

House Bill 1079

By: Representative O`Neal of the 146th

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 change certain definitions regarding such taxes; to provide an effective
3 date; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

6 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
7 is amended by revising Code Section 48-7-1, relating to definitions regarding such taxes, as
8 follows:

9 "48-7-1.

10 As used in this chapter, the term:

11 (1) 'Corporation' includes, but is not limited to, all associations, professional associations
12 organized pursuant to Chapter 10 of Title 14, and insurance companies.

13 (2) 'Deficiency' means the amount by which the tax imposed by this chapter or any prior
14 law exceeds the amount shown as the tax due by the taxpayer upon his return or, if no
15 amount is shown as the tax due by a taxpayer upon his return or if no return is made by
16 the taxpayer, the amount determined by the commissioner to be the correct amount of the
17 tax.

18 (3) 'Dividend,' when used for the purpose of defining a taxable dividend, means any
19 distribution made by a corporation out of its earnings or profits to its shareholders or
20 members whether the distribution is made in cash, other property, or a stock different
21 from the stock on which the dividend is paid. 'Dividend' also includes, but is not limited
22 to, the portion of the assets of a corporation distributed at the time of dissolution which
23 is in effect a distribution of earnings.

24 (4) 'Fiscal year' means an accounting period of 12 months ending on the last day of any
25 month other than December. In the case of any taxpayer who has elected a year

1 consisting of 52 to 53 weeks for federal income tax purposes, the term means the period
2 so elected.

3 (5) 'Income tax day' means December 31 of each calendar year or, if a person can show
4 to the satisfaction of the commissioner that the person has already established the fiscal
5 year as his taxable year for income tax reporting purposes, the last day of the person's
6 fiscal year.

7 (6) 'Nonresidents' means taxable nonresidents and nontaxable nonresidents.

8 (7) 'Nontaxable nonresident' means every individual who is not otherwise a resident of
9 this state or a taxable nonresident of this state.

10 (7.1) 'Owning property or doing business in this state' shall not include the following
11 activities, either singularly or in the aggregate, with respect to any person that is not
12 otherwise subject to income taxation in the State of Georgia that has contracted with a
13 commercial printer for any printing, including printing related activities, and distribution
14 services to be performed in Georgia:

15 (A) The ownership by that person of tangible or intangible property located at the
16 Georgia premises of the commercial printer for use by the printer in performing its
17 services for the owner;

18 (B) The sale and distribution by that person of printed material produced at and
19 shipped or distributed from the Georgia premises of the commercial printer;

20 (C) The activities performed by or on behalf of that person at the Georgia premises of
21 the commercial printer which are directly related to the services provided by that
22 commercial printer; or

23 (D) The printing, including printing related activities and distribution related activities,
24 performed by the commercial printer in Georgia for or on behalf of that person.

25 (8) 'Paid,' for the purpose of the deductions under this chapter, means 'paid or accrued'
26 or 'paid or incurred.' The terms 'paid or accrued,' 'paid or incurred,' and 'incurred' shall be
27 construed according to the method of accounting upon the basis of which the net income
28 is computed under this chapter.

29 (9) 'Received,' for the purpose of the computation of the net income under this chapter,
30 means 'received or accrued.' The term 'received or accrued' shall be construed according
31 to the method of accounting upon the basis of which the net income is computed under
32 this chapter.

33 (10)(A) 'Resident' means:

34 (i) Every individual who is a legal resident of this state on income tax day;

35 (ii) Every individual who, though not necessarily a legal resident of this state,
36 nevertheless resides within this state on a more or less regular or permanent basis and

1 not on the temporary or transitory basis of a visitor or sojourner and who so resides
2 within this state on income tax day; and

3 (iii) Every individual who on income tax day has been residing within this state for
4 183 days or part-days or longer, in the aggregate, of the immediately preceding 365
5 day period.

6 (B) Every individual who, having become a resident of this state for income tax
7 purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed
8 to continue to be a resident of this state until the person shows to the satisfaction of the
9 commissioner that he or she has become a legal resident or domiciliary of another state
10 and that he or she does not come within division (iii) of subparagraph (A) of this
11 paragraph. Upon such a showing with respect to any 12 month period immediately
12 preceding income tax day, the person shall be taxable as a resident of this state only to
13 the date of becoming a nonresident on an apportionment basis as prescribed in Code
14 Section 48-7-85.

15 (C) Every individual who becomes a resident of this state for income tax purposes
16 under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time
17 during the 12 month period immediately preceding income tax day and who does not
18 otherwise come within division (iii) of subparagraph (A) of this paragraph shall be
19 taxable as a resident only from the date of becoming a resident on an apportionment
20 basis as prescribed in Code Section 48-7-85.

21 (11) 'Taxable nonresident' means:

22 (A) Every individual who is not otherwise a resident of this state for income tax
23 purposes and who regularly and not casually or intermittently engages within this state,
24 by himself or herself or by means of employees, agents, or partners, in employment,
25 trade, business, professional, or other activity for financial gain or profit including, but
26 not limited to, the rental of real or personal property located within this state or for use
27 within this state. 'Taxable nonresident' does not include a legal resident of another state
28 whose only activity for financial gain or profit in this state consists of performing
29 services in this state for an employer as an employee when the remuneration for the
30 services does not exceed the lesser of 5 percent of the income received by the person
31 for performing services in all places during any taxable year or \$5,000.00;

32 (B) Every individual who is not otherwise a resident of this state for income tax
33 purposes and who sells, exchanges, or otherwise disposes of tangible property which
34 at the time of the sale, exchange, or other disposition has a taxable situs within this state
35 or who sells, exchanges, or otherwise disposes of intangible personal property which
36 has acquired at the time of the sale, exchange, or other disposition a business or
37 commercial situs within this state;

1 (C) Every individual who is not otherwise a resident of this state for income tax
2 purposes and who receives the proceeds of any lottery prize awarded by the Georgia
3 Lottery Corporation; and

4 (D) Every individual who is not a resident of this state for income tax purposes and
5 who makes a withdrawal as provided for in subparagraph (b)(10)(B) of Code Section
6 48-7-27.

7 (12) 'Taxable year' means the calendar year or the fiscal year ending during the calendar
8 year upon the basis of which the net income is computed under this chapter."

9 **SECTION 2.**

10 This Act shall become effective upon its approval by the Governor or upon its becoming law
11 without such approval.

12 **SECTION 3.**

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