

House Bill 439

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 taxes, so as to
3 provide for the comprehensive revision of income tax credits for business enterprises in less
4 developed areas, employers providing approved retraining, business enterprises having
5 qualified research expenses, base year port traffic, and taxpayers establishing or relocating
6 headquarters into this state; to provide for procedures, conditions, and limitations; to provide
7 an effective date; to provide for applicability; to repeal conflicting laws; and for other
8 purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
12 imposition, rate, computation, and exemptions regarding income taxes, is amended by
13 revising Code Section 48-7-40, relating to tax credits for business enterprises in less
14 developed areas, to read as follows:

15 "48-7-40.

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

17 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
18 programming content to the general public, subscribers, or to third parties via radio,
19 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
20 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
21 is limited to establishments classified under the ~~2007~~ 2002 North American Industry
22 Classification System Codes 515, broadcasting; 516, Internet publishing and
23 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
24 industries.

25 (2) 'Business enterprise' means any business or the headquarters of any such business
 26 which is engaged in manufacturing, warehousing and distribution, processing,
 27 telecommunications, broadcasting, tourism, and research and development industries.
 28 Such term shall not include retail businesses.

29 (3) 'Competitive project' means expansion or location of some or all of a business
 30 enterprise's operations in this state having significant regional impact where the
 31 commissioner of economic development certifies that but for some or all of the tax
 32 incentives provided in this Code section, the business enterprise would have located or
 33 expanded outside this state.

34 ~~(3)~~(4) 'Existing business enterprise' means any business or the headquarters of any such
 35 business which has operated for the immediately preceding three years a facility in this
 36 state which is engaged in manufacturing, warehousing and distribution, processing,
 37 telecommunications, broadcasting, tourism, or research and development industries.
 38 Such term shall not include retail businesses.

39 (b)(1) Not later than December 31 of each year, using the most current data available
 40 from the Department of Labor and the United States Department of Commerce, the
 41 commissioner of community affairs shall rank and designate as less developed areas all
 42 159 counties in this state using a combination of the following equally weighted factors:

- 43 (A) Highest unemployment rate for the most recent 36 month period;
- 44 (B) Lowest per capita income for the most recent 36 month period; and
- 45 (C) Highest percentage of residents whose incomes are below the poverty level
 46 according to the most recent data available.

47 (2) Counties ranked and designated as the first through seventy-first least developed
 48 counties shall be classified as tier 1, counties ranked and designated as the
 49 seventy-second through one hundred sixth least developed counties shall be classified as
 50 tier 2, counties ranked and designated as the one hundred seventh through one hundred
 51 forty-first least developed counties shall be classified as tier 3, and counties ranked and
 52 designated as the one hundred forty-second through one hundred fifty-ninth least
 53 developed counties shall be classified as tier 4.

54 (c) The commissioner of community affairs shall be authorized to include in the tier 2
 55 designation provided for in subsection (b) of this Code section any tier 3 county which, in
 56 the opinion of the commissioner of community affairs, undergoes a sudden and severe
 57 period of economic distress caused by the closing of one or more business enterprises
 58 located in such county. No designation made pursuant to this subsection shall operate to
 59 displace or remove any other county previously designated as a tier 2 county.

60 (c.1) The commissioner of community affairs shall be authorized to include in the tier 1
 61 designation provided for in subsection (b) of this Code section any tier 2 county which, in

62 the opinion of the commissioner of community affairs, undergoes a sudden and severe
63 period of economic distress caused by the closing of one or more business enterprises
64 located in such county. No designation made pursuant to this subsection shall operate to
65 displace or remove any other county previously designated as a tier 1 county.

66 (d) For business enterprises which plan a significant expansion in their labor forces, the
67 commissioner of community affairs shall prescribe redesignation procedures to ensure that
68 the business enterprises can claim credits in future years without regard to whether or not
69 a particular county is reclassified in a different tier.

70 (e)(1) Business enterprises in counties designated by the commissioner of community
71 affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article
72 equal to \$3,500.00 annually per eligible new full-time employee job for five years
73 beginning with ~~years two through six after the creation of such job~~ the first taxable year
74 in which the new full-time employee job is created and for the four immediately
75 succeeding taxable years; provided, however, that where the amount of such credit
76 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may
77 be taken as a credit against such business enterprise's quarterly or monthly payment under
78 Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new
79 full-time employee job when aggregated with the credit applied against taxes under this
80 article. Each employee whose employer receives credit against such business enterprise's
81 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
82 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
83 year for the full amount which would be credited against such liability prior to the
84 application of the credit provided for in this paragraph. Credits against quarterly or
85 monthly payments under Code Section 48-7-103 and credits against liability under Code
86 Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.
87 Business enterprises in counties designated by the commissioner of community affairs
88 as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article
89 equal to \$2,500.00 annually, business enterprises in counties designated by the
90 commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for
91 taxes imposed under this article equal to \$1,250.00 annually, and business enterprises in
92 counties designated by the commissioner of community affairs as tier 4 counties shall be
93 allowed a job tax credit for taxes imposed under this article equal to \$750.00 annually for
94 each new full-time employee job for five years beginning with ~~years two through six after~~
95 ~~the creation of the job~~ the first taxable year in which the new full-time employee job is
96 created and for the four immediately succeeding taxable years. Where a business
97 enterprise is engaged in a competitive project located in a county designated by the
98 commissioner of community affairs as a tier 2, tier 3, or tier 4 county, and where the

