

The Senate Finance Committee offered the following substitute to HB 439:

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 change
7 certain provisions regarding expenses from transactions with certain related persons or
8 members; to provide an effective date; to provide for applicability; to repeal conflicting laws;
9 and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

16 "48-7-40.

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

18 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
19 programming content to the general public, subscribers, or to third parties via radio,
20 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
21 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
22 is limited to establishments classified under the 2007 North American Industry
23 Classification System Codes 515, broadcasting; ~~516~~ 519, Internet publishing and
24 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
25 industries.

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

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

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

41 (b)(1) Not later than December 31 of each year, using the most current data available
 42 from the Department of Labor and the United States Department of Commerce, the
 43 commissioner of community affairs shall rank and designate as less developed areas all
 44 159 counties in this state using a combination of the following equally weighted factors:

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

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

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

62 (c.1) The commissioner of community affairs shall be authorized to include in the tier 1
63 designation provided for in subsection (b) of this Code section any tier 2 county which, in
64 the opinion of the commissioner of community affairs, undergoes a sudden and severe
65 period of economic distress caused by the closing of one or more business enterprises
66 located in such county. No designation made pursuant to this subsection shall operate to
67 displace or remove any other county previously designated as a tier 1 county.

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

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

99 enterprise is engaged in a competitive project located in a county designated by the
100 commissioner of community affairs as a tier 2 county and where the amount of the credit
101 provided in this paragraph exceeds such business enterprise's liability for taxes imposed
102 under this article in a taxable year, or where a business enterprise is engaged in a
103 competitive project located in a county designated by the commissioner of community
104 affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this
105 paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed
106 under this article in a taxable year, the excess may be taken as a credit against such
107 business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not
108 to exceed in any one taxable year \$2,500.00 for each new full-time employee job when
109 aggregated with the credit applied against taxes under this article. Each employee whose
110 employer receives credit against such business enterprise's quarterly or monthly payment
111 under Code Section 48-7-103 shall receive credit against his or her income tax liability
112 under Code Section 48-7-20 for the corresponding taxable year for the full amount which
113 would be credited against such liability prior to the application of the credit provided for
114 in this paragraph. Credits against quarterly or monthly payments under Code Section 48-
115 7-103 and credits against liability under Code Section 48-7-20 established by this
116 paragraph shall not constitute income to the taxpayer. The number of new full-time jobs
117 shall be determined by comparing the monthly average number of full-time employees
118 subject to Georgia income tax withholding for the taxable year with the corresponding
119 period of the prior taxable year. In tier 1 counties, those business enterprises that increase
120 employment by five or more shall be eligible for the credit. In tier 2 counties, only those
121 business enterprises that increase employment by ten or more shall be eligible for the
122 credit. In tier 3 counties, only those business enterprises that increase employment by 15
123 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises
124 that increase employment by 25 or more shall be eligible for the credit. The average
125 wage of the new jobs created must be above the average wage of the county that has the
126 lowest average wage of any county in the state to qualify as reported in the most recently
127 available annual issue of the Georgia Employment and Wages Averages Report of the
128 Department of Labor. To qualify for a credit under this paragraph, the employer must
129 make health insurance coverage available to the employee filling the new full-time job;
130 provided, however, that nothing in this paragraph shall be construed to require the
131 employer to pay for all or any part of health insurance coverage for such an employee in
132 order to claim the credit provided for in this paragraph if such employer does not pay for
133 all or any part of health insurance coverage for other employees. Credit shall not be
134 allowed during a year if the net employment increase falls below the number required in
135 such tier. ~~Any credit received for years prior to the year in which the net employment~~

136 ~~increase falls below the number required in such tier shall not be affected.~~ In any year
137 in which the net employment increase falls below the number required in such tier, the
138 taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that
139 the net employment increase falls below the number required in such tier, a taxpayer that
140 forfeits such right is therefore liable for all past taxes imposed by this article for that
141 taxable year and all past payments under Code Section 48-7-103 for that taxable year that
142 were foregone by the state as a result of the credits provided by this Code section;
143 provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture. The
144 state revenue commissioner shall adjust the credit allowed each year for net new
145 employment fluctuations above the minimum level of the number required 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) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section
 211 shall be claimed within one year of the earlier of the date the original tax return was filed
 212 or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,
 213 including any approved extensions.

