

House Bill 438 (AS PASSED HOUSE AND SENATE)

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

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to imposition, rate, computation, and exemptions regarding income tax, so as to
3 provide for the comprehensive revision of the income tax credits for qualified jobs,
4 investment, investment property, and projects; to provide for procedures, conditions, and
5 limitations; to provide for an effective date; to provide for applicability; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

13 "48-7-40.24.

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

15 (1) 'Business enterprise' means any ~~business or the headquarters of any such business~~
16 ~~which is engaged in manufacturing.~~ Such enterprise or organization, whether
17 corporation, partnership, limited liability company, proprietorship, association, trust,
18 business trust, real estate trust, or other form of organization which is registered and
19 authorized to use the federal employment verification system known as 'E-Verify' or any
20 successor federal employment verification system and is engaged in or carrying on any
21 business activities within this state, except that such term shall not include retail
22 businesses.

23 (2) 'Eligible full-time employee' means an individual holding a full-time employee job
24 created by a qualified project who:

25 (A) Possesses a valid Georgia driver's license or identification card issued by the
26 Georgia Department of Driver Services; or

27 (B) Submits a notarized affidavit swearing to be a United States citizen or lawfully
 28 present alien authorized to work in the United States.

29 (3) 'Force majeure' means any:

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

31 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail,
 32 tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

33 (C) Acts of war (whether or not declared), carnage, blockade, or embargo;

34 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot,
 35 public disorder, or violent demonstrations;

36 (E) Strikes or other labor disturbances; or

37 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or
 38 compulsory acquisition of the site or sites of a qualified project or any part thereof;

39 but such term shall not include any event or circumstance that could have been prevented,
 40 overcome, or remedied in whole or in part by the taxpayer through the exercise of
 41 reasonable diligence and due care, nor shall such term include the unavailability of funds.

42 (4) 'Full-time employee job' and 'full-time job' means employment of an individual
 43 which:

44 (A) Is located in this state at the site or sites of a qualified project or the ~~manufacturing~~
 45 facility or facilities resulting therefrom;

46 (B) Involves a regular work week of 35 hours or more;

47 (C) Has no predetermined end date; and

48 (D) Pays at or above the average wage of the county with the lowest average wage in
 49 the state, as reported in the most recently available annual issue of the Georgia
 50 Employment and Wages Averages Report of the Department of Labor.

51 For purposes of this paragraph, leased employees will be considered employees of the
 52 company using their services and such persons may be counted in determining the
 53 company's job tax credits under this Code section if their employment otherwise meets
 54 the definition of full-time job contained herein. In addition, an individual's employment
 55 shall not be deemed to have a predetermined end date solely by virtue of a mandatory
 56 retirement age set forth in a company policy of general application. The employment of
 57 any individual in a bona fide executive, administrative, or professional capacity, within
 58 the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended,
 59 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed
 60 to have a predetermined end date solely by virtue of the fact that such employment is
 61 pursuant to a fixed-term contract, provided that such contract is for a term of not less than
 62 one year.

63 (5) ~~'Investment requirement' means the requirement that by the close of the sixth taxable~~
 64 ~~year following the withholding start date a minimum of \$450 million in qualified~~
 65 ~~investment property will have been purchased or acquired by the business enterprise to~~
 66 ~~be used with respect to a qualified project.~~

67 ~~(6)~~ (6) 'Job creation requirement' means the requirement that no later than the close of the
 68 sixth taxable year following the withholding ~~start date~~ start date, the business enterprise
 69 will have a minimum of 1,800 eligible full-time employees.

70 ~~(7)~~(6) 'Job maintenance requirement' means the requirement that, with respect to each
 71 year in the recapture period, the monthly average number of eligible full-time employees
 72 employed by the business enterprise, determined as prescribed by subsection (1) of this
 73 Code section, must equal or exceed 1,800.

74 (7) 'Payroll maintenance requirement' means the requirement that, with respect to each
 75 year in the recapture period, the total annual Georgia W-2 reported payroll with respect
 76 to a qualified project must equal or exceed \$150 million.

77 (8) 'Payroll requirement' means the requirement that no later than the close of the sixth
 78 taxable year following the withholding start date, the business enterprise will have a
 79 minimum of \$150 million in total annual Georgia W-2 reported payroll with respect to
 80 a qualified project.

