTION 2.**

6 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation is
7 amended by striking paragraph (14) of Code Section 48-1-2, relating to definitions of terms,
8 and inserting in its place a new paragraph (14) to read as follows:

9 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
10 beginning on or after January 1, 2003, the provisions of the United States Internal
11 Revenue Code of 1986 provided for in federal law enacted on or before January 1, ~~2002~~
12 2003, except Section 168(k) and Section 1400L of the Internal Revenue Code of 1986
13 shall be treated as if they were not in effect. In the event a reference is made in this title
14 to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a
15 specific date prior to January 1, ~~2002~~ 2003, the term means the provisions of the Internal
16 Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date.
17 Unless otherwise provided in this title, any term used in this title shall have the same
18 meaning as when used in a comparable provision or context in the Internal Revenue Code
19 of 1986. For taxable years beginning on or after January 1, 2003, provisions of the
20 Internal Revenue Code of 1986 which were as of January 1, 2003, enacted into law but
21 not yet effective shall become effective for purposes of Georgia taxation on the same
22 dates upon which they become effective for federal tax purposes."

23 **SECTION 3.**

24 Said title is further amended in Code Section 48-2-32, relating to electronic funds transfer,
25 by striking subsection (f) and inserting in its place a new subsection (f) to read as follows:

26 "(f)(1) As used in this subsection, the term 'electronic funds transfer' means a method of
27 making financial payments from one party to another through a series of instructions and
28 messages communicated electronically, via computer, among financial institutions. Such
29 term shall not include the electronic filing of tax returns.

30 (2) The commissioner may require that any person or business owing more than
31 \$10,000.00 in connection with any return, report, or other document required to be filed
32 with the department on or after July 1, 1992, shall pay any such sales tax, withholding
33 tax, motor fuel distributor tax, corporate estimated income tax, or individual estimated
34 income tax liability to the state by electronic funds transfer so that the state receives

1 collectable funds on the date such payment is required to be made. In emergency
 2 situations, the commissioner may authorize alternative means of payment in funds
 3 immediately available to the state on the date of payment.

4 (3) In addition to the requirements contained in paragraph (2) of this subsection, every
 5 employer whose tax withheld or required to be withheld under Code Section 48-7-103
 6 exceeds \$50,000.00 in the aggregate for the lookback period as defined in paragraph (4)
 7 of subsection (b) of Code Section 48-7-103 must pay the taxes by electronic funds
 8 transfer as follows:

9 (A) For paydays occurring on Wednesday, Thursday, or Friday, the taxes must be
 10 remitted on or before the following Wednesday or, in the case of a holiday, the next
 11 banking day thereafter;

12 (B) For paydays occurring on Saturday, Sunday, Monday, or Tuesday, the taxes must
 13 be remitted on or before the following Friday or, in the case of a holiday, the next
 14 banking day thereafter; and

15 (C) Notwithstanding any other provision of this paragraph to the contrary, for
 16 employers whose tax withheld or required to be withheld exceeds \$100,000.00 for the
 17 payday, the taxes must be remitted by the next banking day.

18 ~~(3)~~(4) The commissioner is specifically authorized to establish due dates and times for
 19 the initiation of electronic payments, establish an implementation schedule, promulgate
 20 regulations, and prescribe rules and procedures to implement this subsection.

21 ~~(4)~~(5) A penalty of 10 percent of the amount due shall be added to any timely payment
 22 which is made in other than immediately available funds which are specified by
 23 regulation of the commissioner unless the commissioner has authorized an alternate
 24 means of payment in an emergency.

25 ~~(5)~~(6) In addition to authority granted in Code Section 48-2-40, the commissioner is
 26 authorized to waive the collection of interest on electronic funds transfer payments, not
 27 to exceed the first two scheduled payments, whenever and to the extent that the
 28 commissioner reasonably determines that the default giving rise to the interest charge was
 29 due to reasonable cause and not due to gross or willful neglect or disregard of this
 30 subsection or regulations or instructions issued pursuant to this subsection.

31 ~~(6)~~(7) Notwithstanding any provision of law to the contrary, the commissioner is
 32 authorized to promulgate rules and regulations setting forth the requirements for
 33 electronically transmitting all required returns, reports, or other documents required to
 34 be filed with taxes paid by electronic funds transfer.

35 ~~(7)~~(8) Notwithstanding any provision of law to the contrary, the commissioner is
 36 authorized to promulgate rules and regulations setting forth the procedure for satisfying
 37 the signature requirement for returns whether by electronic signature, voice signature, or

1 other means, so long as appropriate security measures are implemented which assure
2 security and verification of the signature procedure.

3 ~~(8)~~(9) Notwithstanding any provision of law to the contrary, the commissioner is
4 authorized to pay all tax refunds by electronic funds transfer when requested by a
5 taxpayer who has filed his or her return electronically with the department."

6 SECTION 4.

7 Said title is further amended in Code Section 48-7-27, relating to computation of taxable net
8 income, by striking subparagraph (a)(5)(A) and inserting in its place a new subparagraph
9 (a)(5)(A) to read as follows:

10 "(5)(A) Retirement income otherwise included in Georgia taxable net income not to
11 exceed the exclusion amount as follows:

12 (i) For taxable years beginning on or after January 1, 1989, and prior to January 1,
13 1990, retirement income not to exceed an exclusion amount of \$8,000.00 per year
14 received from any source;

15 (ii) For taxable years beginning on or after January 1, 1990, and prior to January 1,
16 1994, retirement income not to exceed an exclusion amount of \$10,000.00 per year
17 received from any source;

18 (iii) For taxable years beginning on or after January 1, 1994, and prior to January 1,
19 1995, retirement income from any source not to exceed an exclusion amount of
20 \$11,000.00;

21 (iv) For taxable years beginning on or after January 1, 1995, and prior to January 1,
22 1999, retirement income from any source not to exceed an exclusion amount of
23 \$12,000.00;

24 (v) For taxable years beginning on or after January 1, 1999, and prior to January 1,
25 2000, retirement income from any source not to exceed an exclusion amount of
26 \$13,000.00;

27 (vi) For taxable years beginning on or after January 1, 2000, and prior to January 1,
28 2001, retirement income not to exceed an exclusion amount of \$13,500.00 per year
29 received from any source;

30 (vii) For taxable years beginning on or after January 1, 2001, and prior to January
31 1, 2002, retirement income from any source not to exceed an exclusion amount of
32 \$14,000.00;

33 (viii) For taxable years beginning on or after January 1, 2002, and prior to January
34 1, 2003, retirement income from any source not to exceed an exclusion amount of
35 \$14,500.00; and

1 (ix) For taxable years beginning on or after January 1, 2003, and prior to January 1,
 2 2006, retirement income from any source not to exceed an exclusion amount of
 3 \$15,000.00;

4 (x) For taxable years beginning on or after January 1, 2006, and prior to January 1,
 5 2007, retirement income from any source not to exceed an exclusion amount of
 6 \$25,000.00;

7 (xi) For taxable years beginning on or after January 1, 2007, and prior to January 1
 8 2008, retirement income from any source not to exceed an exclusion amount of
 9 \$30,000.00; and

10 (xii) For taxable years beginning on or after January 1, 2008, retirement income from
 11 any source not to exceed an exclusion amount of \$35,000.00."

12 SECTION 5.

13 Said title is further amended in subsection (a) of Code Section 48-7-27, relating to
 14 computation of taxable net income, by striking "and" at the end of paragraph (10), by striking
 15 the period at the end of paragraph (11) and inserting in its place "; and", and by adding a new
 16 paragraph immediately following paragraph (11) to be designated paragraph (12) to read as
 17 follows:

18 "(12) Military income received by a member of the national guard or any reserve
 19 component of the armed services of the United States stationed in a combat zone pursuant
 20 to military orders. The exclusion provided under this paragraph:

21 (A) Shall apply with respect to each taxable year, or portion thereof, covered by such
 22 military orders; and

23 (B) Shall apply only with respect to such member of the national guard or any reserve
 24 component of the armed forces and only with respect to military income earned during
 25 the period covered by such military orders."

26 SECTION 6.

27 Said title is further amended in Code Section 48-7-40.16, relating to income tax credits with
 28 respect to certain vehicles and certain electric vehicle chargers, by striking subsections (b),
 29 (c), and (d) and inserting in their place new subsections (b), (c), and (d) to read as follows:

30 "(b) A tax credit is allowed against the tax imposed under this article to a taxpayer for the
 31 purchase or lease of a new low-emission vehicle or zero emission vehicle that is registered
 32 in the State of Georgia. The amount of the credit shall be:

33 (1) For any new low-emission vehicle, 10 percent of the cost of such vehicle or
 34 \$2,500.00, whichever is less; and

1 (2) For any new zero emission vehicle, 20 percent of the cost of such vehicle or
 2 \$5,000.00, whichever is less.

3 ~~\$2,500.00 per new low-emission vehicle and \$5,000.00 per new zero-emission vehicle.~~

4 (c) A tax credit is allowed against the tax imposed under this article to a taxpayer for the
 5 conversion of a conventionally fueled vehicle to a converted vehicle that is registered in
 6 the State of Georgia. The amount of the credit shall be equal to 10 percent of the cost of
 7 conversion, not to exceed \$2,500.00 per converted vehicle.

8 (d) A tax credit is allowed against the tax imposed under this article to any business
 9 enterprise for the purchase or lease of each electric vehicle charger that is located in the
 10 State of Georgia. The amount of the credit shall be ~~\$2,500.00 per charger~~ 10 percent of the
 11 cost of the charger or \$2,500.00, whichever is less."

12 SECTION 7.

13 Said title is further amended in Code Section 48-7-40.17, relating to the income tax credit
 14 regarding establishing or relocating headquarters, by striking subsections (a) and (b) and
 15 inserting in their place new subsections (a) and (b), respectively, to read as follows:

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

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

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

21 (A) Is located at a headquarters;

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

23 (C) Pays at or above:

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

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

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

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

31 (D) Has no predetermined end date.

32 (3) 'Headquarters' means the principal central administrative office of a taxpayer or a
 33 subsidiary of the taxpayer.