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

217 (l) Taxpayers that initially claimed the credit under this Code section for any taxable year
 218 beginning before January 1, 2009, shall be governed, for purposes of all such credits
 219 claimed as well as any credits claimed in subsequent taxable years related to such initial
 220 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
 221 made such initial claim."

222 SECTION 2.

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

225 "48-7-40.1.

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

227 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
 228 programming content to the general public, subscribers, or to third parties via radio,
 229 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
 230 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
 231 is limited to establishments classified under the 2007 North American Industry
 232 Classification System Codes 515, broadcasting; ~~516~~ 519, Internet publishing and
 233 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
 234 industries.

235 (2) 'Business enterprise' means any business or the headquarters of any such business
 236 which is engaged in manufacturing, warehousing and distribution, processing,
 237 telecommunications, broadcasting, tourism, ~~and~~ research and development industries, and
 238 services for the elderly and persons with disabilities. Such term shall not include retail
 239 businesses.

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

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

- 246 (2) Lowest per capita income for the most recent 36 month period; and
247 (3) Highest percentage of residents whose income is below the poverty level according
248 to the most recent data available.

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

251 (1) Any area comprised of ten or more contiguous census tracts which, in the opinion of
252 the commissioner of community affairs, undergoes a sudden and severe period of
253 economic distress caused by the closing of one or more business enterprises located in
254 such area;

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

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

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

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

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

280 (e) Business enterprises in areas designated by the commissioner of community affairs as
281 less developed areas shall be allowed a job tax credit for taxes imposed under this article
282 equal to \$3,500.00 annually per eligible new full-time employee job for five years

283 beginning with ~~years two through six after the creation of such job~~ the first taxable year in
284 which the new full-time employee job is created and for the four immediately succeeding
285 taxable years; provided, however, that where the amount of such credit exceeds a business
286 enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit
287 against such business enterprise's quarterly or monthly payment under Code Section
288 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time
289 employee job when aggregated with the credit applied against taxes under this article.
290 Each employee whose employer receives credit against such business enterprise's quarterly
291 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
292 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
293 full amount which would be credited against such liability prior to the application of the
294 credit provided for in this subsection. Credits against quarterly or monthly payments under
295 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
296 by this subsection shall not constitute income to the taxpayer. The number of new full-time
297 jobs shall be determined by comparing the monthly average number of full-time employees
298 subject to Georgia income tax withholding for the taxable year with the corresponding
299 period of the prior taxable year. Only those business enterprises that increase employment
300 by five or more in a less developed area shall be eligible for the credit; provided, however,
301 that within areas of pervasive poverty as designated under paragraphs (2) and (4) of
302 subsection (c) of this Code section businesses shall only have to increase employment by
303 two or more jobs in order to be eligible for the credit, provided that, if a business only
304 increases employment by two jobs, the persons hired for such jobs shall not be married to
305 one another. The average wage of the new jobs created must be above the average wage
306 of the county that has the lowest wage of any county in the state to qualify as reported in
307 the most recently available annual issue of the Georgia Employment and Wages Averages
308 Report of the Department of Labor. To qualify for a credit under this subsection, the
309 employer must make health insurance coverage available to the employee filling the new
310 full-time job; provided, however, that nothing in this subsection shall be construed to
311 require the employer to pay for all or any part of health insurance coverage for such an
312 employee in order to claim the credit provided for in this subsection if such employer does
313 not pay for all or any part of health insurance coverage for other employees. Credit shall
314 not be allowed during a year if the net employment increase falls below five or two, as
315 applicable. ~~Any credit received for years prior to the year in which the net employment~~
316 ~~increase falls below five or two shall not be affected.~~ In any year in which the net
317 employment increase falls below five or two, as applicable, the taxpayer shall forfeit the
318 right to the credit claimed for that taxable year. For the year that the net employment
319 increase falls below five or two, as applicable, a taxpayer that forfeits such right is

320 therefore liable for all past taxes imposed by this article for that taxable year and all past
321 payments under Code Section 48-7-103 for that taxable year that were foregone by the state
322 as a result of the credits provided by this Code section; provided, however that Code
323 Section 48-2-40 shall not apply to any such forfeiture. The state revenue commissioner
324 shall adjust the credit allowed each year for net new employment fluctuations above the
325 minimum level of five or two.