99 amount of the credit provided in this paragraph exceeds such business enterprise's
100 liability for taxes imposed under this article in a taxable year, the excess may be taken as
101 a credit against such business enterprise's quarterly or monthly payment under Code
102 Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new
103 full-time employee job when aggregated with the credit applied against taxes under this
104 article. Each employee whose employer receives credit against such business enterprise's
105 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
106 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
107 year for the full amount which would be credited against such liability prior to the
108 application of the credit provided for in this paragraph. Credits against quarterly or
109 monthly payments under Code Section 48-7-103 and credits against liability under Code
110 Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer.
111 The number of new full-time jobs shall be determined by comparing the monthly average
112 number of full-time employees subject to Georgia income tax withholding for the taxable
113 year with the corresponding period of the prior taxable year. In tier 1 counties, those
114 business enterprises that increase employment by five or more shall be eligible for the
115 credit. In tier 2 counties, only those business enterprises that increase employment by ten
116 or more shall be eligible for the credit. In tier 3 counties, only those business enterprises
117 that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties,
118 only those business enterprises that increase employment by 25 or more shall be eligible
119 for the credit. The average wage of the new jobs created must be above the average wage
120 of the county that has the lowest average wage of any county in the state to qualify as
121 reported in the most recently available annual issue of the Georgia Employment and
122 Wages Averages Report of the Department of Labor. To qualify for a credit under this
123 paragraph, the employer must make health insurance coverage available to the employee
124 filling the new full-time job; provided, however, that nothing in this paragraph shall be
125 construed to require the employer to pay for all or any part of health insurance coverage
126 for such an employee in order to claim the credit provided for in this paragraph if such
127 employer does not pay for all or any part of health insurance coverage for other
128 employees. Credit shall not be allowed during a year if the net employment increase falls
129 below the number required in such tier. ~~Any credit received for years prior to the year~~
130 ~~in which the net employment increase falls below the number required in such tier shall~~
131 ~~not be affected.~~ In any year in which the net employment increase falls below the
132 number required in such tier, the taxpayer shall forfeit the right to 20 percent of the credit
133 claimed in each prior year for each year that the net employment increase falls below the
134 number required in such tier. For each year that the net employment increase falls below
135 the number required in such tier, a taxpayer that forfeits such right is therefore liable for

136 20 percent of all past taxes imposed by this article and all past payments under Code
137 Section 48-7-103 that were foregone by the state as a result of the credits provided by this
138 Code section, plus interest at the rate established by Code Section 48-2-40 computed
139 from the date such taxes or payments would have been due if the credits had not been
140 taken. The taxpayer shall file amended income tax and withholding tax returns for all
141 affected periods that recalculate those liabilities without regard to the forfeited credits and
142 shall pay any additional amounts shown on such returns, with interest as provided herein
143 this paragraph. The state revenue commissioner shall adjust the credit allowed each year
144 for net new employment fluctuations above the minimum level of the number required
145 in such tier.

146 (2) Existing business enterprises shall be allowed an additional tax credit for taxes
147 imposed under this article equal to \$500.00 per eligible new full-time employee job for
148 ~~one year after the creation of such job~~ the first year in which the new full-time employee
149 job is created. The additional credit shall be claimed in ~~year two after the creation of~~
150 ~~such job~~ the first taxable year in which the new full-time employee job is created. The
151 number of new full-time jobs shall be determined by comparing the monthly average
152 number of full-time employees subject to Georgia income tax withholding for the taxable
153 year with the corresponding period of the prior taxable year. In tier 1 counties, those
154 existing business enterprises that increase employment by five or more shall be eligible
155 for the credit. In tier 2 counties, only those existing business enterprises that increase
156 employment by ten or more shall be eligible for the credit. In tier 3 counties, only those
157 existing business enterprises that increase employment by 15 or more shall be eligible for
158 the credit. In tier 4 counties, only those existing business enterprises that increase
159 employment by 25 or more shall be eligible for the credit. The average wage of the new
160 jobs created must be above the average wage of the county that has the lowest average
161 wage of any county in the state to qualify as reported in the most recently available
162 annual issue of the Georgia Employment and Wages Averages Report of the Department
163 of Labor. To qualify for a credit under this paragraph, the employer must make health
164 insurance coverage available to the employee filling the new full-time job; provided,
165 however, that nothing in this paragraph shall be construed to require the employer to pay
166 for all or any part of health insurance coverage for such an employee in order to claim the
167 credit provided for in this paragraph if such employer does not pay for all or any part of
168 health insurance coverage for other employees. Credit shall not be allowed during a year
169 if the net employment increase falls below the number required in such tier. Any credit
170 ~~received~~ generated and utilized for years prior to the year in which the net employment
171 increase falls below the number required in such tier shall not be affected. The state
172 revenue commissioner shall adjust the credit allowed each year for net new employment

