

House Bill 1274

By: Representative Knight of the 126th

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 income tax imposition, rate, computation, and exemptions, so as to change certain
3 provisions relating to income tax credits for donations of real property for conservation
4 purposes and carryover of credits; to provide an effective date; to provide for applicability;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
9 income tax imposition, rate, computation, and exemptions, is amended by revising Code
10 Section 48-7-29.12, relating to income tax credits for donations of real property for
11 conservation purposes and carryover of credits, as follows:

12 "48-7-29.12.

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

14 (1) 'Conservation purposes' means real property which is qualified as conservation land
15 pursuant to Chapter 22 of Title 36.

16 (2) 'Fair market value' means the value of the donated property established by a property
17 appraisal or appraisals meeting the requirements of Section 170 of Title 26 of the United
18 States Code, to be submitted in such manner as the commissioner may by regulation
19 require.

20 ~~(2)~~(3) 'Qualified donation' means the fee simple conveyance to the state; a county, a
21 municipality, or a consolidated government of this state; to the federal government; or a
22 bona fide charitable nonprofit organization qualified under the Internal Revenue Code of
23 100 percent of all right, title, and interest in the entire parcel of donated real property,
24 which donation is accepted by such state, county, municipality, consolidated government,
25 federal government, or bona fide charitable nonprofit organization. Such term shall also
26 include the donation to and acceptance by the state; a county, a municipality, or a

1 consolidated government of this state; to the federal government; or a bona fide charitable
 2 nonprofit organization qualified under the Internal Revenue Code of an interest in real
 3 property which qualifies as a conservation easement under paragraph (4) of Code
 4 Section 36-22-2. Any real property which is otherwise required to be dedicated pursuant
 5 to local government regulations or ordinances or to increase building density levels shall
 6 not be eligible as a qualified donation under this Code section. Any real property which
 7 is used for or associated with the playing of golf; or is planned to be so used or associated
 8 shall not be eligible as a qualified donation under this Code section.

9 (4) 'Substantial valuation misstatement' means a valuation such that the value of any
 10 property claimed on any return of tax imposed under this chapter, or on any claim for
 11 refund of such tax, is 150 percent or more of the amount determined to be the correct
 12 amount of such valuation.

13 (b) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code
 14 Section 48-7-20 or Code Section 48-7-21 for each qualified donation of real property for
 15 conservation purposes. Except as otherwise provided in subsection (d) of this Code
 16 section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00,
 17 ~~or 25 percent of the fair market value of the donated real property as fair market value is~~
 18 ~~established pursuant to paragraph (3) of Code Section 48-5-2 for the year in which the~~
 19 ~~donation occurred,~~ or 25 percent of the difference between the fair market value and the
 20 amount paid to the donor if the donation is effected by a sale of property for less than fair
 21 market value as established for the year in which the donation occurred.

22 (c) No tax credit shall be allowed under this Code section unless the taxpayer files with
 23 the taxpayer's income tax return a copy of a certification by the Department of Natural
 24 Resources that the donated property is suitable for conservation purposes. The Board of
 25 Natural Resources shall promulgate any rules and regulations necessary to implement and
 26 administer this subsection, including, but not limited to, policies to guide the determination
 27 of whether or not donated property is suitable for conservation purposes. A final
 28 determination by the Department of Natural Resources with respect to the suitability of
 29 donated property for conservation purposes shall be subject to review and appeal under
 30 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

31 (d) In no event shall the total amount of any tax credit under this Code section for a taxable
 32 year exceed the taxpayer's income tax liability. In no event shall the total amount of the
 33 tax credit allowed to a taxpayer under subsection (b) of this Code section exceed
 34 \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or
 35 \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any
 36 unused tax credit shall be allowed to be carried forward to apply to the taxpayer's
 37 succeeding ~~five~~ ten years' tax liability. However, the amount in excess of such annual

1 dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax
2 liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

3 (e)(1) Whenever:

4 (A) Any person prepares an appraisal of the value of property and knows, or
5 reasonably should have known, that the appraisal would be used in connection with a
6 return or a claim for refund claiming a tax credit under this Code section; and

7 (B) The claimed value of the property on a return or claim for refund which is based
8 on such appraisal results in a substantial valuation misstatement with respect to such
9 property for purposes of claiming a tax credit under this Code section,

10 then such person shall pay a penalty in the amount determined under paragraph (2) of this
11 subsection.

12 (2) The amount of the penalty imposed under paragraph (1) of this subsection on any
13 person with respect to an appraisal shall be equal to the lesser of:

14 (A) The greater of:

15 (i) Twenty-five percent of the difference between the amount of the tax credit
16 claimed on the taxpayer's return or claim for refund and the amount of the tax credit
17 to which the taxpayer is actually entitled, to the extent the difference is attributable
18 to the misstatement described in subparagraph (e)(1)(B) of this Code section; or

19 (ii) One thousand dollars; or

20 (B) One hundred twenty-five percent of the gross income received by the person
21 described in subparagraph (e)(1)(A) of this Code section for the preparation of the
22 appraisal.

23 (3) No penalty shall be imposed under paragraph (1) of this subsection if the person
24 establishes to the satisfaction of the commissioner that the value established in the
25 appraisal was more likely than not the proper value.

26 (4) Except as otherwise provided, the penalty provided by this subsection shall be in
27 addition to any other penalties provided by law. The amount of any penalty under this
28 subsection shall be assessed within three years after the return or claim for refund with
29 respect to which the penalty is assessed was filed, and no proceeding in court without
30 assessment for the collection of such penalty shall be begun after the expiration of such
31 period. Any claim for refund of an overpayment of the penalty assessed under this
32 subsection shall be filed within three years from the time the penalty was paid.

33 (e)(f) The commissioner shall promulgate any rules and regulations necessary to
34 implement and administer this Code section."

