

The Senate Finance Committee offered the following substitute to HB 670:

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 revise and change
3 certain provisions regarding state income tax; to provide for income tax credits for wood
4 residuals diverted or transported to renewable biomass qualified facilities for a limited period
5 of time; to provide for income tax credits for clean energy property for a limited period of
6 time; to provide for an income tax deduction for high deductible health plans established and
7 used with a health savings account; to provide for an income tax credit for certain employers
8 who provide high deductible health plans established and used with a health savings account;
9 to provide for definitions; to provide for procedures, conditions, and limitations; to provide
10 for powers, duties, and authority of the state revenue commissioner and the Georgia Forestry
11 Commission with respect to the foregoing; to provide for related matters; to provide for an
12 effective date; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
15 imposition, rate, and computation of income tax, is amended by adding a new Code section
16 to read as follows:
17

18 "48-7-29.13.

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

20 (1) 'Authority' means the Georgia Environmental Facilities Authority.

21 (2) 'Business property' means tangible personal property that is used by the taxpayer in
22 connection with a business or for the production of income and is capitalized by the
23 taxpayer for federal income tax purposes. The term does not include, however, a luxury
24 passenger automobile taxable under Section 4001 of the Internal Revenue Code or a
25 watercraft used principally for entertainment and pleasure outings for which no admission
26 is charged.

1 (3) 'Clean energy property' includes any of the following:

2 (A) Solar energy equipment that uses solar radiation as a substitute for traditional
3 energy for water heating, active space heating and cooling, passive heating, daylighting,
4 generating electricity, distillation, desalinization, or the production of industrial or
5 commercial process heat, as well as related devices necessary for collecting, storing,
6 exchanging, conditioning, or converting solar energy to other useful forms of energy;

7 (B) Energy Star certified geothermal heat pump systems;

8 (C) Energy efficient projects as follows:

9 (i) Lighting retrofit projects. 'Lighting retrofit project' means a lighting retrofit system
10 that employs dual switching (ability to switch roughly half the lights off and still have
11 fairly uniform light distribution), delamping, daylighting, relamping, or other controls
12 or processes which reduce annual energy and power consumption by 30 percent
13 compared to the American Society of Heating, Refrigerating, and Air Conditioning
14 Engineers 2004 standard (ASHRAE 90.1.2004); and

15 (ii) Energy efficient buildings. 'Energy efficient building' means for other than
16 single-family residential property new or retrofitted buildings that are designed,
17 constructed, and certified to exceed the standards set forth in the American Society
18 of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE
19 90.1.2004) by 30 percent; and

20 (D) Wind equipment required to capture and convert wind energy into electricity or
21 mechanical power as well as related devices that may be required for converting,
22 conditioning, and storing the electricity produced by wind equipment.

23 (4) 'Cost' means:

24 (A) In the case of clean energy property owned by the taxpayer, cost is the aggregate
25 funds actually invested and expended by a taxpayer to put into service the clean energy
26 property; and

27 (B) In the case of clean energy property the taxpayer leases from another, cost is eight
28 times the net annual rental rate, which is the annual rental rate paid by the taxpayer less
29 any annual rental rate received by the taxpayer from subrentals.

30 (5) 'Installation' means the year in which the clean energy property is put into service and
31 becomes eligible for a tax credit allowed by this Code section.

32 (6) 'Renewable biomass qualified facility' means a renewable biomass qualified facility
33 as defined by the Federal Energy Regulatory Commission which facility meets the open
34 loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue
35 Code. Such facility must be located in a county in this state which has not attained the
36 federal Environmental Protection Agency Ambient Air Quality Standard for any or all
37 regulated pollutants.

1 (7) 'Wood residuals' means wood residuals that include land-clearing residue, urban
2 wood residue, and pellets and do not include wood from any United States national forest.

3 (b) A tax credit under this Code section is subject to the following limits:

4 (1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the
5 construction, purchase, or lease of clean energy property that is placed into service in this
6 state between July 1, 2008, and December 31, 2010; provided, however, this credit shall
7 be further subject to the following conditions and limitations:

8 (A) A credit allowed by this Code section shall be taken for the taxable year in which
9 the clean energy property is installed and may be taken against income tax or, if the
10 taxpayer is an insurance company, against gross premium tax;

11 (B) A taxpayer that claims a credit allowed under this subsection shall not be eligible
12 to claim any other credit under this subsection with respect to the same clean energy
13 property;

14 (C) A taxpayer may not take the credit allowed in this subsection for clean energy
15 property the taxpayer leases from another unless the taxpayer obtains the lessor's
16 written certification that the lessor will not claim a credit under this subsection with
17 respect to the same clean energy property; and

18 (D) In no event shall the amount of the tax credits allowed by this Code section for a
19 taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount
20 shall be allowed to be carried forward for five years from the close of the taxable year
21 in which the installment of the clean energy property occurred. No such credit shall be
22 allowed the taxpayer against prior years' tax liability.