173 fluctuations above the minimum level of the number required in such tier. This
174 paragraph shall apply only to new eligible full-time jobs created in taxable years
175 beginning on or after January 1, 2006, and ending no later than taxable years beginning
176 prior to January 1, 2011.

177 (f) Tax credits for ~~five~~ four years for the taxes imposed under this article shall be awarded
178 for additional new full-time jobs created by business enterprises qualified under subsection
179 (b), (c), or (c.1) of this Code section. Additional new full-time jobs shall be determined by
180 subtracting the highest total employment of the business enterprise during years two
181 through ~~six~~ five, or whatever portion of years two through ~~six~~ five which has been
182 completed, from the total increased employment. The state revenue commissioner shall
183 adjust the credit allowed in the event of employment fluctuations during the ~~additional~~ five
184 years of credit.

185 (g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create
186 new eligibility in any succeeding business entity, but any unused job tax credit may be
187 transferred and continued by any transferee of the business enterprise. The commissioner
188 of community affairs shall determine whether or not qualifying net increases or decreases
189 have occurred and may require reports, promulgate regulations, and hold hearings as
190 needed for substantiation and qualification.

191 (h)(1) Except as provided in paragraph (2) of this subsection, any credit claimed under
192 this Code section but not used in any taxable year may be carried forward for ten years
193 from the close of the taxable year in which the qualified jobs were established, subject
194 to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in
195 tiers 3 and 4 the credit established by this Code section taken in any one taxable year
196 shall be limited to an amount not greater than 50 percent of the taxpayer's state income
197 tax liability which is attributable to income derived from operations in this state for that
198 taxable year. In tier 1 and 2 counties, the credit allowed under this Code section against
199 taxes imposed under this article in any taxable year shall be limited to an amount not
200 greater than 100 percent of the taxpayer's state income tax liability attributable to income
201 derived from operations in this state for such taxable year.

202 (2) The additional credit claimed by an existing business enterprise pursuant to the
203 provisions of paragraph (2) of subsection (e) of this Code section must be applied against
204 taxes imposed for the taxable year in which such credit is available and may not be
205 carried forward to any subsequent taxable year.

206 (i) Notwithstanding any provision of this Code section to the contrary, in counties
207 recognized and designated as the first through fortieth least developed counties in the tier
208 1 designation, job tax credits shall be allowed as provided in this Code section, in addition
209 to business enterprises or existing business enterprises, to any business of any nature.

210 (j) Business enterprises eligible to claim a credit under this Code section shall claim the
 211 credit no later than one year after the date the original tax return was filed or within one
 212 year of the due date of the tax return including extensions, whichever comes first.

213 ~~(j)~~(k) The commissioner may require such reports, promulgate such regulations, and gather
 214 such relevant data necessary and advisable for the evaluation of the job tax credits
 215 established by this Code section."

216 **SECTION 2.**

217 Said article is further amended by revising Code Section 48-7-40.1, relating to tax credits for
 218 business enterprises in less developed areas, to read as follows:

219 "48-7-40.1.

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

221 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
 222 programming content to the general public, subscribers, or to third parties via radio,
 223 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
 224 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
 225 is limited to establishments classified under the ~~2007~~ 2002 North American Industry
 226 Classification System Codes 515, broadcasting; 516, Internet publishing and
 227 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
 228 industries.

229 (2) 'Business enterprise' means any business or the headquarters of any such business
 230 which is engaged in manufacturing, warehousing and distribution, processing,
 231 telecommunications, broadcasting, tourism, and research and development industries.
 232 Such term shall not include retail businesses.

233 (b) Not later than December 31 of each year, using the most current data available from
 234 the Department of Labor and the United States Department of Commerce, the
 235 commissioner of community affairs shall rank and designate as less developed areas the
 236 areas which are comprised of ten or more contiguous census tracts in this state using a
 237 combination of the following equally weighted factors:

238 (1) Highest unemployment rate for the most recent 36 month period;

239 (2) Lowest per capita income for the most recent 36 month period; and

240 (3) Highest percentage of residents whose income is below the poverty level according
 241 to the most recent data available.

