

House Bill 191

By: Representatives O`Neal of the 146<sup>th</sup> and Williams of the 4th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition, rate, computation, and exemptions regarding income taxes, so as to  
3 provide for adjustments to taxable net income with respect to certain direct or indirect  
4 interest expenses and costs and intangible expenses and costs; to provide for procedures,  
5 conditions, and limitations; to change the manner and method of allocating and apportioning  
6 income with respect to corporations; to provide for powers, duties, and authority of the state  
7 revenue commissioner; to provide effective dates; to provide for applicability; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
12 imposition, rate, computation, and exemptions regarding income taxes, is amended in Code  
13 Section 48-7-27, relating to computation of taxable net income, by adding a new paragraph  
14 at the end of subsection (b), to be designated paragraph (11), to read as follows:

15 "(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3."

16 **SECTION 2.**

17 Said article is further amended in Code Section 48-7-21, relating to taxation of corporations,  
18 by striking paragraph (10) of subsection (b) and inserting in its place a new paragraph (10)  
19 to read as follows:

20 "(10) ~~Reserved.~~ Georgia taxable income shall be adjusted as provided in Code Section  
21 48-7-28.3."

22 **SECTION 3.**

23 Said article is further amended by adding a new Code section immediately following Code  
24 Section 48-7-28.2, to be designated Code Section 48-7-28.3, to read as follows:

1 "48-7-28.3.

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

3 (1) 'Comprehensive income tax treaty' means a convention or agreement, entered into by  
4 the United States and approved by Congress, with a foreign government for the allocation  
5 of all categories of income subject to taxation or the withholding of tax on interest,  
6 dividends, and royalties for the prevention of double taxation of the respective nations'  
7 residents and the sharing of information.

8 (2) 'Corporation' means:

9 (A) A corporation incorporated under the laws of this state or incorporated or  
10 organized under the laws of any other state, territory, or nation; or

11 (B) A limited liability company treated as a corporation for federal income tax  
12 purposes or any other person treated as a corporation for federal income tax purposes.  
13 A limited liability company which is disregarded as a separate entity for income tax  
14 purposes shall also be disregarded as a separate entity for purposes of this Code section.

15 (3) 'Foreign nation' means an established sovereign government that is recognized as  
16 such by the United States Department of State.

17 (4) 'Intangible expenses and costs' means expenses, losses, and costs directly or  
18 indirectly for, related to, or in connection with the direct or indirect acquisition, use,  
19 maintenance, management, ownership, sale, exchange, or disposition of intangible  
20 property, to the extent such amounts are allowed as deductions or costs in determining  
21 taxable income before net operating loss deduction and special deductions for the taxable  
22 year under the Internal Revenue Code of 1986. The term includes but is not limited to:

23 (A) Royalty, patent, technical, and copyright fees;

24 (B) Licensing fees; and

25 (C) Other similar expenses and costs.

26 (5) 'Intangible property' includes but is not limited to patents, patent applications, trade  
27 names, trademarks, service marks, copyrights, mask words, trade secrets, and similar  
28 types of intangible assets.

29 (6) 'Interest expenses and costs' includes but is not limited to amounts directly or  
30 indirectly allowed as deductions under Section 163 of the Internal Revenue Code of 1986  
31 for purposes of determining taxable income under the Internal Revenue Code of 1986 to  
32 the extent such expenses and costs are directly or indirectly for, related to, or in  
33 connection with the direct or indirect acquisition, use, maintenance, management,  
34 ownership, sale, exchange, or disposition of intangible property.

35 (7) 'Related person' means:

36 (A) A stockholder who is an individual or a member of the stockholder's family  
37 enumerated in Section 318 of the Internal Revenue Code of 1986 if the stockholder and

1 the members of the stockholder's family own, directly or indirectly, beneficially or  
2 constructively, in the aggregate at least 50 percent of the value of the taxpayer's  
3 outstanding stock;

4 (B) A stockholder, or a stockholder's partnerships, estate, trusts, or corporations, if the  
5 stockholder and the stockholder's partnerships, estate, trusts, and corporations own,  
6 directly or indirectly, beneficially or constructively, in the aggregate at least 50 percent  
7 of the value of the taxpayer's outstanding stock; or

8 (C) A corporation, or a person related to the corporation in a manner that would require  
9 an attribution of stock from the corporation to the person or from the person to the  
10 corporation under the attribution rules of Section 318 of the Internal Revenue Code of  
11 1986, if the taxpayer owns, directly or indirectly, beneficially or constructively, at least  
12 50 percent of the value of the corporation's outstanding stock.