81 ~~(8)~~(9) 'Qualified investment property' means all real and personal property purchased or
 82 acquired by a taxpayer for use in a qualified project, including, but not limited to,
 83 amounts expended on land acquisition, improvements, buildings, building improvements,
 84 and ~~machinery and equipment~~ any personal property to be used in the ~~manufacturing~~
 85 facility or facilities.

86 (10) 'Qualified investment property requirement' means the requirement that by the close
 87 of the sixth taxable year following the withholding start date a minimum of \$450 million
 88 in qualified investment property will have been purchased or acquired by the business
 89 enterprise to be used with respect to a qualified project.

90 ~~(9)~~(11) 'Qualified project' means a project which meets the job creation requirement and
 91 either the payroll requirement or qualified investment property requirement. If the
 92 taxpayer selects the qualified investment property requirement as one of the conditions
 93 for its project, the property shall involve the construction of one or more new facilities
 94 ~~the construction of a new manufacturing facility~~ in this state or the expansion of an one
 95 or more existing ~~manufacturing facility~~ facilities in this state. For purposes of this
 96 paragraph, the term '~~manufacturing facility~~ facilities' means all facilities comprising a
 97 single ~~facility, including contiguous~~ project, including noncontiguous parcels of land,
 98 improvements to such land, buildings, building improvements, and any ~~machinery or~~
 99 equipment that is used in the process of making, fabricating, constructing, forming, or

100 ~~assembling a product from components or from raw, unfinished, or semifinished~~
 101 ~~materials, and any support facility. For purposes of this paragraph, the term 'support~~
 102 ~~facility' means any warehouses, distribution centers, storage facilities, research and~~
 103 ~~development facilities, laboratories, repair and maintenance facilities, corporate offices,~~
 104 ~~sales or marketing offices, computer operations facilities, or administrative offices, that~~
 105 ~~are contiguous to the manufacturing facility that results from a qualified project,~~
 106 ~~constructed or expanded as part of the same such project, and designed primarily for~~
 107 ~~activities supporting the manufacturing operations at such manufacturing facility~~ personal
 108 property that is used in the facility or facilities.

109 ~~(10)~~(12) 'Recapture period' means the period of five consecutive taxable years that
 110 commences after the first taxable year in which a business enterprise has satisfied ~~both~~
 111 ~~the investment requirement and the job creation requirement~~ and either the payroll
 112 requirement or the qualified investment property requirement, as selected by the taxpayer.

113 ~~(11)~~(13) 'Withholding ~~start-date~~ start date' means the date on which the business
 114 enterprise begins to withhold Georgia income tax from the wages of its employees
 115 located at the site or sites of a qualified project.

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

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

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

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

125 (C) Certifies that during the recapture period applicable to such project the business
 126 enterprise will meet the job maintenance requirement and, if applicable, the payroll
 127 maintenance requirement prescribed by this Code section;

128 (2) Following the commissioner's referral of the application to a panel composed of the
 129 commissioner of community affairs, the commissioner of economic development, and the
 130 director of the Office of Planning and Budget, said panel, after reviewing the application,
 131 certifies that the new or expanded facility or ~~expansion~~ facilities will have a significant
 132 beneficial economic effect on the region for which ~~it is~~ they are planned. The panel shall
 133 make its determination within 30 days after receipt from the commissioner of the
 134 taxpayer's application and any necessary supporting documentation. Although the panel's
 135 certification may be based upon other criteria, a project that meets the minimum
 136 employment and job creation requirement and either the payroll requirement or qualified

137 investment ~~requirements~~ property requirement, as applicable, specified in paragraph (1)
138 of this subsection will have a significant beneficial economic effect on the region for
139 which it is planned if one of the following additional criteria is met:

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

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

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

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

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

150 (c) Any lease for a period of five years or longer of any real or personal property used in
151 a new or expanded ~~manufacturing~~ facility or facilities which would otherwise constitute
152 qualified investment property shall be treated as the purchase or acquisition thereof by the
153 lessee. The taxpayer may treat the full value of the leased property as qualified investment
154 property in the year in which the lease becomes binding on the lessor and the taxpayer.