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

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

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

346 (i) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section
347 shall be claimed within one year of the earlier of the date the original tax return was filed
348 or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,
349 including any approved extensions.

350 (j) Taxpayers that initially claimed the credit under this Code section for any taxable year
351 beginning before January 1, 2009, shall be governed, for purposes of all such credits
352 claimed as well as any credits claimed in subsequent taxable years related to such initial
353 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
354 made such initial claim."

SECTION 3.

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

"48-7-40.5.

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

(1) 'Approved retraining' means employer provided or employer sponsored retraining that meets the following conditions:

(A) It enhances the functional skills of employees otherwise unable to function effectively on the job due to skill deficiencies or who would otherwise be displaced because such skill deficiencies would inhibit their utilization of new technology; provided, however, that approved retraining shall not include any retraining on commercially, mass produced software related to word processing, data base management, presentations, spreadsheets, e-mail, personal information management, or computer operating systems except a retraining tax credit shall be allowable for those providing support or training on such software;

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

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

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

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

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

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

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

(b) A tax credit shall be granted to an employer who provides or sponsors an one or more approved retraining program programs in a taxable year. The total amount of the tax credit allowed per full-time employee ~~amount of the tax credit~~ shall be equal to one-half of the

392 costs of retraining per full-time employee, or \$500.00 per full-time employee, whichever
 393 is less, for each employee who has successfully completed an approved retraining program;
 394 provided, however, that in no event shall the amount of the tax credit authorized under this
 395 subsection exceed \$1,250.00 per year per full-time employee who has successfully
 396 completed more than one approved retraining program. No employer ~~may~~ shall receive a
 397 credit if the employer requires that the employee reimburse or pay the employer for the cost
 398 of retraining.

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

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

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

425 **SECTION 4.**

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

428 "48-7-40.12.

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

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

438 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
439 programming content to the general public, subscribers, or to third parties via radio,
440 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
441 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
442 is limited to establishments classified under the 2007 North American Industry
443 Classification System Codes 515, broadcasting; ~~516~~ 519, Internet publishing and
444 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
445 industries.

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

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

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

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

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

465 (e) In the first five years of a newly formed business enterprise's operations in this state,
 466 where the amount of a credit claimed under this Code section exceeds 50 percent of a
 467 taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit
 468 against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each
 469 employee whose employer receives credit against such taxpayer's quarterly or monthly
 470 payment under Code Section 48-7-103 shall receive a credit against his or her income tax
 471 liability under Code Section 48-7-20 for the corresponding taxable year for the full amount
 472 which would be credited against such liability prior to the application of the credit provided
 473 for in this subsection. Credits against quarterly or monthly payments under Code Section
 474 48-7-103 and credits against liability under Code Section 48-7-20 established by this
 475 subsection shall not constitute income to the taxpayer."

476 SECTION 5.

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

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

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

487 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net
 488 tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported
 489 into this state or exported out of this state by way of a waterborne ship or vehicle
 490 through a port facility during the second preceding 12 month period; provided,
 491 however, that in the event the total amount actually imported into this state or exported
 492 out of this state during such period was not at least 75 net tons, five containers, or ten
 493 twenty-foot equivalent units (TEU's), then 'base year port traffic' means 75 net tons,
 494 five containers, or ten twenty-foot equivalent units (TEU's)."

495 "(5) 'Port traffic' means:

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

499 (B) For all taxable years beginning on or after January 1, 2010, the total amount of net
 500 tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this

501 state or exported out of this state by way of a waterborne ship or vehicle through a port
 502 facility."

