

House Bill 1405

By: Representatives Royal of the 140<sup>th</sup>, Buck of the 112<sup>th</sup>, Richardson of the 26<sup>th</sup>, Keen of the 146<sup>th</sup>, Heard of the 75<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 48-7-31 of the Official Code of Georgia Annotated, relating to  
2 allocation and apportionment of income with respect to income taxation regarding  
3 corporations, so as to provide for the comprehensive revision of the allocation and  
4 apportionment formulas used to apportion income of corporations deriving income from  
5 business conducted both within Georgia and elsewhere; to provide an effective date; to  
6 provide for applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 48-7-31 of the Official Code of Georgia Annotated, relating to allocation and  
10 apportionment of income with respect to income taxation regarding corporations, is amended  
11 by striking paragraphs (1) and (2) of subsection (d) and inserting in their place new  
12 paragraphs (1) and (2) to read as follows:

13 "(1) Where the net business income of the corporation is derived principally from the  
14 manufacture, production, or sale of tangible personal property, the portion of the net  
15 income therefrom attributable to property owned or business done within this state shall  
16 be taken to be the portion arrived at by application of the following formula:

17 ~~(A) Property factor. The property factor is a fraction, the numerator of which is the~~  
18 ~~average value of the taxpayer's real and tangible personal property owned or rented and~~  
19 ~~used in this state during the tax period and the denominator of which is the average~~  
20 ~~value of all the taxpayer's real and tangible personal property owned or rented and used~~  
21 ~~during the tax period;~~

22 ~~(i) Property owned by the taxpayer is valued at its original cost. Property rented by~~  
23 ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate~~  
24 ~~is the annual rental rate paid by the taxpayer less any annual rental rate received by~~  
25 ~~the taxpayer from subrentals;~~

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

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

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

13 ~~(ii) The employee's service is performed both within and outside this state and the~~  
 14 ~~service performed outside this state is incidental to the employee's service within this~~  
 15 ~~state; or~~

16 ~~(iii) Some of the service is performed in this state and either the base of operations~~  
 17 ~~or the place from which the service is directed or controlled is in this state or the base~~  
 18 ~~of operations or the place from which the service is directed or controlled is not in any~~  
 19 ~~state in which some part of the service is performed but the employee's residence is~~  
 20 ~~in this state;~~

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

31 ~~(D)~~(B) Apportionment formula. The ~~property factor, the payroll factor, and the gross~~  
 32 ~~receipts factor shall be separately determined and an apportionment fraction shall be~~  
 33 ~~calculated using the following formula:~~

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

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

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

1     ~~The~~ net income of the corporation shall be apportioned to this state according to such  
 2     ~~fraction~~ gross receipts factor;

3     (2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the  
 4     net business income is derived principally from business other than the manufacture,  
 5     production, or sale of tangible personal property, the net business income of the  
 6     corporation shall be arrived at by application of the following ~~three factor formula~~:

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

12    ~~(i) Property owned by the taxpayer is valued at its original cost. Property rented by~~  
 13    ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate~~  
 14    ~~is the annual rental rate paid by the taxpayer less any annual rental rate received by~~  
 15    ~~the taxpayer from subrentals;~~

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

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

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

28    ~~(ii) The employee's service is performed both within and outside this state and the~~  
 29    ~~service performed outside this state is incidental to the employee's service within this~~  
 30    ~~state; or~~

31    ~~(iii) Some of the service is performed in this state and either the base of operations~~  
 32    ~~or the place from which the service is directed or controlled is in this state or the base~~  
 33    ~~of operations or the place from which the service is directed or controlled is not in any~~  
 34    ~~state in which some part of the service is performed but the employee's residence is~~  
 35    ~~in this state;~~

36    ~~(C)~~(A) Gross receipts factor. The gross receipts factor is a fraction, the numerator of  
 37    which is the total gross receipts from business done within this state during the tax

1 period and the denominator of which is the total gross receipts from business done  
 2 everywhere during the tax period. Gross receipts are in this state if the receipts are  
 3 derived from customers within this state or if the receipts are otherwise attributable to  
 4 this state's marketplace; and

5 ~~(D) The property factor, payroll factor, and the gross receipts factor shall be separately~~  
 6 ~~determined and an apportionment fraction shall be calculated using the following~~  
 7 ~~formula:~~

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

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

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

11 (B) Apportionment formula. The net income of the corporation shall be apportioned  
 12 to this state according to such fraction gross receipts factor;

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

17 ~~(i) Separate accounting;~~

18 ~~(ii) The exclusion of any one or more of the factors;~~

19 ~~(iii) The inclusion of one or more additional factors that will fairly represent the~~  
 20 ~~taxpayer's business activity within this state; or~~

21 ~~(iv) The employment of any other method to effectuate an equitable allocation and~~  
 22 ~~apportionment of the taxpayer's income.~~

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

## 25 SECTION 2.

26 This Act shall become effective January 1, 2006.

## 27 SECTION 3.

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