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

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

1 (1) Within one year of the first date on which it withholds wages for employees at such
 2 headquarters ~~pursuant to the provisions of Code Section 48-7-101 employs at least 100~~
 3 ~~persons in new full-time jobs at such headquarters~~ or the headquarters of a subsidiary,
 4 defined as the taxpayer's 'affiliated group' within the meaning of Section 1504(a) of the
 5 Internal Revenue Code of 1986, as amended, pursuant to the provisions of Code Section
 6 48-7-101, employs at least 50 persons in new full-time jobs at such headquarters;

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

11 (3) Elects not to receive the tax credits provided for by Code Sections 48-7-40,
 12 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
 13 jobs or such investment

14 shall be allowed a credit for taxes imposed under this article equal to \$2,500.00 annually
 15 per eligible new full-time job, or \$5,000.00 if the average wage of the new full-time jobs
 16 created is 200 percent or more of the average wage of the county in which such jobs are
 17 located per eligible new full-time job; provided, however, that where the amount of such
 18 credit exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be
 19 taken as a credit against such taxpayer's quarterly or monthly payment under Code Section
 20 48-7-103 but not to exceed in any one taxable year \$2,500.00 annually per eligible new
 21 full-time job, or \$5,000.00 if the average wage of the new full-time jobs created is 200
 22 percent or more of the average wage of the county in which such jobs are located for each
 23 new full-time job when aggregated with the credit applied against taxes under this article.
 24 Each employee whose employer receives credit against such taxpayer's quarterly or
 25 monthly payment under Code Section 48-7-103 shall receive credit against his or her
 26 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
 27 full amount which would be credited against such liability prior to the application of the
 28 credit provided for in this subsection. Credits against quarterly or monthly payments under
 29 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
 30 by this subsection shall not constitute income to the taxpayer. For each new full-time job
 31 created, the ~~The~~ credit established by this subsection may be taken for the first taxable year
 32 in which the new full-time job is created and for the four immediately succeeding taxable
 33 years, ~~and the taxpayer shall thereafter be ineligible for such credit;~~ provided, however, that
 34 such new full-time jobs must be created within seven years from the close of the taxable
 35 year in which the taxpayer first becomes eligible for such credit. Credit shall not be
 36 allowed during a year if the net employment increase falls below the ~~100~~ 50 new full-time
 37 jobs required. Any credit received for years prior to the year in which the net employment

1 increase falls below the ~~100~~ 50 new full-time jobs required shall not be affected. The
 2 commissioner shall adjust the credit allowed each year for net new employment
 3 fluctuations above the ~~100~~ 50 new full-time jobs required."

4 **SECTION 8.**

5 Said title is further amended by adding two new Code sections immediately following Code
 6 Section 48-7-40.23, to be designated Code Sections 48-7-40.24 and 48-7-40.25 to read as
 7 follows:

8 "48-7-40.24.

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

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

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

14 (3) 'Force majeure' means any:

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

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

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

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

21 (E) Strikes or other labor disturbances; or

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

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

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

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

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

32 (C) Has no predetermined end date; and

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

1 For purposes of this paragraph, leased employees will be considered employees of the
2 company using their services and such persons may be counted in determining the
3 company's job tax credits under this Code section if their employment otherwise meets
4 the definition of full-time job contained herein. In addition, an individual's employment
5 shall not be deemed to have a predetermined end date solely by virtue of a mandatory
6 retirement age set forth in a company policy of general application. The employment of
7 any individual in a bona fide executive, administrative, or professional capacity, within
8 the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended,
9 29 U.S.C. § 213(a)(1), as such Act existed on January 1, 2002, shall not be deemed to
10 have a predetermined end date solely by virtue of the fact that such employment is
11 pursuant to a fixed-term contract, provided that such contract is for a term of not less than
12 one year.

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

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

20 (7) 'Job maintenance requirement' means the requirement that, with respect to each year
21 in the recapture period, the monthly average number of eligible full-time employees
22 employed by the business enterprise, determined as prescribed by subsection (1) of this
23 Code section, must equal or exceed 1,800.

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

28 (9) 'Qualified project' means the construction of a new manufacturing facility in this state
29 or the expansion of an existing manufacturing facility in this state. For purposes of this
30 paragraph, the term 'manufacturing facility' means a single facility, including contiguous
31 parcels of land, improvements to such land, buildings, building improvements, and any
32 machinery or equipment that is used in the process of making, fabricating, constructing,
33 forming, or assembling a product from components or from raw, unfinished, or
34 semifinished materials, and any support facility. For purposes of this paragraph, the term
35 'support facility' means any warehouses, distribution centers, storage facilities, research
36 and development facilities, laboratories, repair and maintenance facilities, corporate
37 offices, sales or marketing offices, computer operations facilities, or administrative

1 offices, that are contiguous to the manufacturing facility that results from a qualified
 2 project, constructed or expanded as part of the same such project, and designed primarily
 3 for activities supporting the manufacturing operations at such manufacturing facility.

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

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

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

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

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

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

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

19 (2) Following the commissioner's referral of the application to a panel composed of the
 20 commissioner of community affairs, the commissioner of industry, trade, and tourism,
 21 and the director of the Office of Planning and Budget, said panel, after reviewing the
 22 application, certifies that the new facility or expansion will have a significant beneficial
 23 economic effect on the region for which it is planned. The panel shall make its
 24 determination within 30 days after receipt from the commissioner of the taxpayer's
 25 application and any necessary supporting documentation. Although the panel's
 26 certification may be based upon other criteria, a project that meets the minimum
 27 employment and investment requirements specified in paragraph (1) of this subsection
 28 will have a significant beneficial economic effect on the region for which it is planned
 29 if one of the following additional criteria is met:

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

32 (i) Twenty percent above such average wage for projects located in tier 1 counties;

33 (ii) Ten percent above such average wage for projects located in tier 2 counties; or

34 (iii) Five percent above such average wage for projects located in tier 3 or tier 4
 35 counties; or

36 (B) The project demonstrates high growth potential based upon the prior year's
 37 Georgia net taxable income growth of over 20 percent from the previous year, if the

1 taxpayer's Georgia net taxable income in each of the two preceding years also grew by
2 20 percent or more.

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

8 (d) A business enterprise whose application is approved shall be allowed a tax credit for
9 taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time
10 employee job for five years beginning with the year in which such job is created through
11 year five after such creation; provided, however, that where the amount of such credit
12 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be
13 taken as a credit against such business enterprise's quarterly or monthly payment under
14 Code Section 48-7-103. The taxpayer may file an election with the commissioner to take
15 such credit against quarterly or monthly payments under Code Section 48-7-103 that
16 become due before the due date of the income tax return on which such credit may be
17 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
18 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
19 the taxpayer may begin to take the credit against such quarterly or monthly payments. For
20 any one taxable year the amounts taken as a credit against taxes imposed under this article
21 and against the business enterprise's quarterly or monthly payments under Code Section
22 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job.
23 Each employee whose employer receives credit against such business enterprise's quarterly
24 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
25 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
26 full amount which would be credited against such liability prior to the application of the
27 credit provided for in this subsection. Credits against quarterly or monthly payments under
28 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
29 by this subsection shall not constitute income to the taxpayer. To qualify for a credit under
30 this subsection, the employer must make health insurance coverage available to the
31 employee filling the new full-time job; provided, however, that nothing in this subsection
32 shall be construed to require the employer to pay for all or any part of health insurance
33 coverage for such an employee in order to claim the credit provided for in this subsection
34 if such employer does not pay for all or any part of health insurance coverage for other
35 employees.

36 (e) The number of new full-time jobs to which this Code section shall be applicable shall
37 be determined each month by comparing the number of full-time employees subject to

1 Georgia income tax withholding as of the last payroll period of such month or as the
2 payroll period during each month used for the purpose of reports to the Department of
3 Labor with the number of such employees for the previous month.

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

7 (g) To qualify for the credit provided by this Code section a new full-time job must be
8 created by the close of the seventh taxable year following the business enterprise's
9 withholding start-date. In no event may a credit be claimed under this Code section for
10 more than 3,300 new full-time employee jobs created by any one project; provided,
11 however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and
12 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions
13 thereof.

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

17 (i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to
18 and takes credits provided by this Code section with respect to a qualified project shall not
19 be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1,
20 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,
21 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 with respect to jobs, investments, child
22 care, or ground-water usage shifts created by, arising from, related to, or connected in any
23 way with the same project. Such taxpayer may take any credit authorized by Code Section
24 48-7-40.5 for the costs of retraining an employee located at the site of such project or the
25 manufacturing facility resulting therefrom, but only with respect to costs incurred more
26 than five years after the date the manufacturing facility first becomes operational.

27 (j) Except under those circumstances described in subsection (k) of this Code section, the
28 taxpayer shall, not more than 60 days after the close of the sixth taxable year following its
29 withholding start-date, file a report with the commissioner concerning the number of
30 eligible full-time employee jobs created by such project; the wages of such jobs; the
31 qualified investment property purchased or acquired by the taxpayer for the project; and
32 any other information that the commissioner may reasonably require in order to determine
33 whether the taxpayer has met both the investment requirement and job creation requirement
34 with respect to such project. If the taxpayer has failed to meet either such requirement, the
35 taxpayer will forfeit the right to claim any credits provided by this Code section for such
36 project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes
37 imposed by this article and all past payments under Code Section 48-7-103 that were

1 foregone by the state as a result of the credits, plus interest at the rate established by Code
2 Section 48-2-40 computed from the date such taxes or payments would have been due if
3 the credits had not been taken. No later than 90 days after notification from the
4 commissioner that either the investment requirement or the job creation requirement was
5 not met, the taxpayer shall file amended income tax and withholding tax returns for all
6 affected periods that recalculate those liabilities without regard to the forfeited credits and
7 shall pay any additional amounts shown on such returns, with interest as provided herein.
8 On such amended returns the taxpayer may claim any credit to which it would have been
9 entitled under this article but for having taken the credit provided by this Code section.