155 (d) A business enterprise whose application is approved shall be allowed a tax credit for
156 taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time
157 employee job for five years beginning with the year in which such job is created through
158 year five after such creation; provided, however, that where the amount of such credit
159 exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be
160 taken as a credit against such business enterprise's quarterly or monthly payment under
161 Code Section 48-7-103. The taxpayer may file an election with the commissioner to take
162 such credit against quarterly or monthly payments under Code Section 48-7-103 that
163 become due before the due date of the income tax return on which such credit may be
164 claimed. In the event of such an election, the commissioner shall confirm with the taxpayer
165 a date, which shall not be later than 30 days after receipt of the taxpayer's election, when
166 the taxpayer may begin to take the credit against such quarterly or monthly payments. For
167 any one taxable year the amounts taken as a credit against taxes imposed under this article
168 and against the business enterprise's quarterly or monthly payments under Code Section
169 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job.
170 Each employee whose employer receives credit against such business enterprise's quarterly
171 or monthly payment under Code Section 48-7-103 shall receive a credit against his or her
172 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
173 full amount which would be credited against such liability prior to the application of the

174 credit provided for in this subsection. Credits against quarterly or monthly payments under
 175 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
 176 by this subsection shall not constitute income to the taxpayer. To qualify for a credit under
 177 this subsection, the employer must make health insurance coverage available to the
 178 employee filling the new full-time job; provided, however, that nothing in this subsection
 179 shall be construed to require the employer to pay for all or any part of health insurance
 180 coverage for such an employee in order to claim the credit provided for in this subsection
 181 if such employer does not pay for all or any part of health insurance coverage for other
 182 employees.

183 (e) The number of new full-time jobs to which this Code section shall be applicable shall
 184 be determined ~~each month by comparing the number of full-time employees subject to~~
 185 ~~Georgia income tax withholding as of the last payroll period of such month or as the~~
 186 ~~payroll period during each month used for the purpose of reports to the Department of~~
 187 ~~Labor with the number of such employees for the previous month~~ by comparing the
 188 monthly average number of eligible full-time employees subject to Georgia income tax
 189 withholding for the taxable year with the corresponding period for the prior taxable year.

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

193 (g) To qualify for the credit provided by this Code section a new full-time job must be
 194 created by the close of the seventh taxable year following the business enterprise's
 195 withholding ~~start-date~~ start date. In no event may a credit be claimed under this Code
 196 section for more than 3,300 new full-time employee jobs created by any one project;
 197 provided, however, that the taxpayer may claim the credits provided by Code Sections
 198 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and
 199 conditions thereof.

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

203 (i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to
 204 and takes credits provided by this Code section ~~with respect to~~ for a qualified project shall
 205 not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1,
 206 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10,
 207 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 ~~with respect to~~ for jobs, investments,
 208 child care, or ground-water usage shifts created by, arising from, related to, or connected
 209 in any way with the same project. Provided such taxpayer otherwise qualifies, such ~~Such~~
 210 taxpayer may take any credit authorized by Code Section 48-7-40.5 for the costs of

211 retraining an employee located at the site or sites of such project or the ~~manufacturing~~
 212 facility or facilities resulting therefrom, but only ~~with respect to~~ for costs incurred more
 213 than five years after the date the ~~manufacturing~~ facility or facilities first ~~becomes~~ become
 214 operational.

215 (j) Except under those circumstances described in subsection (k) of this Code section, the
 216 taxpayer shall, not more than 60 days after the close of the sixth taxable year following its
 217 withholding ~~start-date~~ start date, file a report with the commissioner concerning the number
 218 of eligible full-time employee jobs created by such project; the wages of such jobs; the
 219 qualified investment property purchased or acquired by the taxpayer for the project; and
 220 any other information that the commissioner may reasonably require in order to determine
 221 whether the taxpayer has met ~~both the job creation requirement and either the payroll~~
 222 requirement or the qualified investment property requirement, as selected by the taxpayer,
 223 ~~for and job creation requirement with respect to~~ such project. If the taxpayer has failed to
 224 meet ~~either such~~ any applicable job creation, payroll, or qualified investment property
 225 requirement, the taxpayer will forfeit the right to claim any credits provided by this Code
 226 section for such project. A taxpayer that forfeits the right to claim such credits is liable for
 227 all past taxes imposed by this article and all past payments under Code Section 48-7-103
 228 that were foregone by the state as a result of the credits, plus interest at the rate established
 229 by Code Section 48-2-40 computed from the date such taxes or payments would have been
 230 due if the credits had not been taken. No later than 90 days after notification from the
 231 commissioner that ~~either the investment requirement or the job creation~~ any applicable job
 232 creation, payroll, or qualified investment property requirement was not met, the taxpayer
 233 shall file amended income tax and withholding tax returns for all affected periods that
 234 recalculate those liabilities without regard to the forfeited credits and shall pay any
 235 additional amounts shown on such returns, with interest as provided herein. On such
 236 amended returns the taxpayer may claim any credit to which it would have been entitled
 237 under this article but for having taken the credit provided by this Code section.