242 (c) The commissioner of community affairs also shall be authorized to include in the
 243 designation provided for in subsection (b) of this Code section:

244 (1) Any area comprised of ten or more contiguous census tracts which, in the opinion of
 245 the commissioner of community affairs, undergoes a sudden and severe period of

246 economic distress caused by the closing of one or more business enterprises located in
247 such area;

248 (2) Any area comprised of one or more census tracts adjacent to a federal military
249 installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater
250 as reflected in the most recent decennial census;

251 (3) Any area comprised of one or more contiguous census tracts which, in the opinion
252 of the commissioner of community affairs, is or will be adversely impacted by the loss
253 of one or more jobs, businesses, or residences as a result of an airport expansion,
254 including noise buy-outs, or the closing of a business enterprise which, in the opinion of
255 the commissioner of community affairs, results or will result in a sudden and severe
256 period of economic distress; or

257 (4) Any area which is within or adjacent to one or more contiguous census block groups
258 with a poverty rate of 15 percent or greater as determined from data in the most current
259 United States decennial census, where the area is also included within a state enterprise
260 zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted
261 pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of
262 community affairs, displays pervasive poverty, underdevelopment, general distress, and
263 blight.

264 No designation made pursuant to this subsection shall operate to displace or remove any
265 other area previously designated as a less developed area. Notwithstanding any provision
266 of this Code section to the contrary, in areas designated as suffering from pervasive poverty
267 under this subsection, job tax credits shall be allowed as provided in this Code section, in
268 addition to business enterprises, to any lawful business.

269 (d) For business enterprises which plan a significant expansion in their labor forces, the
270 commissioner of community affairs shall prescribe redesignation procedures to ensure that
271 the business enterprises can claim credits in future years without regard to whether or not
272 a particular area is removed from the list of less developed areas.

273 (e) Business enterprises in areas designated by the commissioner of community affairs as
274 less developed areas shall be allowed a job tax credit for taxes imposed under this article
275 equal to \$3,500.00 annually per eligible new full-time employee job for five years
276 beginning with ~~years two through six after the creation of such job~~ the first taxable year in
277 which the new full-time employee job is created and for the four immediately succeeding
278 taxable years; provided, however, that where the amount of such credit exceeds a business
279 enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit
280 against such business enterprise's quarterly or monthly payment under Code Section
281 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time
282 employee job when aggregated with the credit applied against taxes under this article.

283 Each employee whose employer receives credit against such business enterprise's quarterly
284 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
285 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
286 full amount which would be credited against such liability prior to the application of the
287 credit provided for in this subsection. Credits against quarterly or monthly payments under
288 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
289 by this subsection shall not constitute income to the taxpayer. The number of new full-time
290 jobs shall be determined by comparing the monthly average number of full-time employees
291 subject to Georgia income tax withholding for the taxable year with the corresponding
292 period of the prior taxable year. Only those business enterprises that increase employment
293 by five or more in a less developed area shall be eligible for the credit; provided, however,
294 that within areas of pervasive poverty as designated under paragraphs (2) and (4) of
295 subsection (c) of this Code section businesses shall only have to increase employment by
296 two or more jobs in order to be eligible for the credit, provided that, if a business only
297 increases employment by two jobs, the persons hired for such jobs shall not be married to
298 one another. The average wage of the new jobs created must be above the average wage
299 of the county that has the lowest wage of any county in the state to qualify as reported in
300 the most recently available annual issue of the Georgia Employment and Wages Averages
301 Report of the Department of Labor. To qualify for a credit under this subsection, the
302 employer must make health insurance coverage available to the employee filling the new
303 full-time job; provided, however, that nothing in this subsection shall be construed to
304 require the employer to pay for all or any part of health insurance coverage for such an
305 employee in order to claim the credit provided for in this subsection if such employer does
306 not pay for all or any part of health insurance coverage for other employees. Credit shall
307 not be allowed during a year if the net employment increase falls below five or two, as
308 applicable. ~~Any credit received for years prior to the year in which the net employment~~
309 ~~increase falls below five or two shall not be affected.~~ In any year in which the net
310 employment increase falls below five or two, as applicable, the taxpayer shall forfeit the
311 right to 20 percent of the credit claimed in each prior year for each year that the net
312 employment increase falls below five or two, as applicable. For each year that the net
313 employment increase falls below five or two, as applicable, a taxpayer that forfeits such
314 right is therefore liable for 20 percent of all past taxes imposed by this article and all past
315 payments under Code Section 48-7-103 that were foregone by the state as a result of the
316 credits provided by this Code section, plus interest at the rate established by Code Section
317 48-2-40 computed from the date such taxes or payments would have been due if the credits
318 had not been taken. The taxpayer shall file amended income tax and withholding tax
319 returns for all affected periods that recalculate those liabilities without regard to the

320 forfeited credits and shall pay any additional amounts shown on such returns, with interest
 321 as provided herein. The state revenue commissioner shall adjust the credit allowed each
 322 year for net new employment fluctuations above the minimum level of five or two.

323 (f) Tax credits for ~~five~~ four years for the taxes imposed under this article shall be awarded
 324 for additional new full-time jobs created by business enterprises qualified under
 325 subsection (b) or (c) of this Code section. Additional new full-time jobs shall be
 326 determined by subtracting the highest total employment of the business enterprise during
 327 years two through ~~six~~ five, or whatever portion of years two through ~~six~~ five which has
 328 been completed, from the total increased employment. The state revenue commissioner
 329 shall adjust the credit allowed in the event of employment fluctuations during the additional
 330 five years of credit.

331 (g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create
 332 new eligibility in any succeeding business entity, but any unused job tax credit may be
 333 transferred and continued by any transferee of the business enterprise. The commissioner
 334 of community affairs shall determine whether or not qualifying net increases or decreases
 335 have occurred and may require reports, promulgate regulations, and hold hearings as
 336 needed for substantiation and qualification.

337 (h) Any credit claimed under this Code section but not used in any taxable year may be
 338 carried forward for ten years from the close of the taxable year in which the qualified jobs
 339 were established, subject to forfeiture as provided in subsection (e) of this Code section,
 340 but the credit established by this Code section taken in any one taxable year shall be limited
 341 to an amount not greater than 100 percent of the taxpayer's state income tax liability which
 342 is attributable to income derived from operations in this state for that taxable year.

343 (i) Business enterprises eligible to a claim credit under this Code section shall claim the
 344 credit no later than one year after the date the original tax return was filed or within one
 345 year of the due date of the tax return including extensions, whichever comes first."

346 **SECTION 3.**

347 Said article is further amended by revising Code Section 48-7-40.5, relating to tax credits for
 348 employers providing approved retraining programs, to read as follows:

349 "48-7-40.5.

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

351 (1) 'Approved retraining' means ~~employer~~ business enterprise provided or ~~employer~~
 352 business enterprise sponsored retraining that meets the following conditions:

353 (A) It enhances the functional skills of employees otherwise unable to function
 354 effectively on the job due to skill deficiencies or who would otherwise be displaced
 355 because such skill deficiencies would inhibit their utilization of new technology;

356 provided, however, that retraining shall not include any program related to word
 357 processing software, data base software, presentation software, spreadsheet software,
 358 e-mail software, personal information management software, or computer operating
 359 system software;

360 (B) It is approved and certified by the Technical College System of Georgia; and

361 (C) The employer business enterprise does not require the employee to make any
 362 payment for the retraining, either directly or indirectly through use of forfeiture of leave
 363 time, vacation time, or other compensable time.

364 (2) 'Business enterprise' means any business or the headquarters of any such business
 365 which is engaged in manufacturing, warehousing and distribution, processing,
 366 telecommunications, broadcasting, tourism, or research and development industries.
 367 Such term shall not include retail businesses.

368 (3) 'Business enterprise provided' refers to approved retraining offered on the premises
 369 of the business enterprise or on premises approved by the Technical College System of
 370 Georgia by instructors hired by or employed by a business enterprise.

371 (4) 'Business enterprise sponsored' refers to a contractual arrangement with a school,
 372 university, college, or other instructional facility which offers approved retraining that
 373 is paid for by the business enterprise.

374 ~~(2)~~(5) 'Cost of retraining' means direct instructional costs as defined by the Technical
 375 College System of Georgia including instructor salaries, materials, supplies, and
 376 textbooks but specifically excluding costs associated with renting or otherwise securing
 377 space.

378 ~~(3)~~(6) 'Employee' means any employee resident in this state who is employed for at least
 379 25 hours a week; and who has been continuously employed by the employer business
 380 enterprise for at least 16 consecutive weeks.

381 ~~(4)~~ 'Employer' means ~~any employer upon whom an income tax is imposed by this~~
 382 ~~chapter.~~

383 ~~(5)~~ 'Employer provided' refers to ~~approved retraining offered on the premises of the~~
 384 ~~employer or on premises approved by the Technical College System of Georgia by~~
 385 ~~instructors hired by or employed by an employer.~~

386 ~~(6)~~ 'Employer sponsored' refers to ~~a contractual arrangement with a school, university,~~
 387 ~~college, or other instructional facility which offers approved retraining that is paid for by~~
 388 ~~the employer.~~

389 (b) A tax credit shall be granted to ~~an employer~~ a business enterprise who provides or
 390 sponsors an approved retraining program in a taxable year. The total amount of the tax
 391 credit allowed per taxable year per full-time employee ~~amount of the tax credit~~ shall be
 392 equal to one-half of the costs of retraining per full-time employee, or \$500.00 per full-time

393 employee, whichever is less, for each employee who has successfully completed an
 394 approved retraining program. ~~No employer may~~ business enterprise shall receive a credit
 395 if the ~~employer~~ business enterprise requires that the employee reimburse or pay the
 396 ~~employer~~ business enterprise for the cost of retraining.