23 To claim a credit allowed by this paragraph, the taxpayer shall provide any information
24 required by the authority or department. Every taxpayer claiming a credit under this Code
25 section shall maintain and make available for inspection by the authority or department
26 any records that either entity considers necessary to determine and verify the amount of
27 the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit
28 and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a
29 taxpayer that fails to maintain adequate records or to make them available for inspection;

30 (2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified
31 facility shall be allowed a credit against the tax imposed by this article in an amount not
32 to exceed the actual amount certified by the Georgia Forestry Commission to the
33 taxpayer. The value of such credit shall be determined on a per tonnage basis. Such
34 certification shall be based upon vouchers provided to the taxpayer by the renewable
35 biomass qualified facility to whom the wood residuals are provided for the purpose of
36 providing bioelectric power to a third party. The Georgia Forestry Commission shall
37 calculate and attribute a dollar value to such wood residuals;

- 1 (3) In no event shall the total amount of tax credits allowed by this subsection exceed:
- 2 (A) For calendar year 2008, \$2,500,000.00;
- 3 (B) For calendar year 2009, \$2,500,000.00; and
- 4 (C) For calendar year 2010, \$2,500,000.00.
- 5 (4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section
- 6 must submit an application to the commissioner for tentative approval of such tax
- 7 credit. The commissioner shall promulgate the rules and forms on which the
- 8 application is to be submitted. The commissioner shall review such application and
- 9 shall tentatively approve such application upon determining that it meets the
- 10 requirements of this Code section within 60 days after receiving such application.
- 11 (B) The commissioner shall allow the tax credits on a first come, first served basis. In
- 12 no event shall the aggregate amount of tax credits approved by the commissioner for
- 13 all taxpayers under this Code section in a calendar year exceed the limitations specified
- 14 in paragraph (3) of this subsection;
- 15 (5) The credit allowed by this subsection shall not exceed the following amounts:
- 16 (A) For all types of clean energy property placed into service for any purpose other
- 17 than single family residential, the credit allowed by this subsection may not exceed the
- 18 lesser of 35 percent of the cost of the clean energy property described in subparagraphs
- 19 (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any
- 20 clean energy property:
- 21 (i) A ceiling of \$500,000.00 per installation applies to solar energy equipment for
- 22 solar electric (photovoltaic), other solar thermal electric applications, and active space
- 23 heating and wind equipment as described in subparagraphs (a)(3)(A) and (a)(3)(D)
- 24 of this Code section;
- 25 (ii) The sum of \$100,000.00 per installation applies to clean energy property related
- 26 to solar energy equipment for domestic water heating as described in subparagraph
- 27 (a)(3)(A) of this Code section which is certified for performance by the Solar Rating
- 28 Certification Corporation, Florida Solar Energy Center, or by a comparable entity
- 29 approved by the authority to have met the certification of Solar Rating Certification
- 30 Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal
- 31 collectors;
- 32 (iii) For Energy Star certified geothermal heat pump systems as described in division
- 33 (a)(3)(B) of this Code section, the sum of \$100,000.00;
- 34 (iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code
- 35 section, the sum of \$0.60 per square foot of the building with a maximum of
- 36 \$100,000.00; and

1 (v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code
2 section, the sum of the cost of energy efficient products installed during construction
3 at \$1.80 per square foot of the building, with a maximum of \$100,000.00; and

4 (B) The following ceilings apply to clean energy property placed in service for single
5 family residential purposes, the lesser of 35 percent of the cost or:

6 (i) The sum of \$2,500.00 per dwelling unit applies for clean energy property related
7 to solar energy equipment for domestic water heating as described in subparagraph
8 (a)(3)(A) of this Code section which is certified for performance by the Solar Rating
9 Certification Corporation, Florida Solar Energy Center, or by a comparable entity
10 approved by the authority to have met the certification of Solar Rating Certification
11 Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal
12 collectors, Solar Rating Certification Corporation certification OG-300 or Florida
13 Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