238 (k) If the recapture period applicable to a qualified project begins with or before the sixth
 239 taxable year following the taxpayer's withholding ~~start-date~~ start date, the taxpayer shall,
 240 not later than 60 days after the close of the taxable year immediately preceding the
 241 recapture period, file a report with the commissioner concerning the number of eligible
 242 full-time employee jobs created by such project; the wages of such jobs; the qualified
 243 investment property purchased or acquired by the taxpayer for the project; and any other
 244 information that the commissioner may reasonably require in order to verify that the
 245 taxpayer met ~~both the job creation requirement and either the payroll requirement or the~~
 246 qualified investment property requirement and job creation requirement in such preceding
 247 year.

248 (l) Not more than 60 days after the close of each taxable year within the recapture period,
249 the taxpayer shall file a report, using such form and providing such information as the
250 commissioner may reasonably require, concerning whether it met the job maintenance
251 requirement and, if applicable, the payroll maintenance requirement for such year. For
252 purposes of this subsection, whether such job maintenance requirement has been satisfied
253 shall be determined by comparing the monthly average number of eligible full-time
254 employees subject to Georgia income tax withholding for the taxable year with 1,800. For
255 purposes of this subsection, whether such payroll maintenance requirement has been
256 satisfied shall be determined by comparing the total annual Georgia W-2 reported payroll
257 with respect to a qualified project for the taxable year with \$150 million. If the taxpayer
258 has failed to meet the job maintenance requirement or payroll maintenance requirement,
259 or both, for such year, the taxpayer will forfeit the right to 20 percent of all credits provided
260 by this Code section for such project. A taxpayer that forfeits such right is liable for 20
261 percent of all past taxes imposed by this article and all past payments under Code Section
262 48-7-103 that were foregone by the state as a result of the credits provided by this Code
263 section, plus interest at the rate established by Code Section 48-2-40 computed from the
264 date such taxes or payments would have been due if the credits had not been taken. No
265 later than 90 days after notification by the commissioner that the taxpayer has failed to
266 meet the job maintenance requirement or payroll maintenance requirement, or both, for
267 such year, the taxpayer shall file amended income tax and withholding tax returns for all
268 affected periods that recalculate those liabilities without regard to the forfeited credits and
269 shall pay any additional amounts shown on such returns, with interest as provided herein.

270 (m) A taxpayer who fails to meet the job maintenance requirement or payroll maintenance
271 requirement, or both, for any taxable year within the recapture period because of force
272 majeure may petition the commissioner for relief from such requirement. Such a petition
273 must be made with and at the same time as the report required by subsection (l) of this
274 Code section. If the commissioner determines that force majeure materially affected the
275 taxpayer's ability to meet the job maintenance requirement or payroll maintenance
276 requirement, or both, for such year, but that the portion of the year so affected was six
277 months or less, for purposes of the job maintenance requirement the commissioner shall
278 calculate the taxpayer's monthly average number of eligible full-time employees for
279 purposes of subsection (l) of this Code section by disregarding the affected months and for
280 purposes of the payroll maintenance requirement the commissioner shall annualize the total
281 Georgia W-2 reported payroll with respect to a qualified project for the portion of the year
282 not so affected. If the commissioner determines that the affected portion of the year was
283 more than six months, the taxable year shall be disregarded in its entirety for purposes of

284 the job maintenance requirement or payroll maintenance requirement, or both, and the
285 recapture period applicable to the qualified project shall be extended for an additional year.
286 (n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the
287 commissioner may make any assessment attributable to the forfeiture of credits claimed
288 under this Code section for the periods covered by any amended returns filed by a taxpayer
289 pursuant to subsection (j) or (l) of this Code section within one year from the date such
290 returns are filed. If the taxpayer fails to file the reports or any amended return required by
291 subsection (j) or (l) of this Code Section, the commissioner may assess additional tax or
292 other amounts attributable to the forfeiture of credits claimed under this Code section at
293 any time.

294 (o) Projects certified by the panel pursuant to paragraph (2) of subsection (b) of this Code
295 section before January 1, 2009, shall be governed by this Code section as it was in effect
296 for the taxable year the project was certified.

297 (p) The commissioner shall promulgate any rules and regulations necessary to implement
298 and administer this Code section."

299 **SECTION 2.**

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

303 **SECTION 3.**

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