503 **SECTION 6.**

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

506 "48-7-40.17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

540 ~~(3) Elects not to receive the tax credits provided for by Code Sections 48-7-40,~~
 541 ~~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~~
 542 ~~jobs or such investment~~

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

547 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this
 548 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,
 549 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
 550 jobs and investments created by, arising from, related to, or connected in any way with the
 551 same project and, within one year of the first date on which the taxpayer pursuant to the
 552 provisions of Code Section 48-7-101 withholds wages for employees in this state and
 553 employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for
 554 taxes imposed under this article:

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

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

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

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

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

570 provided, however, that where the amount of such credit exceeds a taxpayer's liability for
 571 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's
 572 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one

573 taxable year ~~\$2,500.00 annually per eligible new full-time job, or \$5,000.00 if the average~~
574 ~~wage of the new full-time jobs created is 200 percent or more of the average wage of the~~
575 ~~county in which such jobs are located for each new full-time job~~ the credit amounts in
576 paragraphs (1) through (5) of this subsection for each new quality job when aggregated
577 with the credit applied against taxes under this article. Each employee whose employer
578 receives credit against such taxpayer's quarterly or monthly payment under Code Section
579 48-7-103 shall receive a credit against his or her income tax liability under Code Section
580 48-7-20 for the corresponding taxable year for the full amount which would be credited
581 against such liability prior to the application of the credit provided for in this subsection.
582 Credits against quarterly or monthly payments under Code Section 48-7-103 and credits
583 against liability under Code Section 48-7-20 established by this subsection shall not
584 constitute income to the taxpayer. For each new full-time quality job created, the credit
585 established by this subsection may be taken for the first taxable year in which the new
586 full-time quality job is created and for the four immediately succeeding taxable years;
587 provided, however, that such new full-time quality jobs must be created within seven years
588 from the close of the taxable year in which the taxpayer first becomes eligible for such
589 credit. Credit shall not be allowed during a year if the net employment increase falls below
590 the 50 new full-time quality jobs required. Any credit received for years prior to the year
591 in which the net employment increase falls below the 50 new full-time quality jobs
592 required shall not be affected except as provided in subsection (f) of this Code section. The
593 commissioner shall adjust the credit allowed each year for net new employment
594 fluctuations above the 50 new full-time quality jobs required.

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

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

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

606 (f) If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer
607 shall forfeit the right to the credit claimed for such job in that year. For each year such new
608 quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all
609 past taxes imposed by this article for that taxable year and all past payments under Code

610 Section 48-7-103 for that taxable year that were foregone by the state as a result of the
 611 credits provided by this Code section; provided, however, that Code Section 48-2-40 shall
 612 not apply to any such forfeiture.

613 (g) Taxpayers that initially claimed the credit under this Code section for any taxable year
 614 beginning before January 1, 2009, shall be governed, for purposes of all such credits
 615 claimed as well as any credits claimed in subsequent taxable years related to such initial
 616 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
 617 made such initial claim.

618 ~~(e)~~(h) The commissioner shall promulgate any rules and regulations necessary to
 619 implement and administer this Code section."

620 **SECTION 7.**

621 Said article is further amended in subsection (b) of Code Section 48-7-21, relating to taxation
 622 of corporations, by adding a new paragraph to read as follows:

623 "(16)(A) As used in this paragraph, the term 'related member' shall have the same
 624 meaning as provided in Code Section 48-7-28.3.

625 (B) There shall be subtracted from taxable income, before the income is apportioned
 626 or allocated as provided by Code Section 48-7-31, any amount received or accrued
 627 from a related member during the taxable year to the extent such amount corresponds
 628 to expenses or costs the related member was required to add back and thereby include
 629 in its taxable income prior to the apportionment and allocation of such income pursuant
 630 to paragraph (10) of this subsection."

631 **SECTION 8.**

632 Said article is further amended in Code Section 48-7-28.3, relating to expenses from
 633 transactions with related members, by revising paragraph (2) of subsection (d) as follows:

634 "(2) The amount of the adjustment required by subsection (b) of this Code section shall
 635 be reduced, but not below zero, to the extent the corresponding interest expenses and
 636 costs and intangible expenses and costs:

637 (A) Are received as income in an arm's length transaction by the related member;
 638 provided, however, that the subtraction from taxable income permitted by paragraph
 639 (16) of subsection (b) of Code Section 48-7-21 shall not be taken into account for
 640 purposes of determining whether such expenses and costs are received as income by the
 641 related member; and

642 (B) Such income is allocated or apportioned, or both, to and taxed by Georgia or
 643 another state that imposes a tax on or measured by the income of the related member."

644

SECTION 9.

645

This Act shall become effective upon its approval by the Governor or upon its becoming law

646

without such approval and shall be applicable for all taxable years beginning on or after

647

January 1, 2009.

648

SECTION 10.

649

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