397 (c) Any tax credit claimed under this Code section for any taxable year beginning on or
 398 after January 1, 1998, but not used for any such taxable year may be carried forward for
 399 ten years from the close of the taxable year in which the tax credit was granted. The tax
 400 credit granted to any ~~employer~~ business enterprise pursuant to this Code section shall not
 401 exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year
 402 as computed without regard to this Code section. Notwithstanding Code Section 48-2-35,
 403 any tax credit claimed under this Code section shall be claimed within one year of the date
 404 the original return was filed or within one year of the date such return was due as
 405 prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

406 (d) To be eligible to claim the credit granted under this Code section, the ~~employer must~~
 407 business enterprise shall certify to the department the name of the employee, the course
 408 work successfully completed by such employee, the name of the provider of the approved
 409 retraining, and such other information as may be required by the department to ensure that
 410 credits are only granted to ~~employers~~ business enterprises who provide or sponsor
 411 approved retraining pursuant to this Code section and that such credits are only granted to
 412 ~~employers with respect to~~ business enterprises for employees who successfully complete
 413 such approved retraining. The department shall adopt rules and regulations and forms to
 414 implement this credit program. The department is expressly authorized and directed to
 415 work with the Technical College System of Georgia to ensure the proper granting of credits
 416 pursuant to this Code section.

417 (e) The Technical College System of Georgia is expressly authorized and directed to
 418 establish such standards as it deems necessary and convenient in approving ~~employer~~
 419 business enterprise provided and ~~employer~~ business enterprise sponsored retraining
 420 programs. In establishing such standards, the Technical College System of Georgia shall
 421 establish required hours of classroom instruction, required courses, certification of teachers
 422 or instructors, progressive levels of instruction, and standardized measures of employee
 423 evaluation to determine successful completion of a course of study."

424 **SECTION 4.**

425 Said article is further amended by revising Code Section 48-7-40.12, relating to income tax
 426 credits for business enterprises having qualified research expenses, to read as follows:

427 "48-7-40.12.

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

429 (1) 'Base amount' means the product of a business enterprise's Georgia ~~taxable net~~
430 ~~income~~ gross receipts in the current taxable year and the average of the ratios of its
431 aggregate qualified research expenses to Georgia ~~taxable net income~~ gross receipts for
432 the preceding three taxable years or 0.300, whichever is less; provided, however, that a
433 business enterprise need not have had a positive taxable net income for the preceding
434 three taxable years in order to claim the credit provided in this Code section. For
435 purposes of this paragraph, 'Georgia gross receipts' shall be the numerator of the gross
436 receipts factor provided in subsection (d) of Code Section 48-7-31.

437 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
438 programming content to the general public, subscribers, or to third parties via radio,
439 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
440 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
441 is limited to establishments classified under the ~~2007~~ 2002 North American Industry
442 Classification System Codes 515, broadcasting; 516, Internet publishing and
443 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
444 industries.

445 (3) 'Business enterprise' means any business or the headquarters of any such business
446 which is engaged in manufacturing, warehousing and distribution, processing,
447 telecommunications, broadcasting, tourism, ~~and~~ or research and development industries.
448 Such term shall not include retail businesses.

449 (4) 'Qualified research expenses' means qualified research expenses for any business
450 enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as
451 amended, except that all wages paid and all purchases of services and supplies must be
452 for research conducted within the State of Georgia.

453 (b) A tax credit is allowed a business enterprise which has qualified research expenses in
454 Georgia in a taxable year exceeding a base amount, provided that the business enterprise
455 for the same taxable year claims and is allowed a research credit under Section 41 of the
456 Internal Revenue Code of 1986, as amended.

457 (c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the
458 excess over the base amount referred to in said subsection.

459 (d) Any unused credit claimed under this Code section may be carried forward ten years
460 from the close of the taxable year in which the qualified research expenses were made. The
461 credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's
462 remaining Georgia net income tax liability after all other credits have been applied.

463 (e) In the first five years of a newly formed business enterprise's operations in this state,
464 where the amount of a credit claimed under this Code section exceeds a taxpayer's liability
465 for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's

466 quarterly or monthly payment under Code Section 48-7-103. Each employee whose
 467 employer receives credit against such taxpayer's quarterly or monthly payment under Code
 468 Section 48-7-103 shall receive a credit against his or her income tax liability under Code
 469 Section 48-7-20 for the corresponding taxable year for the full amount which would be
 470 credited against such liability prior to the application of the credit provided for in this
 471 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103
 472 and credits against liability under Code Section 48-7-20 established by this subsection shall
 473 not constitute income to the taxpayer."