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

18 (l) Not more than 60 days after the close of each taxable year within the recapture period,
19 the taxpayer shall file a report, using such form and providing such information as the
20 commissioner may reasonably require, concerning whether it met the job maintenance
21 requirement for such year. For purposes of this subsection, whether such requirement has
22 been satisfied shall be determined by comparing the monthly average number of eligible
23 full-time employees subject to Georgia income tax withholding for the taxable year with
24 1,800. If the taxpayer has failed to meet the job maintenance requirement for such year,
25 the taxpayer will forfeit the right to 20 percent of all credits provided by this Code section
26 for such project. A taxpayer that forfeits such right is liable for 20 percent of all past taxes
27 imposed by this article and all past payments under Code Section 48-7-103 that were
28 foregone by the state as a result of the credits provided by this Code section, plus interest
29 at the rate established by Code Section 48-2-40 computed from the date such taxes or
30 payments would have been due if the credits had not been taken. No later than 90 days
31 after notification by the commissioner that the taxpayer has failed to meet the job
32 maintenance requirement for such year, the taxpayer shall file amended income tax and
33 withholding tax returns for all affected periods that recalculate those liabilities without
34 regard to the forfeited credits and shall pay any additional amounts shown on such returns,
35 with interest as provided herein.

36 (m) A taxpayer who fails to meet the job maintenance requirement for any taxable year
37 within the recapture period because of force majeure may petition the commissioner for

1 relief from such requirement. Such a petition must be made with and at the same time as
 2 the report required by subsection (l) of this Code section. If the commissioner determines
 3 that force majeure materially affected the taxpayer's ability to meet the job maintenance
 4 requirement for such year, but that the portion of the year so affected was six months or
 5 less, the commissioner shall calculate the taxpayer's monthly average number of eligible
 6 full-time employees for purposes of subsection (l) of this Code section by disregarding the
 7 affected months. If the commissioner determines that the affected portion of the year was
 8 more than six months, the taxable year shall be disregarded in its entirety for purposes of
 9 the job maintenance requirement and the recapture period applicable to the qualified
 10 project shall be extended for an additional year.

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

19 (o) The commissioner shall promulgate any rules and regulations necessary to implement
 20 and administer this Code section.

21 48-7-40.25.

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

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

25 (2) 'Force majeure' means any:

26 (A) Explosions, implosions, fire, conflagrations, accidents, or contamination;

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

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

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

32 (E) Strikes or other labor disturbances; or

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

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

4 (3) 'Full-time employee' means an individual holding a full-time employee job.

5 (4) 'Full-time employee job' and 'full-time job' mean employment of an individual which:

6 (A) Is located in this state at the manufacturing facility resulting from a qualified
7 project;

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

9 (C) Has no predetermined end date; and

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

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

25 (5) 'Investment requirement' means the requirement that a minimum of \$800 million in
26 qualified investment property shall have been purchased or acquired for use in a qualified
27 project and be in service.

28 (6) 'Job maintenance requirement' means the requirement that the monthly average
29 number of full-time employees employed by the business enterprise during the first 60
30 months of the recapture period must equal or exceed 90 percent of the job requirement.

31 (7) 'Job requirement' means the requirement that the number of full-time employees must
32 equal or exceed 1,800.

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

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

14 (10) 'Recapture period' means the period of ten consecutive taxable years that
15 commences after the taxable year in which the taxpayer has met both the investment
16 requirement and the job requirement.

17 (b) A business enterprise that has operated an existing manufacturing facility in this state
18 for the immediately three preceding years and that is planning a qualified project shall be
19 allowed to take the credit provided by this Code section under the following conditions:

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

21 (A) Describes the qualified project to be undertaken by the business enterprise,
22 including when such project will commence;

23 (B) Certifies that such project will meet the investment requirement and the job
24 requirement prescribed by this Code section, stating when the business enterprise
25 expects to meet such requirements; and

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

29 (2) Following the commissioner's referral of the application to a panel composed of the
30 commissioner of community affairs, the commissioner of industry, trade, and tourism,
31 and the director of the Office of Planning and Budget, said panel, after reviewing the
32 application, certifies that the new facility will have a significant beneficial economic
33 effect on the region for which it is planned. The panel shall make its determination
34 within 30 days after receipt from the commissioner of the taxpayer's application and any
35 necessary supporting documentation. Although the panel's certification may be based
36 upon other criteria, a project that meets the minimum job and investment requirements

1 specified in paragraph (1) will have a significant beneficial economic effect on the region
2 for which it is planned if one of the following additional criteria is met:

3 (A) The full-time employee jobs that will be located at the manufacturing facility
4 resulting from such project will pay average wages that are, as determined by the
5 Georgia Department of Labor for all jobs for the county in question:

6 (i) Twenty percent above such average wage for projects located in tier 1 counties;

7 (ii) Ten percent above such average wage for projects located in tier 2 counties; or

8 (iii) Five percent above such average wage for projects located in tier 3 or tier 4
9 counties; or

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

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

19 (d) A business enterprise whose application is approved shall be allowed a credit against
20 the tax imposed under this article in an amount equal to 6 percent of the cost of all qualified
21 investment property purchased or acquired by the business enterprise in such year, subject
22 to the conditions and limitations set forth in this Code section. Where the amount of such
23 credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess
24 may be taken as a credit against such business enterprise's quarterly or monthly payment
25 under Code Section 48-7-103. The taxpayer may file an election with the commissioner
26 to take such credit against quarterly or monthly payments under Code Section 48-7-103
27 that become due before the due date of the income tax return on which such credit may be
28 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
29 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
30 the taxpayer may begin to take the credit against such quarterly or monthly payments.
31 Each employee whose employer receives credit against such business enterprise's quarterly
32 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
33 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
34 full amount which would be credited against such liability prior to the application of the
35 credit provided for in this subsection. Credits against quarterly or monthly payments under
36 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
37 by this subsection shall not constitute income to the taxpayer.

1 (e) The credit granted under subsection (d) of this Code section shall be subject to the
2 following conditions and limitations:

3 (1) In order to qualify as a basis for the credit, the investment in qualified investment
4 property must occur no sooner than April 1, 2003. The credit may be taken beginning
5 with the taxable year in which the taxpayer has met both the investment requirement and
6 the job requirement, and for such first year the credit may include qualified investment
7 property purchased or acquired in prior years but after March 31, 2003. For each year in
8 which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's
9 Georgia income tax return which will set forth the following information, as a minimum:

10 (A) A description of the qualified project;

11 (B) The amount of qualified investment property acquired during the taxable year;

12 (C) The amount of tax credit claimed for the taxable year;

13 (D) The amount of qualified investment property acquired in prior taxable years;

14 (E) Any tax credit previously taken by the taxpayer against Georgia income tax
15 liabilities or the taxpayer's quarterly or monthly payments under Code Section
16 48-7-103;

17 (F) The amount of tax credit carried over from prior years;

18 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

19 (H) The amount of tax credit to be carried over to subsequent tax years; and

20 (I) The monthly average number of full-time jobs during the taxable year;

21 (2) Any credit claimed under this Code section but not fully used in the manner
22 prescribed in subsection (d) of this Code section may be carried forward for 15 years
23 from the close of the later of:

24 (A) The taxable year in which the qualified investment property was acquired; or

25 (B) The taxable year in which both the job requirement and investment requirement are
26 satisfied.

27 The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create
28 new eligibility in any succeeding business entity but any unused investment tax credit
29 may be transferred and continued by any transferee of the business enterprise;

30 (3) In the initial year in which the taxpayer claims the credit granted in subsection (d) of
31 this Code section, the taxpayer shall include in the description of the project required by
32 subparagraph (A) of paragraph (1) of this subsection information which demonstrates that
33 the project includes the acquisition of qualified investment property having an aggregate
34 cost equal to or exceeding \$800 million and that the job requirement was satisfied during
35 such year; and

36 (4) The utilization of the credit granted in subsection (d) of this Code section shall have
37 no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets

1 acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in
2 such assets for the purpose of depreciation.

3 (f) In no event may credits exceeding \$50 million in the aggregate be claimed under this
4 Code section with respect to any one project.

5 (g) A taxpayer who is entitled to and takes credits provided by this Code section with
6 respect to a qualified project shall not be allowed to take any of the credits authorized by
7 Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7,
8 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.11, 48-7-40.15, 48-7-40.17, 48-7-40.18, or
9 48-7-40.24 with respect to jobs, investments, child care, or ground-water usage shifts
10 created by, arising from, related to, or connected in any way with the same project. Such
11 taxpayer may take any credit authorized by Code Section 48-7-40.5 for the cost of
12 retraining an employee located at the site of such project or the manufacturing facility
13 resulting therefrom, but only with respect to costs incurred more than five years after the
14 date the manufacturing facility first becomes operational.

15 (h) Not more than 60 days after the close of the fifth taxable year within the recapture
16 period, the taxpayer shall file a report, using such form and providing such information as
17 the commissioner may reasonably require, concerning whether it met the job maintenance
18 requirement. If the taxpayer has failed to meet the job maintenance requirement, the
19 taxpayer will forfeit the right to all credits provided by this Code section for such project.
20 A taxpayer that forfeits such right is liable for all past taxes imposed by this article and all
21 past payments under Code Section 48-7-103 that were forgone by the state as a result of
22 the credits provided by this Code section, plus interest at the rate established by Code
23 Section 48-2-40 computed from the date such taxes or payments would have been due if
24 the credits had not been taken. No later than 90 days after notification by the commissioner
25 that the taxpayer has failed to meet the job maintenance requirement, the taxpayer shall file
26 amended income tax and withholding tax returns for all affected periods that recalculate
27 those liabilities without regard to the forfeited credits and shall pay any additional amounts
28 shown on such returns, with interest as provided herein.

29 (i) A taxpayer who fails to meet the job maintenance requirement because of force majeure
30 may petition the commissioner for relief from such requirement. Such a petition must be
31 made with and at the same time as the report required by subsection (h) of this Code
32 section. If the commissioner determines that force majeure materially affected the
33 taxpayer's ability to meet the job maintenance requirement, but that the portion of any year
34 so affected was six months or less, the commissioner shall calculate the taxpayer's monthly
35 average number of full-time employees for purposes of subsection (h) of this Code section
36 by disregarding the affected months. If the commissioner determines that the affected
37 portion of any such year was more than six months, the taxable year shall be disregarded

1 in its entirety for purposes of the job maintenance requirement and the recapture period
2 applicable to the qualified project shall be extended for an additional year.

