

Senate Bill 184

By: Senator Rogers of the 21st

**AS PASSED**

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
 2 income taxes, so as to provide for an additional adjustment to taxable income of corporations  
 3 with respect to certain disallowances; to change certain provisions regarding the  
 4 disallowances as a business expense of certain compensation paid by a taxpayer; to exempt  
 5 military income received by a member of the national guard or any reserve component of the  
 6 armed services of the United States stationed in defense of the borders of the United States  
 7 pursuant to military orders; to provide for an additional adjustment to taxable income of  
 8 certain taxpayers with respect to certain disallowances; to change certain provisions  
 9 regarding definitions with respect to current income tax payment; to change certain  
 10 provisions regarding collection and withholding of income taxes; to provide effective dates;  
 11 to provide for applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,  
 15 is amended by adding a new paragraph in subsection (b) of Code Section 48-7-21, relating  
 16 to taxation of corporations, to read as follows:

17 "(15) Georgia taxable income shall be increased by the amount of the payments,  
 18 compensation, or other economic benefit disallowed by Code Section 48-7-21.1."

19 **SECTION 2.**

20 Said chapter is further amended by revising Code Section 48-7-21.1, relating to the  
 21 disallowance as a business expense of certain compensation paid by a taxpayer, as follows:

22 "48-7-21.1.

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

24 (1) 'Authorized employee' means any individual ~~authorized~~ whose hiring for employment  
 25 or continuing employment in the United States ~~as defined in paragraph (2) of~~  
 26 ~~subsection (a)~~ does not violate the provisions of 8 U.S.C. Section 1324a.

1 (2) 'Basic pilot program' shall mean the electronic verification of a work authorization  
 2 program of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P.  
 3 L. 104-208, Division C, Section 1324a note, and operated by the United States  
 4 Department of Homeland Security.

5 ~~(2)~~(3) 'Labor services' means the physical performance of services in this state.

6 (b) On or after January 1, 2008, no wages payment or compensation or other remuneration,  
 7 including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses,  
 8 or any other economic benefit, paid for labor services to an individual of \$600.00 or more  
 9 per annum totaling \$600.00 or more in a taxable year, may be claimed and allowed as a  
 10 deductible business expense for state income tax purposes by a taxpayer unless such  
 11 individual is an authorized employee. The provisions of this subsection shall apply  
 12 whether or not an Internal Revenue Service Form 1099 or Form W-2 is issued in  
 13 conjunction with ~~the wages~~ such payments, compensation, or other remuneration.

14 (c) This Code section shall not apply to any business ~~domiciled in this state~~ which is

15 (1) Has enrolled and participates in the basic pilot program; or

16 (2) Is exempt from compliance with federal employment verification procedures under  
 17 federal law which makes the employment of unauthorized aliens unlawful.

18 (d) This Code section shall not apply to any individual hired by the taxpayer prior to  
 19 January 1, 2008.

20 (e) This Code section shall not apply to any taxpayer where the individual being paid is  
 21 not directly compensated or employed by said taxpayer.

22 (f) This Code section shall not apply to wages payments, compensation, or other  
 23 remuneration paid for labor services to any individual who holds and presents to the  
 24 taxpayer a valid license or identification card issued by the Georgia Department of Driver  
 25 Services.

26 (g) The commissioner is authorized to prescribe forms and promulgate rules and  
 27 regulations deemed necessary in order to administer and effectuate this Code section."

### 28 SECTION 3.

29 Said chapter is further amended in paragraph (12) of subsection (a) of Code Section 48-7-27,  
 30 relating to computation of taxable net income, as follows:

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

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

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

#### 4 SECTION 4.

5 Said chapter is further amended by adding a new paragraph in subsection (b) of Code Section  
 6 48-7-27, relating to the computation of taxable net income, to read as follows:

7 "(12) Georgia taxable income shall be increased by the amount of the payments,  
 8 compensation, or other economic benefit disallowed by Code Section 48-7-21.1."

#### 9 SECTION 5.

10 Said chapter is further amended by adding a new paragraph in Code Section 48-7-100,  
 11 relating to definitions regarding current income tax payment, to read as follows:

12 "(11) 'Withholding agent' means any person required to deduct and withhold any tax  
 13 under the provisions of Code Section 48-7-101."

#### 14 SECTION 6.

15 Said chapter is further amended in subsection (i) of Code Section 48-7-101, relating to  
 16 collection and withholding of income taxes, as follows:

17 "(i) *Form 1099 withholding and reporting.*

18 (1) A withholding agent shall be required to withhold state income tax at the rate of 6  
 19 percent of the amount of compensation paid for labor services as defined in paragraph (3)  
 20 of Code Section 48-7-21.1 to an individual, which compensation is reported on Form  
 21 1099 and with respect to which the individual has:

22 (A) Failed to provide a taxpayer identification number;

23 (B) Failed to provide a correct taxpayer identification number. Except as to the  
 24 withholding rate specified in this paragraph, such failure shall be determined in the  
 25 same manner as provided for in Section 3406 of the Internal Revenue Code and  
 26 regulations thereunder; or

27 (C) Provided an Internal Revenue Service issued taxpayer identification number issued  
 28 for nonresident aliens.

29 (2) Any withholding agent who fails to comply with the withholding requirements of this  
 30 subsection shall be liable for the taxes required to have been withheld unless such  
 31 withholding agent is exempt from federal withholding with respect to such individual  
 32 pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy  
 33 of such form to the commissioner."

1 **SECTION 7.**

2 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become  
3 effective on July 1, 2007.

4 (b) Section 3 of this Act shall become effective January 1, 2008, and shall be applicable  
5 to all taxable years beginning on or after that date.

6 **SECTION 8.**

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