

House Bill 194 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 47th, Burkhalter of the 50th, Amerson of the 9th, Royal of the 171st, Ashe of the 56th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of income tax, so as to provide for income
3 tax credits with respect to teleworking for a limited period of time; to provide for definitions;
4 to provide for conditions, limitations, and exclusions; to provide for powers, duties, and
5 authority of the state revenue commissioner with respect to the foregoing; to change certain
6 provisions regarding calculation of the entertainment industry income tax credit in the event
7 a tier designation is changed; to provide for effective dates; to provide for applicability; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
12 imposition, rate, and computation of income tax, is amended by adding a new Code section
13 immediately following Code Section 48-7-29.9, to be designated Code Section 48-7-29.10,
14 to read as follows:

15 "48-7-29.10.

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

17 (1) 'Eligible telework expenses' means expenses incurred during the calendar year
18 pursuant to a telework agreement, up to a limit of \$1,200.00 for each participating
19 employee, to enable a participating employee to begin to telework, which expenses are
20 not otherwise the subject of a deduction from income claimed by the employer in any tax
21 year. Such expenses shall include, but not be limited to, expenses paid or incurred to
22 purchase computers, computer related hardware and software, modems, data processing
23 equipment, telecommunications equipment, high-speed Internet connectivity equipment,
24 computer security software and devices, and all related delivery, installation, and
25 maintenance fees. Such expenses shall not include replacement costs for computers,
26 computer related hardware and software, modems, data processing equipment,

1 telecommunications equipment, or computer security software and devices at the
2 principal place of business when that equipment is relocated to the telework site. Such
3 expenses shall not include expenses for which a credit is claimed under any other
4 provision of this article. Such expenses may be incurred only once per employee. Such
5 expenses may be incurred directly by the employer on behalf of the participating
6 employee or directly by the participating employee and subsequently reimbursed by the
7 employer.

8 (2) 'Employer' means any employer upon whom an income tax is imposed by this article.

9 (3) 'Participating employee' means an employee who has entered into a telework
10 agreement with his or her employer on or after the effective date of this Code section.

11 This term shall not include an individual who is self-employed or an individual who
12 ordinarily spends a majority of his or her workday at a location other than the employer's
13 principal place of business.

14 (4) 'Telework' means to perform normal and regular work functions on a workday that
15 ordinarily would be performed at the employer's principal place of business at a different
16 location, thereby eliminating or substantially reducing the physical commute to and from
17 that employer's principal place of business. This term shall not include home based
18 businesses, extensions of the workday, or work performed on a weekend or holiday.

19 (5) 'Telework agreement' means an agreement signed by the employer and the
20 participating employee, on or after the effective date of this Code section, that defines the
21 terms of a telework arrangement, including the number of days per year the participating
22 employee will telework, as provided in subsection (b) of this Code section in order to
23 qualify for the credit, and any restrictions on the place from which the participating
24 employee will telework.

25 (6) 'Telework assessment' means an optional assessment leading to the development of
26 policies and procedures necessary to implement a formal telework program which would
27 qualify the employer for the credit provided in subsection (b) of this Code section,
28 including but not limited to a workforce profile, a telework program business case and
29 plan, a detailed accounting of the purpose, goals, and operating procedures of the
30 telework program, methodologies for measuring telework program activities and success,
31 and a deployment schedule for increasing telework activity.

32 (b) For taxable years beginning or ending on or after January 1, 2008, and prior to January
33 1, 2010, an employer shall be allowed a state income tax credit against the tax imposed by
34 Code Section 48-7-20 or Code Section 48-7-21 for a percentage of eligible telework
35 expenses incurred in the calendar years 2008 and 2009. The amount of such credit shall
36 be calculated as follows:

1 (1) The credit shall be equal to 100 percent of the eligible telework expenses incurred
2 pursuant to a telework agreement requiring the participating employee to telework at least
3 12 days per month if the employer's principal place of business is located in an area
4 designated by the United States Environmental Protection Agency as a nonattainment
5 area under the federal Clean Air Act, 42 U.S.C. Section 7401 et seq.;

6 (2) The credit shall be equal to 75 percent of the eligible telework expenses incurred
7 pursuant to a telework agreement requiring the participating employee to telework at least
8 12 days per month; or

9 (3) The credit shall be equal to 25 percent of the eligible telework expenses incurred
10 pursuant to a telework agreement requiring the participating employee to telework at least
11 five days per month.