3 (j) If the manufacturing facility resulting from a qualified project is abandoned at any time
4 during the recapture period, the taxpayer will forfeit the right to all credits provided by this
5 Code section for such project. A taxpayer that forfeits such right is liable for all past taxes
6 imposed by this article and all past payments under Code Section 48-7-103 that were
7 forgone by the state as a result of the credits provided by this Code section, plus interest at
8 the rate established by Code Section 48-2-40 computed from the date such taxes or payments
9 would have been due if the credits had not been taken. For purposes of this subsection, a
10 manufacturing facility will be considered abandoned if there is, for any reason other than
11 force majeure, a complete cessation of manufacturing operations for a period of 12
12 consecutive months or more during the recapture period. Not more than 60 days after the
13 close of the recapture period, the taxpayer shall file a report, using such form and providing
14 such information as the commissioner may require, concerning whether such an
15 abandonment occurred. No later than 90 days after notification by the commissioner that an
16 abandonment occurred, the taxpayer shall file amended income tax and withholding tax
17 returns for all affected periods that recalculate those liabilities without regard to the forfeited
18 credits and shall pay any additional amounts shown on such returns, with interest as provided
19 herein.

20 (k) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the
21 commissioner may make any assessment attributable to the forfeiture of credits claimed
22 under this Code section for the periods covered by any amended returns filed by a taxpayer
23 pursuant to subsections (h) and (j) of this Code section within one year from the date such
24 returns are filed. If the taxpayer fails to file the reports or any amended return required by
25 subsections (h) and (j) of this Code section, the commissioner may assess additional tax or
26 other amounts attributable to the forfeiture of credits claimed under this Code section at
27 any time.

28 (l) The commissioner shall promulgate any rules and regulations necessary to implement
29 and administer this Code section."

30 SECTION 9.

31 Said title is further amended by striking subsection (b) of Code Section 48-7-103, relating
32 to quarterly, monthly, and jeopardy returns, and inserting in its place a new subsection (b)
33 to read as follows:

34 "(b)(1) Except as otherwise provided in subsection (a) of this Code section, every
35 employer whose tax withheld or required to be withheld exceeds \$200.00 per month is
36 \$50,000.00 or less in the aggregate for the lookback period is required to file and remit

1 payment to the department on or before the fifteenth day of the following month;
 2 provided, however, that the commissioner shall be authorized to promulgate rules and
 3 regulations to permit the filing of such returns on a quarterly basis.

4 (2) Every employer whose tax withheld or required to be withheld exceeds \$50,000.00
 5 in the aggregate for the lookback period must remit the withheld taxes pursuant to
 6 paragraph (3) of subsection (f) of Code Section 48-2-32 and shall file returns pursuant to
 7 paragraph (1) of this subsection.

8 (3) Notwithstanding any provision of this subsection to the contrary, for employers
 9 whose tax withheld or required to be withheld exceeds \$100,000.00 for the payday, the
 10 taxes must be remitted by the next banking day.

11 (4) For purposes of this subsection, the 'lookback period' for each calendar year shall be
 12 the 12 month period which ended the preceding June 30."

13 SECTION 10.

14 Said title 48 is amended in Code Section 48-8-2, relating to definitions, by adding a new
 15 paragraph immediately following paragraph (5), to be designated paragraph (5.1), to read as
 16 follows:

17 "(5.1) 'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction
 18 with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels
 19 for highway use and collected prior to that retail sale. This tax is based upon the average
 20 retail sales price as set forth in Code Section 48-9-14. This shall not apply to any local
 21 sales and use tax which is levied on the sale or use of motor fuel and imposed in an area
 22 consisting of less than the entire state, however authorized, including, but not limited to,
 23 such taxes authorized by or pursuant to constitutional amendment; by or pursuant to
 24 Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,
 25 known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant
 26 to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; or by or pursuant
 27 to Article 3 of this chapter."

28 SECTION 11.

29 Said title is further amended in Code Section 48-8-3, relating to exemptions from state sales
 30 and use tax, by striking in its entirety paragraph (47) and inserting in lieu thereof the
 31 following:

32 "(47) Sales of drugs dispensed by prescription and prescription eyeglasses and contact
 33 lenses including, without limitation, prescription contact lenses distributed by the
 34 manufacturer to licensed dispensers as free samples not intended for resale and labeled
 35 as such;"

1 (D) The commissioner shall promulgate any rules and regulations necessary to
 2 implement and administer this paragraph including but not be limited to a list of those
 3 articles and items qualifying for the exemption pursuant to this paragraph; or
 4 (76) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from the
 5 effective date of this paragraph until January 1, 2007, sales of tangible personal property
 6 to, or used in the construction of, an aquarium owned or operated by an organization
 7 which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code."

8 SECTION 13.

9 Said title is further amended by striking subsections (b) and (c) of Code Section 48-8-6,
 10 relating to limitations regarding local sales and use taxes, and inserting in their place new
 11 subsections (b) and (c) to read as follows:

12 "(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this
 13 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.
 14 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and
 15 use tax which is levied in an area consisting of less than the entire state, however
 16 authorized, including such taxes authorized by or pursuant to constitutional amendment,
 17 except that the following taxes shall not count toward or be subject to such 2 percent
 18 limitation:

19 (1) A sales and use tax for educational purposes exempted from such limitation under
 20 Article VIII, Section VI, Paragraph IV of the Constitution; and

21 (2) Any tax levied for purposes of a metropolitan area system of public transportation,
 22 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page
 23 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)
 24 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
 25 provided, however, that the exception provided for under this paragraph shall only apply
 26 in a county in which a tax is being imposed under subparagraph ~~(a)(1)(F)~~ (a)(1)(D) of
 27 Code Section 48-8-111 solely for the purpose or purposes of a water capital outlay project
 28 or projects, a sewer capital outlay project or projects, a water and sewer capital outlay
 29 project or projects, or a combination of such projects and such exception shall apply only
 30 during the period the tax under said subparagraph ~~(a)(1)(F)~~ (a)(1)(D) is in effect.

31 If the imposition of any otherwise authorized local sales tax, local use tax, or local sales
 32 and use tax would result in a tax rate in excess of that authorized by this subsection, then
 33 such otherwise authorized tax may not be imposed.

34 (c) Where the exception specified in paragraph (2) of subsection (b) of this Code section
 35 applies, the tax imposed under subparagraph ~~(a)(1)(F)~~ (a)(1)(D) of Code Section 48-8-111
 36 shall not apply to:

- 1 (1) The furnishing for value to the public of any room or rooms, lodgings, or
 2 accommodations which is subject to taxation under Article 3 of Chapter 13 of this title;
 3 and
 4 (2) The sale of motor vehicles."

5 SECTION 14.

6 Said title is further amended by striking subsection (b) of Code Section 48-8-49, relating to
 7 dealers' sales and use tax returns, and inserting in its place a new subsection (b) to read as
 8 follows:

9 "(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax
 10 liability, adjusted to account for any subsequent change in the state sales and use tax rate,
 11 based on ~~his~~ the dealer's average monthly payments for the last fiscal year.

12 (2) If the estimated tax liability of a dealer for any taxable period exceeds \$2,500.00, the
 13 dealer shall file a return and remit to the commissioner not less than 50 percent of the
 14 estimated tax liability for the taxable period on or before the twentieth day of the period.
 15 The amount of the payment of the estimated tax liability shall be credited against the
 16 amount to be due on the return required under subsection (a) of this Code section. This
 17 subsection shall not apply to any dealer unless during the previous fiscal year the dealer's
 18 monthly payments exceeded \$2,500.00 per month for three consecutive months or more
 19 nor shall this subsection apply to any dealer whose primary business is the sale of motor
 20 fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code
 21 Section 48-9-14. No local sales taxes shall be included in determining any estimated tax
 22 liability."

23 SECTION 15.

24 Said title is further amended by striking paragraph (3) of subsection (b) of Code Section
 25 48-8-50, relating to compensation of dealers, and inserting in its place a new paragraph (3)
 26 to read as follows:

27 "(3) With respect to each certificate of registration number on such return, a deduction
 28 of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as
 29 defined under paragraph (9) of Code Section 48-9-2, which are imposed under any
 30 provision of this title, including, but not limited to, ~~Code Section 48-9-14~~ and sales and
 31 use taxes on motor fuel imposed under any of the provisions described in subsection (f)
 32 of this Code section but not including Code Section 48-9-14."

SECTION 16.

Said title is further amended by striking subsection (b) of Code Section 48-9-14, relating to the second motor fuel tax, and inserting in its place a new subsection (b) to read as follows:

"(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall be subject only to the exemptions provided in Code Section 48-9-3.

(2)(A) As used in this paragraph, the term 'prepaid state tax' shall have the same meaning as provided in paragraph (5.1) of Code Section 48-8-2.

(B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid state tax to the state. The tax shall be separately invoiced throughout the chain of distribution until it reaches the dealer who makes the retail sale. The commissioner shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest \$.001 per gallon for use in the following the semiannual period. The rate shall be calculated at 4 percent of the state-wide average retail price by motor fuel type as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use taxes. In the event that the retail price changes by 25 percent or more within a semiannual period, the commissioner shall issue a revised prepaid state tax rate for the remainder of that period."

SECTION 17.

Said title is further amended by striking subsections (b) and (d) of Code Section 48-9-16, relating to penalties, and inserting in their place new subsections (b) and (d), respectively, to read as follows:

"(b) When any distributor fails to pay the tax or any part of the tax due under ~~paragraph (1) of subsection (a) of Code Section 48-9-3 or 48-9-14,~~ he the distributor shall be subject to a penalty of 10 percent of the amount of unpaid taxes due."

"(d) When any distributor fails to pay the tax or any part of the tax due under ~~paragraph (1) of subsection (a) of Code Section 48-9-3 or 48-9-14,~~ he the distributor shall pay interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the tax became due until paid."

SECTION 18.

Said title is further amended by striking Code Section 48-11-1, relating to definitions, and inserting in its place a new Code Section 48-11-1 to read as follows:

"48-11-1.

As used in this chapter, the term:

(1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover of the roll is also tobacco.

(2) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(3) 'Dealer' means any person other than a distributor who is engaged in this state in the business of selling cigars, ~~or~~ cigarettes, or loose or smokeless tobacco directly to the ultimate consumer of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco.

(4) 'Distributor' means any person who:

(A) Maintains a warehouse, warehouse personnel, and ~~salesmen~~ salespersons who regularly contact and call on dealers; and

(B) Is engaged in the business of:

(i) Manufacturing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in this state; importing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco into this state; or purchasing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco from other manufacturers or distributors; and

(ii) Selling the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco to dealers in this state for resale, but is not in the business of selling the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco directly to the ultimate consumer of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco.

(5) 'First taxable transaction' means the first sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco within this state.

(6) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking but does not include cigarettes or cigars or tobacco purchased for the manufacture of cigarettes by cigarette distributors.

~~(6)~~(7) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

1 or consumer. The seller or distributor shall collect the tax from the purchaser or consumer
 2 and the purchaser or consumer shall pay the tax to the seller or distributor. The seller or
 3 distributor shall be responsible for the collection of the tax and the payment of the tax to
 4 the commissioner. Whenever cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are
 5 shipped from outside the state to anyone other than a distributor, the person receiving the
 6 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco shall be deemed to be a distributor and
 7 shall be responsible for the tax on the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco
 8 and the payment of the tax to the commissioner.

9 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 10 shall be added to and collected as a part of the sales price of the cigars, ~~or~~ cigarettes, or
 11 loose or smokeless tobacco sold or distributed. The amount of the tax shall be stated
 12 separately from the price of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco.

13 (g) The cigars, ~~and~~ cigarettes, and loose or smokeless tobacco tax imposed shall be
 14 collected only once upon the same cigarettes, cigars, ~~or~~ little cigars, or loose or smokeless
 15 tobacco."

16 SECTION 20.

17 Said title is further amended by striking Code Section 48-11-3, relating to collection of such
 18 tax by stamps, and inserting in its place a new Code Section 48-11-3 to read as follows:

19 "48-11-3.

20 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
 21 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
 22 secure stamps of such design and materials as ~~he~~ the commissioner deems appropriate to
 23 protect the revenue and shall sell the stamps to licensed distributors at a discount of not less
 24 than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage
 25 of the discount shall be based on brackets according to the volume of cigars, ~~and~~ cigarettes,
 26 and loose or smokeless tobacco handled by the distributor pursuant to regulations
 27 promulgated by the commissioner. The commissioner shall prescribe by regulation the
 28 condition, method, and manner in which stamps are to be affixed to containers of cigars,
 29 ~~and~~ cigarettes, and loose or smokeless tobacco.

30 (b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale
 31 of stamps, of collecting and paying the tax imposed upon cigars and little cigars. The
 32 commissioner may also prescribe by regulation an alternate method, in lieu of the sale of
 33 stamps, of collecting and paying the tax imposed on loose or smokeless tobacco. Any such
 34 regulations shall be promulgated so that use of the alternate method will result in the same
 35 revenue to the state as the state would realize through the sale of stamps to the distributors.

1 (c) No distributor shall sell or exchange with another distributor any stamps issued
 2 pursuant to this chapter. The commissioner is authorized to redeem at cost price any stamps
 3 presented for redemption by a licensed distributor when the commissioner determines from
 4 physical inspection that no cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~has~~ ~~have~~
 5 been sold by the distributor under pretense of the tax imposed by this chapter having been
 6 paid through use of the stamps."

7 **SECTION 21.**

8 Said title is further amended by striking Code Section 48-11-4, relating to licensure and
 9 suspension and revocation, and inserting in its place a new Code Section 48-11-4 to read as
 10 follows:

11 "48-11-4.

12 (a) No person shall engage in or conduct the business of manufacturing, purchasing,
 13 selling, consigning, vending, dealing in, or distributing cigars, ~~or~~ cigarettes, or loose or
 14 smokeless tobacco in this state without first obtaining a license from the commissioner.

15 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 16 with respect to applications for and issuance of the licenses. The commissioner may refuse
 17 to issue any license under this chapter when ~~he~~ the commissioner has reasonable cause to
 18 believe that the applicant has willfully withheld information requested of ~~him~~ the applicant
 19 or required by the regulations to be provided or reported or when the commissioner has
 20 reasonable cause to believe that the information submitted in any application or report is
 21 false or misleading and is not given in good faith.

22 (c) The fee for a distributor's license shall be \$50.00 annually, except that for a person
 23 commencing business as a distributor for the first time the first year's fee shall be \$250.00.
 24 Each dealer shall have a permanent license issued by the commissioner free of charge.
 25 Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next
 26 succeeding year. The prescribed fee shall accompany every application for a license and
 27 shall apply for any portion of the annual period. Each distributor's or dealer's license shall
 28 be subject to suspension or revocation for violation of any of the provisions of this chapter
 29 or of the rules and regulations made pursuant to this chapter. A separate license shall be
 30 required for each place of business. No person shall hold a distributor's license and a
 31 dealer's license at the same time.

32 (d) The commissioner may make rules and regulations governing the sale of cigars, ~~and~~
 33 cigarettes, and loose or smokeless tobacco and other tobacco products in vending
 34 machines. The commissioner shall require annually a special registration of each vending
 35 machine for any operation in this state and charge a license fee for the registration in the
 36 amount of \$1.00 for each machine. The annual registration shall indicate the location of the

1 vending machine. No vending machine shall be purchased or transported into this state for
 2 use in this state when the vending machine is not so designed as to permit inspection
 3 without opening the machine for the purpose of determining that cigars, and cigarettes, and
 4 loose or smokeless tobacco and other tobacco products contained in the machine bear the
 5 tax stamp required under this chapter.

6 (e) The distributor's or dealer's license shall be exhibited in the place of business for
 7 which it is issued in the manner prescribed by the commissioner. The commissioner shall
 8 require each licensed distributor to file with ~~him~~ the commissioner a bond in an amount of
 9 not less than \$1,000.00 to guarantee the proper performance of the distributor's duties and
 10 the discharge of the distributor's liabilities under this chapter. The bond shall run
 11 concurrently with the distributor's license but shall remain in full force and effect for a
 12 period of one year after the expiration or revocation of the distributor's license unless the
 13 commissioner certifies that all obligations due the state arising under this chapter have been
 14 paid.

15 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
 16 to every person using or consuming cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in
 17 this state and to every person dealing in cigars, ~~or~~ cigarettes, or loose or smokeless tobacco
 18 in any way for business purposes and maintaining a place of business in this state. For the
 19 purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of
 20 goods, or regular sales or promotional activity, whether carried on automatically or by
 21 ~~salesmen~~ salespersons or other representatives, shall constitute, among other activities, the
 22 maintaining of a place of business.

23 (g) The commissioner may provide for the licensing of promotional activities, not
 24 including the sale of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco, carried on by the
 25 manufacturer. The fee for any such license shall be \$10.00 annually."

26 SECTION 22.

27 Said title is further amended by striking Code Section 48-11-5, relating to licensing of
 28 nonresident distributors, and inserting in its place a new Code Section 48-11-5 to read as
 29 follows:

30 "48-11-5.

31 (a)(1) If the commissioner finds that the collection of the tax imposed by this chapter
 32 would be facilitated by such action, ~~he~~ the commissioner may authorize any person
 33 residing or located outside this state who is engaged in the business of manufacturing
 34 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco or any person residing or located
 35 outside this state who ships cigars, ~~or~~ cigarettes, or loose or smokeless tobacco into this
 36 state for sale to licensed dealers in this state, to be licensed as a distributor and, after the

1 person complies with the commissioner's requirements, to affix or cause to be affixed the
 2 stamps required by this chapter on behalf of the purchasers of the cigars, or cigarettes, or
 3 loose or smokeless tobacco who would otherwise be taxable for the cigars, and cigarettes, and
 4 loose or smokeless tobacco. The commissioner may sell tax stamps to an authorized
 5 person or may authorize the use of a metering machine by the person as provided in Code
 6 Section 48-11-3.

7 (2) The commissioner shall require a bond of a nonresident distributor satisfactory to the
 8 commissioner and in an amount not to exceed \$10,000.00, conditioned upon the payment
 9 of the tax and compliance with any other requirements specified by the commissioner.
 10 As a condition of authorization as provided in this Code section, a nonresident distributor
 11 shall agree to submit ~~his~~ the distributor's books, accounts, and records for examination
 12 by the commissioner or ~~his~~ the commissioner's duly authorized agent during reasonable
 13 business hours and shall appoint in writing an agent who resides in this state for the
 14 purpose of service. Service upon an agent shall be sufficient service upon the nonresident
 15 distributor and may be made by leaving a duly attested copy of the process with the
 16 agent. When legal process against any nonresident distributor is served upon the agent,
 17 the agent shall notify the nonresident distributor in the manner specified in Code Section
 18 40-12-2.

19 (3) Upon the grant of authorization as provided in this subsection and except as may
 20 otherwise be determined by the commissioner, a nonresident distributor shall become a
 21 licensed distributor within the meaning of this chapter and shall be subject to all
 22 provisions of this chapter applicable to licensed distributors.

23 (b) Every nonresident manufacturer and every nonresident distributor of cigars, or
 24 cigarettes, or loose or smokeless tobacco making shipments of cigars, or cigarettes, or loose
 25 or smokeless tobacco by common carrier or otherwise for their own account or for the
 26 account of others to distributors or dealers located within this state shall make reports of
 27 the shipments when and as required by rules and regulations of the commissioner."

28 SECTION 23.

29 Said title is further amended by striking Code Section 48-11-8, relating to sale or possession
 30 prohibitions and inserting in its place a new Code Section 48-11-8 to read as follows:

31 "48-11-8.

32 (a)(1) No person shall sell, offer for sale, or possess with intent to sell any cigarettes in
 33 this state when the cigarette container does not bear the tax stamps required by Code
 34 Section 48-11-3.

1 (2) No person shall sell, offer for sale, or possess with intent to sell in this state any
 2 cigars or little cigars upon which the tax has not been paid under the alternate method of
 3 collecting the taxes provided in Code Section 48-11-3 or which do not bear tax stamps.

4 (3) No person shall sell, offer for sale, or possess with intent to sell any loose or
 5 smokeless tobacco in this state when the loose or smokeless tobacco container does not
 6 bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been
 7 paid under the alternate method of collecting the tax provided under Code Section
 8 48-11-3.