13 (D) The attribution rules of Section 318 of the Internal Revenue Code of 1986 apply  
14 for purposes of determining whether the ownership requirements in subparagraphs (A)  
15 through (C) of this paragraph have been met.

16 (E) A limited liability company treated as a partnership for federal income tax purposes  
17 shall be considered a partnership for purposes of this paragraph and paragraph (8) of  
18 this subsection.

19 (8) 'Related member' means a person, with respect to the taxpayer during all or any  
20 portion of the tax year:

21 (A) That is a related person;

22 (B) That is a component member as defined in Section 1563(b) of the Internal Revenue  
23 Code of 1986;

24 (C) To or from whom there would be required an attribution of stock ownership in  
25 accordance with Section 1563(e) of the Internal Revenue Code of 1986; or

26 (D) That, notwithstanding its form of organization, bears the same relationship to the  
27 taxpayer as a person described in subparagraphs (A) through (C) of this paragraph.

28 (9) 'Valid business purpose' means one or more business purposes, other than the  
29 avoidance or reduction of taxation, which alone or in combination constitute the primary  
30 motivation for some business activity or transaction, which activity or transaction  
31 changes in a meaningful way, apart from tax effects, the economic position of the  
32 taxpayer. The economic position of the taxpayer includes an increase in the market share  
33 of the taxpayer, or the entry by the taxpayer into new business markets.

34 (b) For purposes of computing its Georgia taxable net income under Code Sections  
35 48-7-21 and 48-7-27, a taxpayer shall add back otherwise deductible interest expenses and  
36 costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to,  
37 or in connection directly or indirectly with one or more direct or indirect transactions with,

1 one or more related members. Such expenses and costs shall be added before the income  
2 is apportioned or allocated as provided by Code Section 48-7-31.

3 (c) The commissioner shall have the authority to reverse in whole or in part the  
4 adjustments required in subsection (b) of this Code section when the taxpayer and the  
5 commissioner agree in writing to the application or use of an alternative method of  
6 apportionment under subparagraph (d)(2)(E) of Code Section 48-7-31, Code Section  
7 48-7-35, or Code Section 48-7-31.1. Nothing in this Code section shall be construed to  
8 limit or negate the commissioner's authority otherwise to enter into agreements and  
9 compromises otherwise allowed by law.

10 (d)(1) For purposes of this subsection, the term:

11 (A) 'Allocated or apportioned, or both' does not mean the amount of income that is  
12 subject to allocation or apportionment, or both. Rather it means the amount that is  
13 arrived at after applying the allocation and apportionment rules of a state as defined in  
14 subparagraph (B) of this paragraph. A tax or the portion of a tax, which is or would be  
15 imposed regardless of the amount of the income, shall not be considered to be a tax on  
16 or measured by the income of the related member.

17 (B) 'State' means a state in the United States of America, including the District of  
18 Columbia, but does not include those states under whose laws the taxpayer files with  
19 the related member, or the related member files with another related member, a  
20 combined income tax report or return, a consolidated income tax report or return, or any  
21 other report or return where such report or return is due because of the imposition of a  
22 tax on, or measured by, income and where such combined income tax report or return,  
23 consolidated income tax report or return, or other report or return results in the  
24 elimination of the tax effects from transactions directly or indirectly between the  
25 taxpayer and the related member.

26 (2) The amount of the adjustment required by subsection (b) of this Code section shall  
27 be reduced, but not below zero, to the extent the corresponding interest expenses and  
28 costs and intangible expenses and costs:

29 (A) Are received as income in an arm's length transaction by the related member; and

30 (B) Such income is allocated or apportioned, or both, to and taxed by Georgia or  
31 another state that imposes a tax on or measured by the income of the related member.

32 (3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on  
33 its return, with respect to the related member, the name of the related member, the federal  
34 identification number of the related member, the name of each state, the amount of the  
35 interest expenses and costs and intangible expenses and costs allocated or apportioned to  
36 and taxed by each state for such related member, and such other information as the  
37 commissioner may prescribe.

1 (e)(1) The adjustment required by subsection (b) of this Code section shall be reduced,  
2 but not below zero, if and to the extent:

3 (A) The interest expenses and costs and intangible expenses and costs are paid,  
4 accrued, or incurred to a related member domiciled in a foreign nation which has in  
5 force a comprehensive income tax treaty with the United States;

6 (B) The transaction giving rise to the interest expenses and costs and intangible  
7 expenses and costs has a valid business purpose; and

8 (C) The amounts of such interest expenses and costs and intangible expenses and costs  
9 were determined at arm's length rates.

