

House Bill 439 (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 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 North American Industry
 22 Classification System Codes 515, broadcasting; ~~516~~ 519, 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, and

28 services for the elderly and persons with disabilities. Such term shall not include retail
29 businesses.

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

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

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

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

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

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

61 (c.1) The commissioner of community affairs shall be authorized to include in the tier 1
62 designation provided for in subsection (b) of this Code section any tier 2 county which, in
63 the opinion of the commissioner of community affairs, undergoes a sudden and severe
64 period of economic distress caused by the closing of one or more business enterprises

65 located in such county. No designation made pursuant to this subsection shall operate to
66 displace or remove any other county previously designated as a tier 1 county.

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

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

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

139 forfeits such right is therefore liable for all past taxes imposed by this article for that
140 taxable year and all past payments under Code Section 48-7-103 for that taxable year that
141 were foregone by the state as a result of the credits provided by this Code section;
142 provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture. The
143 state revenue commissioner shall adjust the credit allowed each year for net new
144 employment fluctuations above the minimum level of the number required in such tier.
145 (2) Existing business enterprises shall be allowed an additional tax credit for taxes
146 imposed under this article equal to \$500.00 per eligible new full-time employee job for
147 ~~one year after the creation of such job~~ the first year in which the new full-time employee
148 job is created. The additional credit shall be claimed in ~~year two after the creation of~~
149 ~~such job~~ the first taxable year in which the new full-time employee job is created. The
150 number of new full-time jobs shall be determined by comparing the monthly average
151 number of full-time employees subject to Georgia income tax withholding for the taxable
152 year with the corresponding period of the prior taxable year. In tier 1 counties, those
153 existing business enterprises that increase employment by five or more shall be eligible
154 for the credit. In tier 2 counties, only those existing business enterprises that increase
155 employment by ten or more shall be eligible for the credit. In tier 3 counties, only those
156 existing business enterprises that increase employment by 15 or more shall be eligible for
157 the credit. In tier 4 counties, only those existing business enterprises that increase
158 employment by 25 or more shall be eligible for the credit. The average wage of the new
159 jobs created must be above the average wage of the county that has the lowest average
160 wage of any county in the state to qualify as reported in the most recently available
161 annual issue of the Georgia Employment and Wages Averages Report of the Department
162 of Labor. To qualify for a credit under this paragraph, the employer must make health
163 insurance coverage available to the employee filling the new full-time job; provided,
164 however, that nothing in this paragraph shall be construed to require the employer to pay
165 for all or any part of health insurance coverage for such an employee in order to claim the
166 credit provided for in this paragraph if such employer does not pay for all or any part of
167 health insurance coverage for other employees. Credit shall not be allowed during a year
168 if the net employment increase falls below the number required in such tier. Any credit
169 ~~received~~ generated and utilized for years prior to the year in which the net employment
170 increase falls below the number required in such tier shall not be affected. The state
171 revenue commissioner shall adjust the credit allowed each year for net new employment
172 fluctuations above the minimum level of the number required in such tier. This
173 paragraph shall apply only to new eligible full-time jobs created in taxable years
174 beginning on or after January 1, 2006, and ending no later than taxable years beginning
175 prior to January 1, 2011.

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

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

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

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

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

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

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

221 **SECTION 2.**

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

224 "48-7-40.1.

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

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

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

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

243 (1) Highest unemployment rate for the most recent 36 month period;
 244 (2) Lowest per capita income for the most recent 36 month period; and
 245 (3) Highest percentage of residents whose income is below the poverty level according
 246 to the most recent data available.

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

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

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

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

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

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

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

278 (e) Business enterprises in areas designated by the commissioner of community affairs as
 279 less developed areas shall be allowed a job tax credit for taxes imposed under this article
 280 equal to \$3,500.00 annually per eligible new full-time employee job for five years
 281 beginning with ~~years two through six after the creation of such job~~ the first taxable year in
 282 which the new full-time employee job is created and for the four immediately succeeding
 283 taxable years; provided, however, that where the amount of such credit exceeds a business
 284 enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit
 285 against such business enterprise's quarterly or monthly payment under Code Section