12 (c)(1) In addition to the credit provided by subsection (b) of this Code section, an
13 employer conducting a telework assessment on or after the effective date of this Code
14 section shall be allowed a credit in the calendar year of implementation of the employer's
15 formal telework program against the tax imposed by Code Section 48-7-20 or Code
16 Section 48-7-21 for 100 percent of the cost, up to a maximum credit of \$20,000.00 per
17 employer, of preparing the assessment. Such costs shall not be eligible for such credit
18 if they are otherwise the subject of a deduction from income claimed by the employer in
19 any tax year. Costs incurred on or after the effective date of this Code section and before
20 January 1, 2008, shall be treated as being incurred on January 1, 2008, for purposes of
21 this Code section. The credit provided by this subsection is intended to include program
22 planning expenses, including direct program development and training costs, raw labor
23 costs, and professional consulting fees; the credit shall not include expenses for which a
24 credit is claimed under any other provision of this article. This credit shall be allowed
25 only once per employer.

26 (2) All telework assessments eligible for a state income tax credit under this subsection
27 shall meet standards for eligibility promulgated by the commissioner.

28 (d) In no event shall the total amount of any tax credit under this Code section for a taxable
29 year exceed the employer's income tax liability. No unused tax credit shall be allowed to
30 be carried forward to apply to the employer's succeeding years' tax liability. No such tax
31 credit shall be allowed the employer against prior years' tax liability.

32 (e)(1) An employer seeking to claim a tax credit provided for under subsections (b) and
33 (c) of this Code section must submit an application to the commissioner for tentative
34 approval of the tax credit provided for in subsections (b) and (c) of this Code section
35 between September 1 and October 31 of the year preceding the calendar year for which
36 the tax credit is to be earned. The commissioner shall promulgate the rules and forms on
37 which the application is to be submitted. Amounts specified on such application shall

1 not be changed by the employer after the application is approved by the commissioner.
 2 Such applications must certify that the employer would not have incurred the eligible
 3 telework expenses mentioned therein but for the availability of the tax credit. The
 4 commissioner shall review such application and shall tentatively approve such application
 5 upon determining that it meets the requirements of this Code section.

6 (2) The commissioner shall provide tentative approval of the applications by the date
 7 provided in paragraph (3) of this subsection. In no event shall the aggregate amount of
 8 tax credits approved by the commissioner for all qualified employers under this Code
 9 section in a calendar year exceed:

10 (A) \$2,000,000.00 for credits earned in calendar year 2008; and

11 (B) \$2,000,000.00 for credits earned in calendar year 2009.

12 (3) The Department shall notify each employer of the tax credits tentatively approved
 13 and allocated to such employer by December 31st of the year in which the application
 14 was submitted. In the event that the credit amounts on the tax credit applications filed
 15 with the commissioner exceed the maximum aggregate limit of tax credits under this
 16 subsection, then the tax credits shall be allocated among the employers who filed a timely
 17 application on a pro rata basis based upon the amounts otherwise allowed by this Code
 18 section. Once the tax credit application has been approved and the amount approved has
 19 been communicated to the applicant, the employer (applicant) may make purchases
 20 approved for the tax credit at any time during the calendar year following the approval
 21 of the application. The employer may then apply the amount of the approved tax credit
 22 to their tax liability for the tax year or years for which the approved application applies.
 23 In the event the employer has a tax year other than a calendar year and the calendar year
 24 expenses are incurred in more than one taxable year, the credit shall be applied to each
 25 taxable year based upon when the expenses are incurred.

26 (f) Notwithstanding the provisions of Code Sections 48-2-15, 48-7-60, and 48-7-61, on or
 27 before December 31, 2010, for credits allowed in calendar year 2008 and by December 31,
 28 2011, for credits allowed in calendar year 2009, the commissioner shall make available a
 29 public report disclosing the employer names and amounts of credit claimed under this Code
 30 section.

31 (g) The commissioner shall promulgate any rules and regulations necessary to implement
 32 and administer this Code section."

33 SECTION 2.

34 Said article is further amended by striking paragraph (9) of Code Section 48-7-40.26, relating
 35 to definitions regarding the entertainment industry income tax credit, and inserting in its
 36 place a new paragraph (9) to read as follows:

