

House Bill 438

By: Representatives O`Neal of the 146th and Stephens of the 164th

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 imposition, rate, computation, and exemptions regarding income tax, so as to
3 provide for the comprehensive revision of the income tax credits for qualified jobs,
4 investment, investment property, and projects; to provide for procedures, conditions, and
5 limitations; to provide for an effective date; to provide for applicability; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
10 imposition, rate, computation, and exemptions regarding income tax is amended by revising
11 Code Section 48-7-40.24, relating to income tax credits for qualified jobs, investment,
12 investment property, and projects, to read as follows:

13 "48-7-40.24.

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

15 (1) 'Business enterprise' means any ~~business or the headquarters of any such business~~
16 ~~which is engaged in manufacturing.~~ Such enterprise or organization, whether
17 corporation, partnership, limited liability company, proprietorship, association, trust,
18 business trust, real estate trust, or other form of organization engaged in or carrying on
19 any business activities within this state, except that such term shall not include retail
20 businesses.

21 (2) 'Eligible full-time employee' means an individual holding a full-time employee job
22 created by a qualified project.

23 (3) 'Force majeure' means any:

24 (A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

- 25 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail,
 26 tornadoes, hurricanes, lightning, or other natural calamities or acts of God;
 27 (C) Acts of war (whether or not declared), carnage, blockade, or embargo;
 28 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot,
 29 public disorder, or violent demonstrations;
 30 (E) Strikes or other labor disturbances; or
 31 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or
 32 compulsory acquisition of the site or sites of a qualified project or any part thereof;
 33 but such term shall not include any event or circumstance that could have been prevented,
 34 overcome, or remedied in whole or in part by the taxpayer through the exercise of
 35 reasonable diligence and due care, nor shall such term include the unavailability of funds.
- 36 (4) 'Full-time employee job' and 'full-time job' means employment of an individual
 37 which:
- 38 (A) Is located in this state at the site or sites of a qualified project or the ~~manufacturing~~
 39 facility or facilities resulting therefrom;
 40 (B) Involves a regular work week of 35 hours or more;
 41 (C) Has no predetermined end date; and
 42 (D) Pays at or above the average wage of the county with the lowest average wage in
 43 the state, as reported in the most recently available annual issue of the Georgia
 44 Employment and Wages Averages Report of the Department of Labor.
- 45 For purposes of this paragraph, leased employees will be considered employees of the
 46 company using their services and such persons may be counted in determining the
 47 company's job tax credits under this Code section if their employment otherwise meets
 48 the definition of full-time job contained herein. In addition, an individual's employment
 49 shall not be deemed to have a predetermined end date solely by virtue of a mandatory
 50 retirement age set forth in a company policy of general application. The employment of
 51 any individual in a bona fide executive, administrative, or professional capacity, within
 52 the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended,
 53 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed
 54 to have a predetermined end date solely by virtue of the fact that such employment is
 55 pursuant to a fixed-term contract, provided that such contract is for a term of not less than
 56 one year.
- 57 (5) 'Investment requirement' means the requirement that by the close of the sixth taxable
 58 year following the withholding ~~start-date~~ start date a minimum of \$450 million in
 59 qualified investment property will have been purchased or acquired by the business
 60 enterprise to be used with respect to a qualified project.

61 (6) 'Job creation requirement' means the requirement that no later than the close of the
 62 sixth taxable year following the withholding ~~start-date~~ start date, the business enterprise
 63 will have a minimum of 1,800 eligible full-time employees.

64 (7) 'Job maintenance requirement' means the requirement that, with respect to each year
 65 in the recapture period, the monthly average number of eligible full-time employees
 66 employed by the business enterprise, determined as prescribed by subsection (l) of this
 67 Code section, must equal or exceed 1,800.

68 (8) 'Qualified investment property requirement' means all real and personal property
 69 purchased or acquired by a taxpayer for use in a qualified project, including, but not
 70 limited to, amounts expended on land acquisition, improvements, buildings, building
 71 improvements, and ~~machinery and equipment~~ any personal property to be used in the
 72 manufacturing facility or facilities.

73 (9) 'Payroll requirement' means the taxpayer's total Georgia annual W-2 reported payroll
 74 for the project. Total annual payroll shall exceed \$150 million.

75 ~~(9)~~(10) 'Qualified project' means a project which meets the job creation requirement and
 76 either the payroll requirement or qualified investment property requirement. If the
 77 taxpayer selects the qualified investment property requirement as one of the conditions
 78 for its project, the property shall involve the construction of one or more ~~the construction~~
 79 ~~of a new manufacturing facility~~ new facilities in this state or the expansion of ~~an~~ one or
 80 more existing ~~manufacturing facility~~ facilities in this state. For purposes of this
 81 paragraph, the term '~~manufacturing facility~~ facilities' means all facilities comprising a
 82 single facility, including contiguous project, including noncontiguous parcels of land,
 83 improvements to such land, buildings, building improvements, and any ~~machinery or~~
 84 ~~equipment that is used in the process of making, fabricating, constructing, forming, or~~
 85 ~~assembling a product from components or from raw, unfinished, or semifinished~~
 86 ~~materials, and any support facility. For purposes of this paragraph, the term 'support~~
 87 ~~facility' means any warehouses, distribution centers, storage facilities, research and~~
 88 ~~development facilities, laboratories, repair and maintenance facilities, corporate offices,~~
 89 ~~sales or marketing offices, computer operations facilities, or administrative offices, that~~
 90 ~~are contiguous to the manufacturing facility that results from a qualified project,~~
 91 ~~constructed or expanded as part of the same such project, and designed primarily for~~
 92 ~~activities supporting the manufacturing operations at such manufacturing facility~~ personal
 93 property that is used in the facility or facilities.

94 ~~(10)~~(11) 'Recapture period' means the period of five consecutive taxable years that
 95 commences after the first taxable year in which a business enterprise has satisfied both
 96 the investment requirement and the job creation requirement and either the payroll
 97 requirement or the qualified investment property requirement, as selected by the taxpayer.

98 ~~(11)~~(12) 'Withholding ~~start-date~~ start date' means the date on which the business
 99 enterprise begins to withhold Georgia income tax from the wages of its employees
 100 located at the site or sites of a qualified project.

101 (b) A business enterprise that is planning a qualified project shall be allowed to take the
 102 job tax credit provided by this Code section under the following conditions:

103 (1) An application is filed with the commissioner that:

104 (A) Describes the qualified project to be undertaken by the business enterprise,
 105 including when such project will commence and the expected withholding ~~start-date~~
 106 start date;

107 (B) Certifies that such project will meet the ~~investment~~ job creation requirement and
 108 ~~the job creation~~ either the payroll requirement or the qualified investment property
 109 requirement prescribed by this Code section; and

110 (C) Certifies that during the recapture period applicable to such project the business
 111 enterprise will meet the job maintenance requirement prescribed by this Code section;

112 (2) Following the commissioner's referral of the application to a panel composed of the
 113 commissioner of community affairs, the commissioner of economic development, and the
 114 director of the Office of Planning and Budget, said panel, after reviewing the application,
 115 certifies that the new or expanded facility or ~~expansion~~ facilities will have a significant
 116 beneficial economic effect on the region for which ~~it is~~ they are planned. The panel shall
 117 make its determination within 30 days after receipt from the commissioner of the
 118 taxpayer's application and any necessary supporting documentation. Although the panel's
 119 certification may be based upon other criteria, a project that meets the minimum
 120 employment and investment requirements specified in paragraph (1) of this subsection
 121 will have a significant beneficial economic effect on the region for which it is planned
 122 if one of the following additional criteria is met:

123 (A) The project will create new full-time employee jobs with average wages that are,
 124 as determined by the Department of Labor, for all jobs for the county in question:

125 (i) Twenty percent above such average wage for projects located in tier 1 counties;

126 (ii) Ten percent above such average wage for projects located in tier 2 counties; or

127 (iii) Five percent above such average wage for projects located in tier 3 or tier 4
 128 counties; or

129 (B) The project demonstrates high growth potential based upon the prior year's Georgia
 130 net taxable income growth of over 20 percent from the previous year, if the taxpayer's
 131 Georgia net taxable income in each of the two preceding years also grew by 20 percent
 132 or more.

133 (c) Any lease for a period of five years or longer of any real or personal property used in
 134 a new or expanded ~~manufacturing~~ facility or facilities which would otherwise constitute

135 qualified investment property shall be treated as the purchase or acquisition thereof by the
136 lessee. The taxpayer may treat the full value of the leased property as qualified investment
137 property in the year in which the lease becomes binding on the lessor and the taxpayer.

138 (d) A business enterprise whose application is approved shall be allowed a tax credit for
139 taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time
140 employee job for five years beginning with the year in which such job is created through
141 year five after such creation; provided, however, that where the amount of such credit
142 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be
143 taken as a credit against such business enterprise's quarterly or monthly payment under
144 Code Section 48-7-103. The taxpayer may file an election with the commissioner to take
145 such credit against quarterly or monthly payments under Code Section 48-7-103 that
146 become due before the due date of the income tax return on which such credit may be
147 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
148 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
149 the taxpayer may begin to take the credit against such quarterly or monthly payments. For
150 any one taxable year the amounts taken as a credit against taxes imposed under this article
151 and against the business enterprise's quarterly or monthly payments under Code Section
152 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job.
153 Each employee whose employer receives credit against such business enterprise's quarterly
154 or monthly payment under Code Section 48-7-103 shall receive a credit against his or her
155 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
156 full amount which would be credited against such liability prior to the application of the
157 credit provided for in this subsection. Credits against quarterly or monthly payments under
158 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
159 by this subsection shall not constitute income to the taxpayer. To qualify for a credit under
160 this subsection, the employer must make health insurance coverage available to the
161 employee filling the new full-time job; provided, however, that nothing in this subsection
162 shall be construed to require the employer to pay for all or any part of health insurance
163 coverage for such an employee in order to claim the credit provided for in this subsection
164 if such employer does not pay for all or any part of health insurance coverage for other
165 employees.

166 (e) The number of new full-time jobs to which this Code section shall be applicable shall
167 be determined each month by comparing the number of full-time employees subject to
168 Georgia income tax withholding as of the last payroll period of such month or as the
169 payroll period during each month used for the purpose of reports to the Department of
170 Labor with the number of such employees for the previous month.

171 (f) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create
 172 new eligibility in any succeeding business entity, but any unused job tax credit may be
 173 transferred and continued by any transferee of the business enterprise.

174 (g) To qualify for the credit provided by this Code section a new full-time job must be
 175 created by the close of the seventh taxable year following the business enterprise's
 176 withholding ~~start-date~~ start date. In no event may a credit be claimed under this Code
 177 section for more than 3,300 new full-time employee jobs created by any one project;
 178 provided, however, that the taxpayer may claim the credits provided by Code Sections
 179 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and
 180 conditions thereof.

181 (h) Any credit claimed under this Code section but not fully used in the manner prescribed
 182 in subsection (d) of this Code section may be carried forward for ten years from the close
 183 of the taxable year in which the qualified job was established.

184 (i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to
 185 and takes credits provided by this Code section ~~with respect to~~ for a qualified project shall
 186 not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1,
 187 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10,
 188 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 ~~with respect to~~ for jobs, investments,
 189 child care, or ground-water usage shifts created by, arising from, related to, or connected
 190 in any way with the same project. Such taxpayer may take any credit authorized by Code
 191 Section 48-7-40.5 for the costs of retraining an employee located at the site or sites of such
 192 project or the ~~manufacturing~~ facility or facilities resulting therefrom, but only ~~with respect~~
 193 ~~to~~ for costs incurred more than five years after the date the ~~manufacturing~~ facility or
 194 facilities first ~~becomes~~ become operational.

195 (j) Except under those circumstances described in subsection (k) of this Code section, the
 196 taxpayer shall, not more than 60 days after the close of the sixth taxable year following its
 197 withholding ~~start-date~~ start date, file a report with the commissioner concerning the number
 198 of eligible full-time employee jobs created by such project; the wages of such jobs; the
 199 qualified investment property purchased or acquired by the taxpayer for the project; and
 200 any other information that the commissioner may reasonably require in order to determine
 201 whether the taxpayer has met ~~both~~ the job creation requirement and either the payroll
 202 requirement or the qualified investment property requirement, as selected by the taxpayer,
 203 ~~and job creation requirement~~ with respect to for such project. If the taxpayer has failed to
 204 meet ~~either such~~ the job creation requirement and either the payroll requirement or
 205 qualified investment property requirement, the taxpayer will forfeit the right to claim any
 206 credits provided by this Code section for such project. A taxpayer that forfeits the right to
 207 claim such credits is liable for all past taxes imposed by this article and all past payments

208 under Code Section 48-7-103 that were foregone by the state as a result of the credits, plus
209 interest at the rate established by Code Section 48-2-40 computed from the date such taxes
210 or payments would have been due if the credits had not been taken. No later than 90 days
211 after notification from the commissioner that ~~either the investment requirement or the job~~
212 ~~creation requirement was~~ the job creation requirement and either the payroll requirement
213 or qualified investment property requirement were not met, the taxpayer shall file amended
214 income tax and withholding tax returns for all affected periods that recalculate those
215 liabilities without regard to the forfeited credits and shall pay any additional amounts
216 shown on such returns, with interest as provided herein. On such amended returns the
217 taxpayer may claim any credit to which it would have been entitled under this article but
218 for having taken the credit provided by this Code section.

219 (k) If the recapture period applicable to a qualified project begins with or before the sixth
220 taxable year following the taxpayer's withholding ~~start-date~~ start date, the taxpayer shall,
221 not later than 60 days after the close of the taxable year immediately preceding the
222 recapture period, file a report with the commissioner concerning the number of eligible
223 full-time employee jobs created by such project; the wages of such jobs; the qualified
224 investment property purchased or acquired by the taxpayer for the project; and any other
225 information that the commissioner may reasonably require in order to verify that the
226 taxpayer met ~~both the~~ job creation requirement and either the payroll requirement or the
227 qualified investment property requirement and job creation requirement in such preceding
228 year.

229 (l) Not more than 60 days after the close of each taxable year within the recapture period,
230 the taxpayer shall file a report, using such form and providing such information as the
231 commissioner may reasonably require, concerning whether it met the job maintenance
232 requirement for such year. For purposes of this subsection, whether such requirement has
233 been satisfied shall be determined by comparing the monthly average number of eligible
234 full-time employees subject to Georgia income tax withholding for the taxable year with
235 1,800. If the taxpayer has failed to meet the job maintenance requirement for such year,
236 the taxpayer will forfeit the right to 20 percent of all credits provided by this Code section
237 for such project. A taxpayer that forfeits such right is liable for 20 percent of all past taxes
238 imposed by this article and all past payments under Code Section 48-7-103 that were
239 foregone by the state as a result of the credits provided by this Code section, plus interest
240 at the rate established by Code Section 48-2-40 computed from the date such taxes or
241 payments would have been due if the credits had not been taken. No later than 90 days
242 after notification by the commissioner that the taxpayer has failed to meet the job
243 maintenance requirement for such year, the taxpayer shall file amended income tax and
244 withholding tax returns for all affected periods that recalculate those liabilities without

245 regard to the forfeited credits and shall pay any additional amounts shown on such returns,
246 with interest as provided herein.

247 (m) A taxpayer who fails to meet the job maintenance requirement for any taxable year
248 within the recapture period because of force majeure may petition the commissioner for
249 relief from such requirement. Such a petition must be made with and at the same time as
250 the report required by subsection (l) of this Code section. If the commissioner determines
251 that force majeure materially affected the taxpayer's ability to meet the job maintenance
252 requirement for such year, but that the portion of the year so affected was six months or
253 less, the commissioner shall calculate the taxpayer's monthly average number of eligible
254 full-time employees for purposes of subsection (l) of this Code section by disregarding the
255 affected months. If the commissioner determines that the affected portion of the year was
256 more than six months, the taxable year shall be disregarded in its entirety for purposes of
257 the job maintenance requirement and the recapture period applicable to the qualified
258 project shall be extended for an additional year.

259 (n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the
260 commissioner may make any assessment attributable to the forfeiture of credits claimed
261 under this Code section for the periods covered by any amended returns filed by a taxpayer
262 pursuant to subsection (j) or (l) of this Code section within one year from the date such
263 returns are filed. If the taxpayer fails to file the reports or any amended return required by
264 subsection (j) or (l) of this Code Section, the commissioner may assess additional tax or
265 other amounts attributable to the forfeiture of credits claimed under this Code section at
266 any time.

267 (o) The commissioner shall promulgate any rules and regulations necessary to implement
268 and administer this Code section."

269 **SECTION 2.**

270 This Act shall become effective upon its approval by the Governor or upon its becoming law
271 without such approval and applicable to all taxable years beginning on or after
272 January 1, 2009.

273 **SECTION 3.**

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