10 (2) In claiming the exception allowed by this subsection, the taxpayer shall disclose on  
11 its return:

12 (A) The name and federal identification number of the related member;

13 (B) The amount of the interest expenses and costs and intangible expenses and costs;

14 (C) The country of domicile of the related member; and

15 (D) Such other information as the commissioner may prescribe.

16 (f) The adjustment required in subsection (b) of this Code section shall not apply to the  
17 portion of interest expenses and costs and intangible expenses and costs that the taxpayer  
18 establishes by a preponderance of the evidence that meets both of the following:

19 (1) The related member during the same taxable year directly or indirectly paid, accrued,  
20 or incurred such portion to a person that is not a related member; and

21 (2) The transaction giving rise to the interest expenses and costs and intangible expenses  
22 and costs has a valid business purpose.

23 (g) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net  
24 income more than once any amount of interest expenses and costs and intangible expenses  
25 and costs that the taxpayer pays, accrues, or incurs to a related member.

26 (h) Nothing in this Code section shall be construed to limit or negate the commissioner's  
27 authority to make adjustments under Code Section 48-7-58.

28 (i) The adjustment required by this Code section shall apply to a corporation that files a  
29 separate return with Georgia and to the separate taxable income computation of each  
30 member of a Georgia consolidated return.

31 (j) In addition to other penalties imposed by this title, the penalty for failure to make the  
32 adjustment required by this Code section shall be 10 percent of the additional tax that  
33 results because of this Code section.

34 (k) The commissioner is authorized to prescribe forms and promulgate rules and  
35 regulations deemed necessary in order to effectuate this Code section."

**SECTION 4.**

Said article is further amended by striking paragraphs (1) and (2) of subsection (d) of Code Section 48-7-31, relating to the allocation and apportionment formula with respect to corporate income, and inserting in their places new paragraphs (1) and (2) to read as follows:

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

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

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

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

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

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

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

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

1 (C) Gross receipts factor.

2 (i) The gross receipts factor is a fraction, the numerator of which is the total gross  
3 receipts from business done within this state during the tax period and the  
4 denominator of which is the total gross receipts from business done everywhere  
5 during the tax period. For the purposes of this subparagraph, receipts shall be deemed  
6 to have been derived from business done within this state only if the receipts are  
7 received from products shipped to customers in this state, or from products delivered  
8 within this state to customers. In determining the gross receipts within this state,  
9 receipts from sales negotiated or effected through offices of the taxpayer outside this  
10 state and delivered from storage in this state to customers outside this state shall be  
11 excluded;

12 (ii) Where a taxpayer's gross receipts are also derived from activities described in  
13 paragraph (2) of this subsection, gross receipts shall also include the gross receipts  
14 from the activities described in paragraph (2) of this subsection and shall be attributed  
15 to Georgia based upon division (2)(C)(i) of this subsection;

16 (D) Apportionment formula. The property factor, the payroll factor, and the gross  
17 receipts factor shall be ~~separately~~ determined separately and an apportionment fraction  
18 shall be calculated using the following formula:

- 19 (i) The property factor shall represent ~~25~~ 10 percent of the fraction;  
20 (ii) The payroll factor shall represent ~~25~~ 10 percent of the fraction; and  
21 (iii) The gross receipts factor shall represent ~~50~~ 80 percent of the fraction.

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

24 (2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the  
25 net business income is derived principally from business other than the manufacture,  
26 production, or sale of tangible personal property, the net business income of the  
27 corporation shall be ~~arrived at~~ determined by ~~application of~~ applying the following  
28 three-factor formula:

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

- 34 (i) Property owned by the taxpayer is valued at its original cost. Property rented by  
35 the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate  
36 is the annual rental rate paid by the taxpayer less any annual rental rate received by  
37 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) Gross receipts factor.

