

House Bill 670 (AS PASSED HOUSE AND SENATE)

By: Representative Sims of the 169th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to revise and change certain provisions regarding state income tax; to provide for income tax credits for wood residuals diverted or transported to renewable biomass qualified facilities for a limited period of time; to provide for income tax credits for clean energy property for a limited period of time; to provide for definitions; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner and the Georgia Forestry Commission with respect to the foregoing; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-29.13.

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

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

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

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

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting,

1 generating electricity, distillation, desalinization, or the production of industrial or
2 commercial process heat, as well as related devices necessary for collecting, storing,
3 exchanging, conditioning, or converting solar energy to other useful forms of energy;

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

5 (C) Energy efficient projects as follows:

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

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

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

20 (E) Biomass equipment to convert wood residuals into electricity through gasification
21 and pyrolysis.

22 (4) 'Cost' means:

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

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

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

31 (6) 'Renewable biomass qualified facility' means a renewable biomass qualified facility
32 as defined by the Federal Energy Regulatory Commission which facility meets the open
33 loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue
34 Code.

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

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

(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008, and December 31, 2012; provided, however, this credit shall be further subject to the following conditions and limitations:

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

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

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

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

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

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

(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

(A) For calendar year 2008, \$2,500,000.00;

(B) For calendar year 2009, \$2,500,000.00;

1 (C) For calendar year 2010, \$2,500,000.00;

2 (D) For calendar year 2011, \$2,500,000.00; and

3 (E) For calendar year 2012, \$2,500,000.00.

4 (4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section
5 must submit an application to the commissioner for tentative approval of such tax
6 credit. The commissioner shall promulgate the rules and forms on which the
7 application is to be submitted. The commissioner shall review such application and
8 shall tentatively approve such application upon determining that it meets the
9 requirements of this Code section within 60 days after receiving such application.

10 (B) The commissioner shall allow the tax credits on a first come, first served basis. In
11 no event shall the aggregate amount of tax credits approved by the commissioner for
12 all taxpayers under this Code section in a calendar year exceed the limitations specified
13 in paragraph (3) of this subsection;

14 (5) The credit allowed by this subsection shall not exceed the following amounts:

15 (A) For all types of clean energy property placed into service for any purpose other
16 than single family residential, the credit allowed by this subsection may not exceed the
17 lesser of 35 percent of the cost of the clean energy property described in subparagraphs
18 (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any
19 clean energy property:

20 (i) A ceiling of \$500,000.00 per installation applies to solar energy equipment for
21 solar electric (photovoltaic), other solar thermal electric applications, and active space
22 heating, wind equipment, and biomass equipment as described in subparagraphs
23 (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

24 (ii) The sum of \$100,000.00 per installation applies to clean energy property related
25 to solar energy equipment for domestic water heating as described in subparagraph
26 (a)(3)(A) of this Code section which is certified for performance by the Solar Rating
27 Certification Corporation, Florida Solar Energy Center, or by a comparable entity
28 approved by the authority to have met the certification of Solar Rating Certification
29 Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal
30 collectors;

31 (iii) For Energy Star certified geothermal heat pump systems as described in division
32 (a)(3)(B) of this Code section, the sum of \$100,000.00;

33 (iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code
34 section, the sum of \$0.60 per square foot of the building with a maximum of
35 \$100,000.00; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The total amount of credits allowed."

SECTION 2.

This Act shall become effective on July 1, 2008.

SECTION 3.

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