9 (b) Each distributor at the location for which ~~his~~ such distributor's license is issued and in
 10 the manner specified by the commissioner shall affix the stamps required by this Code
 11 section to each individual package of cigarettes sold or distributed by ~~him~~ such distributor.
 12 Each distributor shall comply with the commissioner's regulations for the payment of the
 13 tax on cigars or loose or smokeless tobacco as provided in Code Section 48-11-3 or shall
 14 affix to each container of cigars or loose or smokeless tobacco sold by ~~him~~ such distributor
 15 or from which ~~he~~ such distributor sells cigars or loose or smokeless tobacco the stamps
 16 required by this chapter. The stamps may be affixed or the tax under the alternate method
 17 may be paid by a distributor at any time before the cigars, ~~or~~ cigarettes, or loose or
 18 smokeless tobacco is ~~are~~ transferred out of ~~his~~ such distributor's possession.

19 (c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and
 20 that, if the distributor acquires stamped cigarettes, tax-paid cigars, ~~or~~ stamped cigars,
 21 stamped loose or smokeless tobacco, or tax-paid loose or smokeless tobacco, such
 22 distributor ~~he~~ is not required to affix additional stamps or provide other evidence of
 23 payment of the tax.

24 (d) Every dealer who comes into possession of cigars, ~~or~~ cigarettes, or loose or smokeless
 25 tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter
 26 shall report the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco to the commissioner
 27 prior to displaying, selling, using, or otherwise disposing of the cigars, ~~and~~ cigarettes, and
 28 loose or smokeless tobacco. After a report, the commissioner shall authorize a licensed
 29 distributor to affix the proper stamps to the cigars, ~~and~~ cigarettes, and loose or smokeless
 30 tobacco or, in the case of cigars or loose or smokeless tobacco, authorize the dealer to remit
 31 the tax by the alternate method promulgated by the commissioner in accordance with Code
 32 Section 48-11-3. A licensed distributor shall affix the stamps or comply with the alternate
 33 regulations when presented a permit for such action issued by the commissioner. A
 34 licensed distributor shall stamp cigarettes or comply with the alternate method provided in
 35 this chapter with respect to cigars or loose or smokeless tobacco, other than ~~his~~ such
 36 distributor's own, only when authorized by the permit issued by the commissioner.

1 (e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries
 2 of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or
 3 smokeless tobacco which ~~are~~ is shipped to him such distributor or acquired by him such
 4 distributor at any place within the state except as authorized and provided in this Code
 5 section. All cigars, ~~and~~ cigarettes, and loose or smokeless tobacco shall be examined by the
 6 distributor or dealer on receipt, and the distributor shall immediately report the cigars, ~~or~~
 7 cigarettes, or loose or smokeless tobacco to the commissioner as provided in subsection (d)
 8 of this Code section.

9 (f) The commissioner may prescribe the charges which may be made by a distributor to
 10 any person for the services of the distributor as provided in this chapter in affixing the tax
 11 stamps to each individual package of cigarettes or loose or smokeless tobacco and may
 12 prescribe the charges which may be made by a distributor in complying with the
 13 commissioner's alternate regulations for the collection of the tax on cigars and little cigars
 14 or loose or smokeless tobacco.

15 (g) This Code section shall not apply to unstamped cigars and little cigars or loose or
 16 smokeless tobacco upon which the tax has been paid in accordance with the alternate
 17 regulations promulgated by the commissioner under Code Section 48-11-3."

18 SECTION 24.

19 Said title is further amended by striking Code Section 48-11-9, relating to seizure of
 20 contraband, and inserting in its place a new Code Section 48-11-9 to read as follows:

21 "48-11-9.

22 (a)(1) Any cigars, ~~or~~ cigarettes, or loose or smokeless tobacco found at any place in this
 23 state without stamps affixed to them as required by this chapter are declared to be
 24 contraband articles and may be seized by the commissioner, ~~his~~ the commissioner's
 25 agents or employees, or any peace officer of this state when directed by the commissioner
 26 to do so.

27 (2) Paragraph (1) of this subsection shall not apply when:

28 (A) The tax has been paid on the unstamped cigars and little cigars or loose or
 29 smokeless tobacco in accordance with the commissioner's regulations promulgated
 30 pursuant to Code Section 48-11-3;

31 (B) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are in the possession of
 32 a licensed distributor;

33 (C) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are in course of transit
 34 from outside the state and ~~are~~ is consigned to a licensed distributor;

35 (D) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are in the possession of
 36 a transporter who is in compliance with Code Section 48-11-22; or

1 (E) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ ~~are~~ in the possession of
 2 a registered taxpayer as defined in Code Section 48-11-14 and the time for making the
 3 report required by Code Section 48-11-14 has not expired.

4 (3) This subsection shall not be construed to require the commissioner to confiscate
 5 unstamped or nontax-paid cigars, ~~and~~ cigarettes, and loose or smokeless tobacco or other
 6 property when ~~he~~ the commissioner has reason to believe that the owner of the cigars,
 7 cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally
 8 evading the tax imposed by this chapter.

9 (b) Any cigars, cigarettes, loose or smokeless tobacco, or other property seized pursuant
 10 to this chapter may be offered for sale by the commissioner, at ~~his~~ the commissioner's
 11 discretion, at public auction to the highest bidder after advertisement as provided in this
 12 Code section. The commissioner shall deliver to the Office of Treasury and Fiscal Services
 13 the proceeds of any sale made under this Code section. Before delivering any cigars, ~~or~~
 14 cigarettes, or loose or smokeless tobacco sold to a purchaser at the sale, the commissioner
 15 shall require the purchaser to affix to the packages the amount of stamps required by this
 16 chapter or to comply with the commissioner's alternate method. The seizure and sale of any
 17 cigars, cigarettes, loose or smokeless tobacco, or property pursuant to this chapter shall not
 18 relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

19 (c) When any cigars, cigarettes, loose or smokeless tobacco, or other property has been
 20 seized pursuant to this chapter, the commissioner, at ~~his~~ the commissioner's discretion,
 21 may advertise ~~them~~ it for sale in a newspaper published or having a circulation in the place
 22 in which the seizure occurred, at least five days before the sale. Any person claiming an
 23 interest in the cigars, cigarettes, loose or smokeless tobacco, or other property may make
 24 written application to the commissioner for a hearing. The application shall state the
 25 person's interest in the cigars, cigarettes, loose or smokeless tobacco, or other property and
 26 ~~his~~ such person's reasons why the cigars, cigarettes, loose or smokeless tobacco, or other
 27 property should not be forfeited. Further proceedings on the application for hearing shall
 28 be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars,
 29 cigarettes, loose or smokeless tobacco, or property seized pursuant to this chapter shall be
 30 made while an application for a hearing is pending before the commissioner. The pendency
 31 of an appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale
 32 unless the appellant posts a satisfactory bond with surety in an amount double the estimated
 33 value of the cigars, cigarettes, loose or smokeless tobacco, or other property and
 34 conditioned upon the successful termination of the appeal.

35 (d) Any vending machine containing or dispensing any cigarettes or loose or smokeless
 36 tobacco which ~~do~~ does not bear the tax stamps required under this chapter or containing
 37 or dispensing any cigars or loose or smokeless tobacco upon which the tax has not been

1 paid either through the purchase of stamps or the alternate procedure provided by the
 2 commissioner as required under this chapter shall be a contraband article. The
 3 commissioner may seize any such machine and deal with it in the same manner as provided
 4 by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and
 5 nontax-paid cigars or loose or smokeless tobacco."

6 SECTION 25.

7 Said title is further amended by striking Code Section 48-11-10, relating to monthly reports,
 8 and inserting in its place a new Code Section 48-11-10 to read as follows:

9 "48-11-10.

10 (a) Every licensed distributor shall file with the commissioner, on or before the tenth day
 11 of each month, a report in the form prescribed by the commissioner and disclosing:

12 (1) The ~~number~~ quantity of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco on hand
 13 on the first and last days of the calendar month immediately preceding the month in
 14 which the report is filed;

15 (2) Information required by the commissioner concerning the amount of stamps
 16 purchased, used, and on hand during the report period; and

17 (3) Information otherwise required by the commissioner for the report period.

18 (b) The commissioner may require other reports as ~~he~~ the commissioner deems necessary
 19 for the proper administration of this chapter including, but not limited to, reports from
 20 common carriers and warehousemen with respect to cigars, ~~and~~ cigarettes, and loose or
 21 smokeless tobacco delivered to or stored at any point in this state.

22 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
 23 after the due date until the report is filed the sum of \$1.00, to be collected in the manner
 24 provided in subsection (c) of Code Section 48-11-24 for the collection of penalties."

25 SECTION 26.

26 Said title is further amended by striking subsection (a) of Code Section 48-11-11, relating
 27 to records, and inserting in its place a new subsection (a) to read as follows:

28 "(a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
 29 ~~and~~ cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and
 30 sold. The records shall be of the kind and in the form prescribed by the commissioner and
 31 shall be safely preserved for three years in an appropriate manner to ensure permanency
 32 and accessibility for inspection by the commissioner and ~~his~~ the commissioner's authorized
 33 agents. The commissioner and ~~his~~ the commissioner's authorized agents may examine the
 34 books, papers, and records of any distributor or dealer in this state for the purpose of
 35 determining whether the tax imposed by this chapter has been fully paid and, for the

1 purpose of determining whether the provisions of this chapter are properly observed, may
 2 investigate and examine the stock of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in
 3 or upon any premises including, but not limited to, public and private warehouses where
 4 the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are possessed, stored, or sold."

5 SECTION 27.

6 Said title is further amended by striking subsection (a) of Code Section 48-11-12, relating
 7 to assessment of deficiencies and penalties, and inserting in its place a new subsection (a) to
 8 read as follows:

9 "(a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10
 10 percent of the deficiency if, after an examination of the invoices, books, and records of
 11 a licensed distributor or dealer or of any other information obtained by the commissioner
 12 or ~~his~~ the commissioner's authorized agents, the commissioner determines that:

13 (A) The report of the licensed distributor or licensed dealer is incorrect;

14 (B) The licensed distributor or dealer has not paid the tax in accordance with the
 15 alternate regulations promulgated by the commissioner under Code Section 48-11-3;

16 (C) The licensed distributor or dealer has not purchased sufficient stamps to cover ~~his~~
 17 such licensed distributor or dealer's receipts for sales or other disposition of unstamped
 18 cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless
 19 tobacco.

20 (2) In any case where a licensed distributor or dealer cannot produce evidence of
 21 sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped
 22 cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or smokeless
 23 tobacco, it shall be assumed that the cigars, ~~and~~ cigarettes, and loose or smokeless
 24 tobacco were sold without having either the proper stamps affixed or the tax paid on
 25 unstamped cigars or loose or smokeless tobacco."

26 SECTION 28.

27 Said title is further amended by striking Code Section 48-11-13, relating to certain use,
 28 consumption, or storage taxes, and inserting in its place a new Code Section 48-11-13 to read
 29 as follows:

30 "48-11-13.

31 (a) There is imposed a tax on every person for the privilege of using, consuming, or storing
 32 cigars, ~~and~~ cigarettes, and loose or smokeless tobacco in this state on which the tax
 33 imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and
 34 graduated in accordance with the volume of cigars, ~~and~~ cigarettes, and loose or smokeless
 35 tobacco used, consumed, or stored as set forth in Code Section 48-11-2.

1 (b) This Code section shall not apply to:

2 (1) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in the hands of a licensed
3 distributor or dealer;

4 (2) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in the possession of a carrier
5 complying with Code Section 48-11-22;

6 (3) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco stored in a public warehouse;

7 (4) Cigarettes in an amount not exceeding 200 cigarettes which have been brought into
8 the state on the person; ~~or~~

9 (5) Cigars in an amount not exceeding 20 cigars which have been brought into the state
10 on the person; or

11 (6) Loose or smokeless tobacco in an amount not exceeding six containers which has
12 been brought into the state on the person."

13 SECTION 29.

14 Said title is further amended by striking subsection (a) of Code Section 48-11-14, relating
15 to registration, reports, and tax payments, and inserting in its place a new subsection (a) to
16 read as follows:

17 "(a) Before any person acquires cigars, ~~or~~ cigarettes, or loose or smokeless tobacco subject
18 to the tax imposed by Code Section 48-11-13, ~~he~~ such person shall register with the
19 commissioner as a responsible taxpayer subject to the obligation of maintaining records
20 and making reports in the form prescribed by the commissioner. The report shall be made
21 on or before the tenth day of the month following the month in which the cigars, ~~or~~
22 cigarettes, or loose or smokeless tobacco was ~~were~~ acquired and shall be accompanied by
23 the amount of tax due."

24 SECTION 30.

25 Said title is further amended by striking Code Section 48-11-15, relating to claims for
26 refunds, and inserting in its place a new Code Section 48-11-15 to read as follows:

27 "48-11-15.

28 The Office of Treasury and Fiscal Services is authorized to pay, on the order of the
29 commissioner, claims for refunds of cigar, ~~or~~ cigarette, or loose or smokeless tobacco taxes
30 found by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The
31 commissioner, upon proof satisfactory to ~~him~~ the commissioner and in accordance with
32 regulations promulgated by ~~him~~ the commissioner, shall refund the cost price of stamps
33 affixed to any package of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco or shall
34 refund the tax paid on cigars or loose or smokeless tobacco under the alternate method

1 when the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~has~~ have become unfit for use,
 2 consumption, or sale and ~~have~~ has been destroyed or shipped out of the state."

3 SECTION 31.

4 Said title is further amended by striking Code Section 48-11-17, relating to status of unpaid
 5 tax as a lien, and inserting in its place a new Code Section 48-11-17 to read as follows:

6 "48-11-17.

7 The amount of any unpaid tax shall be a lien against the property of any distributor or
 8 dealer who sells cigars, ~~or~~ cigarettes, or loose or smokeless tobacco without collecting the
 9 tax and against the property of any person using or consuming cigars, ~~or~~ cigarettes, or loose
 10 or smokeless tobacco without proper stamps affixed to the cigars, ~~or~~ cigarettes, or loose or
 11 smokeless tobacco or without the tax paid on the cigars or loose or smokeless tobacco as
 12 otherwise provided in this chapter. The commissioner or ~~his~~ the commissioner's authorized
 13 agents are authorized to seize the property of a delinquent distributor, dealer, or taxpayer
 14 and sell it as provided by law to satisfy the claim for taxes due under this chapter; or the
 15 commissioner may record ~~his~~ the commissioner's lien specifying and describing the
 16 property against which the lien is effective, and the lien shall be good as against any other
 17 person until the claim for taxes is satisfied."

18 SECTION 32.

19 Said title is further amended by striking subsection (a) of Code Section 48-11-18, relating
 20 to hearings by the commissioner, and inserting in its place a new subsection (a) to read as
 21 follows:

22 "(a) Any person aggrieved by any action of the commissioner or ~~his~~ the commissioner's
 23 authorized agent may apply to the commissioner, in writing within ten days after the notice
 24 of the action is delivered or mailed to ~~him~~ the commissioner, for a hearing. The application
 25 shall set forth the reasons why the hearing should be granted and the manner of relief
 26 sought. The commissioner shall notify the applicant of the time and place fixed for the
 27 hearing. After the hearing, the commissioner may make an order as may appear to ~~him~~ the
 28 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
 29 The commissioner at any time by notice in writing may order a hearing on ~~his~~ the
 30 commissioner's own initiative and require the taxpayer or any other person whom ~~he~~ the
 31 commissioner believes to be in possession of information concerning any manufacture,
 32 importation, use, consumption, storage, or sale of cigars, ~~or~~ cigarettes, or loose or
 33 smokeless tobacco which ~~have~~ has escaped taxation to appear before ~~him~~ the commissioner
 34 or ~~his~~ the commissioner's duly authorized agent with any specific books of account, papers,
 35 or other documents for examination under oath relative to the information."

SECTION 33.

Said title is further amended by striking subsection (a) of Code Section 48-11-19, relating to powers and duties of special agents and enforcement officers, and inserting in its place a new subsection (a) to read as follows:

"(a) Each person appointed by the commissioner as a special agent or enforcement officer of the department for the enforcement of the laws of this state with respect to the manufacture, transportation, distribution, sale, possession, and taxation of cigars, cigarettes, ~~and little cigars,~~ and loose or smokeless tobacco shall have the authority throughout the state to:

- (1) Obtain and execute warrants for arrest of persons charged with violations of such laws;
- (2) Obtain and execute search warrants in the enforcement of such laws;
- (3) Arrest without warrant any person violating such laws in the officer's presence or within ~~his~~ such officer's immediate knowledge when there is likely to be a failure of enforcement of such laws for want of a judicial officer to issue a warrant;
- (4) Make investigations in the enforcement of such laws and, in connection with such investigations, to go upon any property outside buildings, whether posted or otherwise, in the performance of ~~his~~ such officer's duties;
- (5) Seize and take possession of all property which is declared contraband under such laws; and
- (6) Carry firearms while performing ~~his~~ such officer's duties."

SECTION 34.

Said title is further amended by striking Code Section 48-11-22, relating to transportation of certain cigarettes and cigars, and inserting in its place a new Code Section 48-11-22 to read as follows:

"48-11-22.

(a) Every person who transports upon the public highways, roads, and streets of this state cigars, ~~or~~ cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been paid in accordance with the alternate regulations provided by the commissioner under Code Section 48-11-3 shall have in ~~his~~ such person's actual possession invoices or delivery tickets for the cigars, ~~and~~ cigarettes, and loose or smokeless tobacco which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, the quantity and brands of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco transported, and the name and address of the person who has assumed or shall assume the payment of the tax at the point of ultimate destination. In the absence of the invoices or delivery tickets, the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco being transported

1 and the vehicles in which the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~
 2 being transported shall be confiscated and disposed of as provided in Code Section
 3 48-11-9; and the transporter may be liable for a penalty of not more than \$25.00 for each
 4 individual carton of cigarettes, ~~and~~ \$50.00 for each individual box of cigars, and \$25.00 for
 5 each individual container of loose or smokeless tobacco being transported by ~~him~~ such
 6 person. The penalty shall be recovered as provided in subsection (c) of Code Section
 7 48-11-24.

8 (b) This Code section shall apply only with respect to the transportation of more than 200
 9 cigarettes, ~~or~~ more than 20 cigars, or more than six containers of loose or smokeless
 10 tobacco."

11 SECTION 35.

12 Said title is further amended by striking subsection (a) of Code Section 48-11-23, relating
 13 to additional sale requirements, and inserting in its place a new subsection (a) to read as
 14 follows:

15 "(a) It shall be unlawful for any person, with intent to evade the tax imposed by this
 16 chapter, to transport cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in violation of
 17 Code Section 48-11-22."

18 SECTION 36.

19 Said title is further amended by striking Code Section 48-11-23.1, relating to additional
 20 requirements and seizure and forfeiture of contraband, and inserting in its place a new Code
 21 Section 48-11-23.1 to read as follows:

22 "48-11-23.1.

23 (a) As used in this Code section, the term 'package' means a pack, carton, or container of
 24 any kind in which cigarettes or loose or smokeless tobacco is ~~are~~ offered for sale, sold, or
 25 otherwise distributed, or intended for distribution, to consumers.

26 (b) No tax stamp may be affixed to, or made upon, any package of cigarettes or loose or
 27 smokeless tobacco if:

28 (1) The package differs in any respect with the requirements of the Federal Cigarette
 29 Labeling and Advertising Act, 15 U.S.C. Sec. 1331, et seq., for the placement of labels,
 30 warnings, or any other information upon a package of cigarettes or loose or smokeless
 31 tobacco that is to be sold within the United States;

32 (2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,'
 33 or similar wording indicating that the manufacturer did not intend that the product be sold
 34 in the United States;

1 (3) The package, or a package containing individually stamped packages, has been
 2 altered by adding or deleting the wording, labels, or warnings described in paragraph (1)
 3 or (2) of this subsection;

4 (4) The package has been imported into the United States after January 1, 2000, in
 5 violation of 26 U.S.C. Sec. 5754; or

6 (5) The package in any way violates federal trademark or copyright laws.