22 (i) The gross receipts factor is a fraction, the numerator of which is the total gross  
 23 receipts from business done within this state during the tax period and the  
 24 denominator of which is the total gross receipts from business done everywhere  
 25 during the tax period. For purposes of this subparagraph, the term 'gross receipts'  
 26 means all gross receipts received from activities which constitute the taxpayer's  
 27 regular trade or business. Gross receipts are in this state if the receipts are derived  
 28 from customers within this state or if the receipts are otherwise attributable to this  
 29 state's marketplace;

30 (ii) Where a taxpayer's gross receipts are also derived from activities described in  
 31 paragraph (1) of this subsection, gross receipts shall also include the gross receipts  
 32 from the activities described in paragraph (1) of this subsection and shall be attributed  
 33 to Georgia based upon division (1)(C)(i) of this subsection;

34 (D) Apportionment formula. The property factor, payroll factor, and gross receipts  
 35 factor shall be ~~separately~~ determined separately and an apportionment fraction shall be  
 36 calculated using the following formula:

37 (i) The property factor shall represent ~~25~~ 10 percent of the fraction;

1 (ii) The payroll factor shall represent ~~25~~ 10 percent of the fraction; and

2 (iii) The gross receipts factor shall represent ~~50~~ 80 percent of the fraction.

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

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

9 (i) Separate accounting;

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

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

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

15 The denial of a petition under this ~~paragraph~~ subparagraph shall be appealable pursuant  
16 to either Code Section 48-2-59 or 50-13-12;"

#### 17 SECTION 5.

18 Said article is further amended by striking paragraphs (1) and (2) of subsection (d) of Code  
19 Section 48-7-31, relating to the allocation and apportionment formula with respect to  
20 corporate income, and inserting in their places new paragraphs (1) and (2) to read as follows:

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

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

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

34 (ii) The average value of property shall be determined by averaging the values at the  
35 beginning and end of the tax period, except that the commissioner may require the

1 averaging of monthly values during the tax period if such averaging is reasonably  
2 required to reflect properly the average value of the taxpayer's property;

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

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

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

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

19 (C) Gross receipts factor.

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

30 (ii) Where a taxpayer's gross receipts are also derived from activities described in  
31 paragraph (2) of this subsection, gross receipts shall also include the gross receipts  
32 from the activities described in paragraph (2) of this subsection and shall be attributed  
33 to Georgia based upon division (2)(C)(i) of this subsection;

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

37 (i) The property factor shall represent 5 percent of the fraction;

1 (ii) The payroll factor shall represent 5 percent of the fraction; and

2 (iii) The gross receipts factor shall represent 90 percent of the fraction.

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

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

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

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

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

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

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

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

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

1 (C) Gross receipts factor.

2 (i) The gross receipts factor is a fraction, the numerator of which is the total gross  
3 receipts from business done within this state during the tax period and the  
4 denominator of which is the total gross receipts from business done everywhere  
5 during the tax period. For purposes of this subparagraph, the term 'gross receipts'  
6 means all gross receipts received from activities which constitute the taxpayer's  
7 regular trade or business. Gross receipts are in this state if the receipts are derived  
8 from customers within this state or if the receipts are otherwise attributable to this  
9 state's marketplace;

10 (ii) Where a taxpayer's gross receipts are also derived from activities described in  
11 paragraph (1) of this subsection, gross receipts shall also include the gross receipts  
12 from the activities described in paragraph (1) of this subsection and shall be attributed  
13 to Georgia based upon division (1)(C)(i) of this subsection;

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

17 (i) The property factor shall represent 5 percent of the fraction;

18 (ii) The payroll factor shall represent 5 percent of the fraction; and

19 (iii) The gross receipts factor shall represent 90 percent of the fraction.

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

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

26 (i) Separate accounting;

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

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

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

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

**SECTION 6.**

Said article is further amended by striking paragraphs (1) and (2) of subsection (d) of Code Section 48-7-31, relating to the allocation and apportionment formula with respect to corporate income, and inserting in their places new paragraphs (1) and (2) to read as follows:

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

(A) Gross receipts factor. The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For the purposes of this subparagraph, receipts shall be deemed to have been derived from business done within this state if:

(i) The receipts are received from products shipped to customers in this state or from products delivered within this state to customers. Except as provided in division (ii) of this subparagraph, in determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside this state and delivered from storage in this state to customers outside this state shall be excluded; or

(ii) The receipts are from sales where the property is delivered from storage in this state and the taxpayer is not taxable in the state of the purchaser. For purposes of this subparagraph, the term 'state' includes the 50 states in the United States of America and the District of Columbia. A taxpayer is considered taxable in another state if:

(I) The taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax imposed by that state. Whether or not a taxpayer is subject to any such tax depends upon the nature and substance of the tax and not upon its form or title. Any taxpayer which claims it is subject to such taxes in another state must furnish to the commissioner upon request documentary evidence to support the claim. The documentary evidence should include proof that the taxpayer has filed the requisite tax return and has paid the tax due. A taxpayer that does not establish that it has filed a return and paid the tax due in a particular state is presumed not to be subject to tax in that state. If a taxpayer's activities in another state are protected from state taxation by the United States Constitution or by other federal law, including 15 U.S.C. Sections 381-384 (P. L. 86-272), or if the taxpayer is not required to file returns under the law of the other state, the taxpayer is not subject to tax in the other state, even if the taxpayer voluntarily files returns with, or pays tax to, that state. A