14 (ii) The sum of \$10,500.00 per dwelling unit applies for clean energy property related
15 to solar energy equipment for solar electric (photovoltaic), other solar thermal electric
16 applications, and active space heating as described in subparagraph (a)(3)(A) of this
17 Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section;
18 and

19 (iii) The sum of \$2,000.00 per installation for Energy Star certified geothermal heat
20 pump systems applies as described in subparagraph (a)(3)(B) of this Code section;
21 and

22 (6)(A) Where the amount of any credits allowed by this Code section except for the
23 credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's
24 liability for such taxes in a taxable year, the excess may be taken as a credit against
25 such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each
26 employee whose employer receives credit against such taxpayer's quarterly or monthly
27 payment under Code Section 48-7-103 shall receive credit against his or her income tax
28 liability under Code Section 48-7-20 for the corresponding taxable year for the full
29 amount which would be credited against such liability prior to the application of the
30 credit provided for in this subsection. Credits against quarterly or monthly payments
31 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
32 established by this subsection shall not constitute income to the taxpayer.

33 (B) In no event shall the total amount of the tax credit under paragraph (2) of
34 subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax
35 liability. Any unused tax credit shall be allowed the taxpayer against succeeding years'
36 tax liability. No such credit shall be allowed the taxpayer against prior years'
37 liability.

1 (c) The authority and department shall be authorized to adopt rules and regulations to
 2 provide for the administration of any tax credit provided by this Code section. Specifically,
 3 the authority and department shall create a mechanism to track and report the status and
 4 availability of credits for the public to review at a minimum on a quarterly basis.

5 (d) The authority and the department shall provide an annual report of:

6 (1) The number of taxpayers that claimed the credits allowed in this Code section;

7 (2) The cost of business property and clean energy property with respect to which credits
 8 were claimed;

9 (3) The type of clean energy property installed and the location;

10 (4) A determination of associated energy and economic benefits to the state; and

11 (5) The total amount of credits allowed."

12 SECTION 2.

13 Said article is further amended by adding a new paragraph in subsection (a) of Code Section
 14 48-7-27, relating to computation of taxable net income, to read as follows:

15 "(13.1) For all taxable years beginning on or after January 1, 2009, an amount equal to
 16 100 percent of the premium paid by the taxpayer during the taxable year for high
 17 deductible health plans established and used with a health savings account under the
 18 applicable provisions of Section 223 of the Internal Revenue Code to the extent the
 19 deduction has not been included in federal adjusted gross income, as defined under the
 20 Internal Revenue Code of 1986, and the expenses have not been provided from a health
 21 reimbursement arrangement and have not been included in itemized nonbusiness
 22 deductions;"

23 SECTION 3.

24 Said article is further amended by adding a new Code section to read as follows:

25 "48-7-29.14.

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

27 (1) 'Qualified health insurance' means a high deductible health plan that includes, at a
 28 minimum, catastrophic health care coverage which is established and used with a health
 29 savings account under the applicable provisions of Section 223 of the Internal Revenue
 30 Code.

31 (2) 'Qualified health insurance expense' means the expenditure of funds of at least
 32 \$250.00 annually for health insurance premiums for qualified health insurance.

33 (3) 'Taxpayer' means an employer who employs directly, or who pays compensation to
 34 individuals whose compensation is reported on Form 1099, 50 or fewer persons and for
 35 whom the taxpayer provides high deductible health plans that include, at a minimum,

1 catastrophic health care coverage which are established and used with a health savings
2 account under the applicable provisions of Section 223 of the Internal Revenue Code and
3 in which such employees are enrolled.

4 (b) For all taxable years beginning on or after January 1, 2009, a taxpayer shall be allowed
5 a credit against the tax imposed by Code Section 48-7-20 or 48-7-21, as applicable, for
6 qualified health insurance expenses in an amount of \$250.00 for each employee enrolled
7 for twelve consecutive months in a qualified health insurance plan if such qualified health
8 insurance is made available to all of the employees and compensated individuals of the
9 employer pursuant to the applicable provisions of Section 125 of the Internal Revenue
10 Code.

11 (c) In no event shall the total amount of the tax credit under this Code section for a taxable
12 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the
13 taxpayer against succeeding years' tax liability. No such credit shall be allowed the
14 taxpayer against prior years' tax liability.

15 (d) The commissioner shall be authorized to promulgate any rules and regulations
16 necessary to implement and administer the provisions of this Code section.

17 (e) The credit allowed by this Code section shall apply only with regard to qualified health
18 insurance expenses."

19 **SECTION 4.**

20 This Act shall become effective on July 1, 2008.

21 **SECTION 5.**

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