474 **SECTION 5.**

475 Said article is further amended in Code Section 48-7-40.15, relating to alternative tax credits
 476 for base year port traffic, by revising paragraphs (1) and (5) of subsection (a) as follows:

477 "(1) 'Base year port traffic' means:

478 (A) For taxable years beginning prior to January 1, 2010, the total amount of net tons,
 479 containers, or twenty-foot equivalent units (TEU's); of product actually transported by
 480 way of a waterborne ship or vehicle through a port facility during the period from
 481 January 1, 1997, through December 31, 1997; provided, however, that in the event the
 482 total amount actually transported during such period was not at least 75 net tons, five
 483 containers, or ten twenty-foot equivalent units (TEU's), then 'base year port traffic'
 484 means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

485 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net
 486 tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported
 487 into this state or exported out of this state by way of a waterborne ship or vehicle
 488 through a port facility during the immediately preceding calendar year; provided,
 489 however, that in the event the total amount actually imported into this state or exported
 490 out of this state during such period was not at least 75 net tons, five containers, or ten
 491 twenty-foot equivalent units (TEU's), then 'base year port traffic' means 75 net tons,
 492 five containers, or ten twenty-foot equivalent units (TEU's)."

493 "(5) 'Port traffic' means:

494 (A) For taxable years beginning prior to January 1, 2010, the total amount of net tons,
 495 containers, or twenty-foot equivalent units (TEU's) of product transported by way of
 496 a waterborne ship or vehicle through a port facility.

497 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net
 498 tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this
 499 state or exported out of this state by way of a waterborne ship or vehicle through a port
 500 facility."

501 **SECTION 6.**

502 Said article is further amended by revising Code Section 48-7-40.17, relating to income tax
 503 credits for establishing or relocating headquarters into this state, to read as follows:

504 "48-7-40.17.

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

506 (1) 'Average wage' means the average wage of the county in which a full-time new
 507 quality job is located as reported in the most recently available annual issue of the
 508 Georgia Employment and Wages Averages Report of the Department of Labor.

509 (2) 'Full-time New quality job' means employment for an individual which:

510 (A) Is located at a headquarters in this state;

511 (B) Has a regular work week of 30 hours or more;

512 (C) Is not a job that is or was already located in Georgia regardless of which taxpayer
 513 the individual performed services for;

514 ~~(C)~~(D) Pays at or above 110 percent of the average wage of the county in which it is
 515 located; and:

516 ~~(i) In tier 1 counties, the average wage of the county in which it is located;~~

517 ~~(ii) In tier 2 counties, 105 percent of the average wage of the county in which it is~~
 518 ~~located;~~

519 ~~(iii) In tier 3 counties, 110 percent of the average wage of the county in which it is~~
 520 ~~located; and~~

521 ~~(iv) In tier 4 counties, 115 percent of the average wage of the county in which it is~~
 522 ~~located; and~~

523 ~~(D)~~(E) Has no predetermined end date.

524 (3) ~~'Headquarters' means the principal central administrative office of a taxpayer or a~~
 525 ~~subsidiary of the taxpayer.~~

526 (4) ~~'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.~~

527 (b) ~~A taxpayer establishing its headquarters in this state or relocating its headquarters into~~
 528 ~~this state which:~~

529 ~~(1) Within one year of the first date on which it withholds wages for employees at such~~
 530 ~~headquarters or the headquarters of a subsidiary, defined as the taxpayer's 'affiliated~~
 531 ~~group' within the meaning of Section 1504(a) of the Internal Revenue Code of 1986, as~~
 532 ~~amended, pursuant to the provisions of Code Section 48-7-101, employs at least 50~~
 533 ~~persons in new full-time jobs at such headquarters;~~

534 ~~(2) Within one year of the first date on which it withholds wages for employees at such~~
 535 ~~headquarters pursuant to the provisions of Code Section 48-7-101 incurs within the state~~
 536 ~~a minimum of \$1 million in construction, renovation, leasing, or other costs related to~~
 537 ~~such establishment or relocation; and~~

538 ~~(3) Elects not to receive the tax credits provided for by Code Sections 48-7-40,~~
 539 ~~48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such~~
 540 ~~jobs or such investment~~

541 ~~shall be allowed a credit for taxes imposed under this article equal to \$2,500.00 annually~~
 542 ~~per eligible new full-time job, or \$5,000.00 if the average wage of the new full-time jobs~~
 543 ~~created is 200 percent or more of the average wage of the county in which such jobs are~~
 544 ~~located per eligible new full-time job;~~

545 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this
 546 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,
 547 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such
 548 jobs and, within one year of the first date on which it or its subsidiary, defined as the
 549 taxpayer's 'affiliated group' within the meaning of Section 1504(a) of the Internal Revenue
 550 Code of 1986, as amended, pursuant to the provisions of Code Section 48-7-101, withholds
 551 wages for employees in this state and employs at least 50 persons in new quality jobs in
 552 this state shall be allowed a credit for taxes imposed under this article:

553 (1) Equal to \$2,500.00 annually per eligible new quality job where the job pays 110
 554 percent or more but less than 120 percent of the average wage of the county in which the
 555 new quality job is located;