7 (c) Any person who sells or holds for sale a cigarette packages or loose or smokeless
 8 tobacco package to which is affixed a tax stamp in violation of subsection (b) of this Code
 9 section shall be guilty of a misdemeanor.

10 (d) Notwithstanding any other provision of law, the commissioner may revoke any license
 11 issued under this chapter to any person who sells or holds for sale a cigarette or loose or
 12 smokeless tobacco package to which is affixed a tax stamp in violation of subsection (b)
 13 of this Code section.

14 (e) Notwithstanding any other provision of law, the commissioner may seize and destroy
 15 or sell to the manufacturer, only for export, packages that do not comply with subsection
 16 (b) of this Code section.

17 (f) A violation of subsection (b) of this Code section shall constitute an unfair and
 18 deceptive act or practice under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair
 19 Business Practices Act of 1975.'

20 SECTION 37.

21 Said title is further amended by striking subsection (a) of Code Section 48-11-24, relating
 22 to criminal penalties, and inserting in its place a new subsection (a) to read as follows:

23 "(a) Any person who possesses unstamped cigarettes or loose or smokeless tobacco or
 24 nontax-paid cigars or loose or smokeless tobacco in violation of this chapter shall be liable
 25 for a penalty of not more than \$25.00 for each individual carton of unstamped cigarettes
 26 or loose or smokeless tobacco and \$50.00 for each individual box of nontax-paid cigars or
 27 loose or smokeless tobacco in his or her possession."

28 SECTION 38.

29 Said title is further amended by striking Code Section 48-11-25, relating to criminal
 30 penalties, and inserting in its place a new Code Section 48-11-25 to read as follows:

31 "48-11-25.

32 (a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
 33 chapter, to possess unstamped cigarettes or loose or smokeless tobacco or nontax-paid
 34 cigars or loose or smokeless tobacco.

1 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a
2 misdemeanor.

3 (b)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
4 chapter, to:

5 (A) Sell cigarettes or loose or smokeless tobacco without the stamps required by this
6 chapter being affixed to the cigarettes or loose or smokeless tobacco; or

7 (B) Sell cigars or loose or smokeless tobacco without the stamp or stamps required by
8 this chapter or without the tax being paid on the cigars or loose or smokeless tobacco
9 in accordance with the alternate method.

10 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
11 and, upon conviction thereof, shall be imprisoned for not less than one year nor more than
12 ten years."

13 SECTION 39.

14 Said title is further amended by striking subsection (a) of Code Section 48-11-27, relating
15 to criminal penalties, and inserting in its place a new subsection (a) to read as follows:

16 "(a) It shall be unlawful for any person to:

17 (1) Make a false entry upon any invoices or any record relating to the purchase,
18 possession, or sale of cigarettes or loose or smokeless tobacco; or

19 (2) With intent to evade any tax imposed by this chapter, present any false entry upon
20 any such invoice or record for the inspection of the commissioner or ~~his~~ the
21 commissioner's authorized agents."

22 SECTION 40.

23 Said title is further amended by striking subsection (a) of Code Section 48-18-3, relating to
24 investments of certified capital and premium tax credits, and inserting in its place a new
25 subsection (a) to read as follows:

26 "(a) Any certified investor who makes an investment of certified capital pursuant to an
27 allocation of tax credits under Code Section 48-18-4 shall, in the year of investment, earn
28 a vested credit against state premium tax liability equal to 100 percent of the certified
29 investor's investment of certified capital. After ~~July 1, 2005~~ January 1, 2007, a certified
30 investor shall be entitled to take up to 10 percent of such vested tax credits in any taxable
31 year to reduce the certified investor's state premium tax liability for such taxable year of
32 the certified investor, plus up to 10 percent of the original amount of any tax credits some
33 or all of which was carried forward unused pursuant to subsection (b) of this Code section;
34 provided, however, that, in the event that a certified investor is unable under the provisions
35 of this Code section to utilize the full 10 percent allowable under the provisions of this

1 subsection for a taxable year, the remainder of such 10 percent may be taken in a future tax
2 year without regard to the annual limitations of this subsection."

3 **SECTION 41.**

4 Said title is further amended by adding a new Code section at the end thereof, to be
5 designated Code Section 48-18-9, to read as follows:

6 "48-18-9.

7 Notwithstanding any provision of law to the contrary, no provision of this chapter shall be
8 implemented prior to July 1, 2004."

9 **SECTION 42.**

10 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
11 general provisions regarding the Georgia Bureau of Investigation, is amended by striking
12 Code Section 35-3-8, relating to powers of agents generally, and inserting in its place a new
13 Code Section 35-3-8 to read as follows:

14 "35-3-8.

15 (a) All properly appointed agents of the bureau shall have the powers, including the power
16 of making arrests and appearing in court, for the enforcement of all criminal statutes
17 pertaining to the manufacture, transportation, distribution, sale, or possession of liquor,
18 wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, ~~and stogies~~, and
19 loose or smokeless tobacco and shall concurrently with agents and enforcement officers
20 appointed by the state revenue commissioner have the authority throughout the state to:

21 (1) Obtain and execute warrants for the arrest of persons charged with violations of such
22 laws;

23 (2) Obtain and execute search warrants in the enforcement of such laws;

24 (3) Arrest without warrant any person found in violation of such laws, or endeavoring
25 to escape, or if for other cause there is likely to be a failure of enforcement of such laws
26 for want of an officer to issue a warrant;

27 (4) Make investigations in the enforcement of such laws and in connection therewith to
28 go upon any property outside of buildings, posted or otherwise, in the performance of
29 such duties;

30 (5) Seize and take possession of all property which is declared contraband under such
31 laws; and

32 (6) Carry firearms while performing their duties.

33 (b) The enforcement powers conferred in this Code section upon agents of the bureau shall
34 relate only to the enforcement of the criminal provisions relating to the manufacture,
35 transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages,

1 cigars, cigarettes, little cigars, cheroots, ~~and stogies,~~ and loose or smokeless tobacco and
 2 shall not extend to regulatory matters with respect to such products under the jurisdiction
 3 of the state revenue commissioner."

4 **SECTION 43.**

5 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 6 by striking subsection (a) of Code Section 50-5-76, relating to tax stamps, and inserting in
 7 its place a new subsection (a) to read as follows:

8 "(a) All cigarette tax stamps, loose or smokeless tobacco tax stamps, fertilizer tax tags, and
 9 other stamps, tags, and paraphernalia evidencing the payment of tax collected by the state
 10 or any department thereof shall be purchased by the Department of Administrative Services
 11 subject to the requisition of any department of the state requiring the use of the tax stamps
 12 or tags."

13 **SECTION 44.**

14 Said title is further amended by striking Code Section 50-6-5, relating to examinations by the
 15 state auditor, and inserting in its place a new Code Section 50-6-5 to read as follows:

16 "50-6-5.

17 The state auditor shall, upon the request of either the Governor or the state revenue
 18 commissioner, make an examination into and report upon the necessary books, records, and
 19 accounts of those persons, firms, and corporations required by law to pay an occupational
 20 tax as distributors of motor fuels and also, at the request of the state revenue commissioner,
 21 of those persons, firms, and corporations required by law to pay a tax upon the retail sales
 22 price of cigarettes, ~~and~~ cigars, and loose or smokeless tobacco, as prescribed in Code
 23 Section 48-11-2. The examination is to be made at such time as shall be fixed by the state
 24 revenue commissioner and for the purpose and to the extent of ascertaining whether or not
 25 the tax has been paid and collected as provided by law."

26 **SECTION 45.**

27 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 28 by striking Code Section 36-89-2, relating to appropriations for homeowner tax relief grants,
 29 and inserting in its place a new Code Section 36-89-2 to read as follows:

30 "36-89-2.

31 In ~~any~~ each year the General Assembly ~~may~~ shall appropriate funds for homeowner tax
 32 relief grants to counties, municipalities, and county or independent school districts, in order
 33 to provide for more effective regulation and management of the finance and fiscal
 34 administration of the state and pursuant to and in furtherance of the provisions of Article

1 III, Section IX, Paragraph II(c) of the Constitution; Article VII, Section III, Paragraph III
 2 of the Constitution; Article VIII, Section I, Paragraph I of the Constitution; and other
 3 provisions of the Constitution."

4 **SECTION 46.**

5 Said title is further amended by striking Code Section 36-89-3, relating to specification
 6 requirements of homeowner tax relief grant appropriations, and inserting in its place a new
 7 Code Section 36-89-3 to read as follows:

8 "36-89-3.

9 In any each year the General Assembly ~~may~~ shall appropriate to the Department of
 10 Revenue funds to provide homeowner tax relief grants to counties, municipalities, and
 11 county or independent school districts. When funds are so appropriated, the General
 12 Appropriations Act shall specify the amount appropriated and the eligible assessed value
 13 of each qualified homestead in the state for the specified tax year, which eligible assessed
 14 value shall, subject to annual appropriation by the General Assembly, be not less than that
 15 specified in the Fiscal Year 2004 General Appropriations Act. If for any reason the amount
 16 appropriated in the General Appropriations Act is insufficient to fund the eligible assessed
 17 value stated in the General Appropriations Act, the amount appropriated may be adjusted
 18 in amendments to the General Appropriations Act."

19 **SECTION 47.**

20 (a) Except as otherwise provided in this section, this Act shall become effective upon its
 21 approval by the Governor or upon its becoming law without such approval.

22 (b) Sections 2, 5, 6, 7, and 8 of this Act shall become effective upon its approval by the
 23 Governor or upon its becoming law without such approval and shall be applicable to all
 24 taxable years beginning on or after January 1, 2003.

25 (c) Sections 3 and 9 of this Act shall become effective upon its approval by the Governor
 26 or upon its becoming law without such approval and shall be applicable to all calendar
 27 quarters beginning on or after April 1, 2004.

28 (d) Sections 18 through 39 and 42 through 44 of this Act shall become effective July 1,
 29 2003.

30 (e) Section 4 of this Act shall become effective January 1, 2006.

31 (f) Sections 10, 14, 15, 16, and 17 of this Act shall become effective January 1, 2004.

32 **SECTION 48.**

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