1 taxpayer that has filed a return in another state and paid tax to that state nevertheless  
 2 is presumed not to be subject to tax in that state if the taxpayer has filed a refund  
 3 claim or similar claim in that state alleging it is not subject to tax in such state;

4 (II) The other state has jurisdiction to subject the taxpayer to a net income tax,  
 5 regardless of whether, in fact, the state does or does not impose such a tax on the  
 6 taxpayer. Another state has jurisdiction to subject the taxpayer to a tax with respect  
 7 to a business activity if, under the Constitution and laws of the United States, the  
 8 taxpayer's business activity could be taxed in Georgia under the same facts and  
 9 circumstances that exist in the other state. A state does not have such jurisdiction  
 10 where the state is prohibited from imposing the tax by reason of the provisions of  
 11 15 U.S.C. Sections 381-384 (P. L. 86-272). The commissioner will presume that  
 12 any activities of a corporation in another state are protected from such other state's  
 13 tax jurisdiction by federal law, including 15 U.S.C. Sections 381-384 (P. L. 86-272),  
 14 if the corporation does not file returns in that jurisdiction. Any taxpayer that claims  
 15 to be subject to the tax jurisdiction of another state must furnish evidence to the  
 16 commissioner upon request to substantiate the claim. Documentary evidence  
 17 contemporaneous with the events in question will be given greater weight than  
 18 affidavits or other evidence not contemporaneous with those events in determining  
 19 whether the taxpayer's activities subject it to another state's tax jurisdiction; or

20 (III) The tangible personal property is delivered or shipped to a purchaser in a  
 21 foreign country.

22 Where a taxpayer's gross receipts are also derived from activities described in  
 23 paragraph (2) of this subsection, gross receipts shall also include the gross receipts  
 24 from the activities described in paragraph (2) of this subsection and shall be attributed  
 25 to Georgia based upon division (2)(A)(i) of this subsection; and

26 (B) Apportionment formula. The net income of the corporation shall be apportioned  
 27 to this state according to the gross receipts factor pursuant to subparagraph (A) of this  
 28 paragraph;

29 (2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the  
 30 net business income is derived principally from business other than the manufacture,  
 31 production, or sale of tangible personal property, the net business income of the  
 32 corporation shall be determined by applying the following formula:

33 (A) Gross receipts factor.

34 (i) The gross receipts factor is a fraction, the numerator of which is the total gross  
 35 receipts from business done within this state during the tax period and the  
 36 denominator of which is the total gross receipts from business done everywhere  
 37 during the tax period. For purposes of this subparagraph, the term 'gross receipts'

1 means all gross receipts received from activities which constitute the taxpayer's  
 2 regular trade or business. Gross receipts are in this state if the receipts are derived  
 3 from customers within this state or if the receipts are otherwise attributable to this  
 4 state's marketplace;

5 (ii) Where a taxpayer's gross receipts are also derived from activities described in  
 6 paragraph (1) of this subsection, gross receipts shall also include the gross receipts  
 7 from the activities described in paragraph (1) of this subsection and shall be attributed  
 8 to Georgia based upon subparagraph (A) of paragraph (1) of this subsection;

9 (B) Apportionment formula. The net income of the corporation shall be apportioned  
 10 to this state according to the gross receipts factor pursuant to subparagraph (A) of this  
 11 paragraph;

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

16 (i) Separate accounting;

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

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

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

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

## 24 SECTION 7.

25 (a) Sections 1, 2, 3, this section, and Section 8 of this Act shall become effective January 1,  
 26 2006, and shall be applicable to all taxable years beginning on or after January 1, 2006.

27 (b) Section 4 of this Act shall become effective January 1, 2006, and shall be applicable to  
 28 all taxable years beginning on or after January 1, 2006, and prior to January 1, 2007.

29 (c) Section 5 of this Act shall become effective January 1, 2007, and shall be applicable to  
 30 all taxable years beginning on or after January 1, 2007, and prior to January 1, 2008.

31 (d) Section 6 of this Act shall become effective January 1, 2008, and shall be applicable to  
 32 all taxable years beginning on or after January 1, 2008.

## 33 SECTION 8.

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