556 (2) Equal to \$3,000.00 annually per eligible new quality job where the job pays 120
 557 percent or more but less than 150 percent of the average wage of the county in which the
 558 new quality job is located;

559 (3) Equal to \$4,000.00 annually per eligible new quality job where the job pays 150
 560 percent or more but less than 175 percent of the average wage of the county in which the
 561 new quality job is located;

562 (4) Equal to \$4,500.00 annually per eligible new quality job where the job pays 175
 563 percent or more but less than 200 percent of the average wage of the county in which the
 564 new quality job is located; and

565 (5) Equal to \$5,000.00 annually per eligible new quality job where the job pays 200
 566 percent or more of the average wage of the county in which the new quality job is
 567 located;

568 provided, however, that where the amount of such credit exceeds a taxpayer's liability for
 569 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's
 570 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one
 571 taxable year ~~\$2,500.00 annually per eligible new full-time job, or \$5,000.00 if the average~~
 572 ~~wage of the new full-time jobs created is 200 percent or more of the average wage of the~~
 573 ~~county in which such jobs are located for each new full-time job~~ the credit amounts in
 574 paragraphs (1) through (5) of this subsection for each new quality job when aggregated

575 with the credit applied against taxes under this article. Each employee whose employer
576 receives credit against such taxpayer's quarterly or monthly payment under Code Section
577 48-7-103 shall receive a credit against his or her income tax liability under Code Section
578 48-7-20 for the corresponding taxable year for the full amount which would be credited
579 against such liability prior to the application of the credit provided for in this subsection.
580 Credits against quarterly or monthly payments under Code Section 48-7-103 and credits
581 against liability under Code Section 48-7-20 established by this subsection shall not
582 constitute income to the taxpayer. For each new ~~full-time~~ quality job created, the credit
583 established by this subsection may be taken for the first taxable year in which the new
584 ~~full-time~~ quality job is created and for the four immediately succeeding taxable years;
585 provided, however, that such new ~~full-time~~ quality jobs must be created within seven years
586 from the close of the taxable year in which the taxpayer first becomes eligible for such
587 credit. Credit shall not be allowed during a year if the net employment increase falls below
588 the 50 new ~~full-time~~ quality jobs required. Any credit received for years prior to the year
589 in which the net employment increase falls below the 50 new ~~full-time~~ quality jobs
590 required shall not be affected except as provided in subsection (f) of this Code section. The
591 commissioner shall adjust the credit allowed each year for net new employment
592 fluctuations above the 50 new ~~full-time~~ quality jobs required.

593 (c) The number of new ~~full-time~~ quality jobs to which this Code section shall be applicable
594 shall be determined by comparing the monthly average of ~~full-time~~ new quality jobs
595 subject to Georgia income tax withholding for the taxable year with the corresponding
596 average for the prior taxable year.

597 (d) Any credit claimed under this Code section but not used in any taxable year may be
598 carried forward for ten years from the close of the taxable year in which the ~~qualified new~~
599 quality jobs were established.

600 (e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section
601 shall be claimed within one year of the date the original return was filed or within one year
602 of the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,
603 including any approved extensions.

604 (f) If the taxpayer has failed to maintain a new quality job in each of the four subsequent
605 taxable years, the taxpayer shall forfeit the right to 20 percent of the credit claimed in each
606 prior year for each year that the new quality job is not maintained. For each year such new
607 quality job is not maintained, a taxpayer that forfeits such right is therefore liable for 20
608 percent of all past taxes imposed by this article and all past payments under Code
609 Section 48-7-103 that were foregone by the state as a result of the credits provided by this
610 Code section, plus interest at the rate established by Code Section 48-2-40 computed from
611 the date such taxes or payments would have been due if the credits had not been taken. The

612 taxpayer shall file amended income tax and withholding tax returns for all affected periods
613 that recalculate those liabilities without regard to the forfeited credits and shall pay any
614 additional amounts shown on such returns, with interest as provided herein.

615 (g) Unless more time is allowed by Code Section 48-2-49 or 48-7-82, the commissioner
616 may make any assessment attributable to the forfeiture of credits claimed under this Code
617 section for the periods covered by any amended returns filed by a taxpayer pursuant to
618 subsection (f) of this Code section within one year of the date such returns were filed. If
619 the taxpayer fails to file the amended return required by subsection (f) of this Code section,
620 the commissioner may assess additional taxes or other amounts attributable to the forfeiture
621 of credits claimed under this Code section at any time.

622 (h) Any tax credit under this Code section shall be claimed within one year of the date the
623 original return was filed or by the date such return was due, including any approved
624 extensions, whichever is earlier.

625 ~~(e)~~(i) The commissioner shall promulgate any rules and regulations necessary to
626 implement and administer this Code section."

627 **SECTION 7.**

628 This Act shall become effective upon its approval by the Governor or upon its becoming law
629 without such approval and shall be applicable for all taxable years beginning on or after
630 January 1, 2009.

631 **SECTION 8.**

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