286 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time
287 employee job when aggregated with the credit applied against taxes under this article.
288 Each employee whose employer receives credit against such business enterprise's quarterly
289 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
290 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
291 full amount which would be credited against such liability prior to the application of the
292 credit provided for in this subsection. Credits against quarterly or monthly payments under
293 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
294 by this subsection shall not constitute income to the taxpayer. The number of new full-time
295 jobs shall be determined by comparing the monthly average number of full-time employees
296 subject to Georgia income tax withholding for the taxable year with the corresponding
297 period of the prior taxable year. Only those business enterprises that increase employment
298 by five or more in a less developed area shall be eligible for the credit; provided, however,
299 that within areas of pervasive poverty as designated under paragraphs (2) and (4) of
300 subsection (c) of this Code section businesses shall only have to increase employment by
301 two or more jobs in order to be eligible for the credit, provided that, if a business only
302 increases employment by two jobs, the persons hired for such jobs shall not be married to
303 one another. The average wage of the new jobs created must be above the average wage
304 of the county that has the lowest wage of any county in the state to qualify as reported in
305 the most recently available annual issue of the Georgia Employment and Wages Averages
306 Report of the Department of Labor. To qualify for a credit under this subsection, the
307 employer must make health insurance coverage available to the employee filling the new
308 full-time job; provided, however, that nothing in this subsection shall be construed to
309 require the employer to pay for all or any part of health insurance coverage for such an
310 employee in order to claim the credit provided for in this subsection if such employer does
311 not pay for all or any part of health insurance coverage for other employees. Credit shall
312 not be allowed during a year if the net employment increase falls below five or two, as
313 applicable. ~~Any credit received for years prior to the year in which the net employment~~
314 ~~increase falls below five or two shall not be affected.~~ In any year in which the net
315 employment increase falls below five or two, as applicable, the taxpayer shall forfeit the
316 right to the credit claimed for that taxable year. For the year that the net employment
317 increase falls below five or two, as applicable, a taxpayer that forfeits such right is
318 therefore liable for all past taxes imposed by this article for that taxable year and all past
319 payments under Code Section 48-7-103 for that taxable year that were foregone by the state
320 as a result of the credits provided by this Code section; provided, however that Code
321 Section 48-2-40 shall not apply to any such forfeiture. The state revenue commissioner

322 shall adjust the credit allowed each year for net new employment fluctuations above the
323 minimum level of five or two.

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

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

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

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

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

353 SECTION 3.

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

356 "48-7-40.5.

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

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

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

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

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

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

376 (3) 'Employee' means any employee resident in this state who is employed for at least
377 25 hours a week; and who has been continuously employed by the employer for at least
378 16 consecutive weeks.

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

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

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

387 (b) A tax credit shall be granted to an employer who provides or sponsors an one or more
388 approved retraining program programs in a taxable year. The total amount of the tax credit
389 allowed per full-time employee amount of the tax credit shall be equal to one-half of the
390 costs of retraining per full-time employee, or \$500.00 per full-time employee, whichever
391 is less, for each employee who has successfully completed an approved retraining program;
392 provided, however, that in no event shall the amount of the tax credit authorized under this
393 subsection exceed \$1,250.00 per year per full-time employee who has successfully
394 completed more than one approved retraining program. No employer may shall receive a

395 credit if the employer requires that the employee reimburse or pay the employer for the cost
396 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 pursuant to this Code section shall not exceed 50 percent
401 of the amount of the taxpayer's income tax liability for the taxable year as computed
402 without regard to this Code section. Notwithstanding Code Section 48-2-35, any tax credit
403 claimed under this Code section shall be claimed within one year of the earlier of the date
404 the original return was filed or the date such return was due as prescribed in subsection (a)
405 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 shall certify to the department the name of the employee, the course work successfully
408 completed by such employee, the name of the provider of the approved retraining, and such
409 other information as may be required by the department to ensure that credits are only
410 granted to employers who provide or sponsor approved retraining pursuant to this Code
411 section and that such credits are only granted to employers with respect to employees who
412 successfully complete such approved retraining. The department shall adopt rules and
413 regulations and forms to implement this credit program. The department is expressly
414 authorized and directed to work with the Technical College System of Georgia to ensure
415 the proper granting of credits pursuant to this Code section.

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

423 **SECTION 4.**

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

426 "48-7-40.12.

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

428 (1) 'Base amount' means the product of a business enterprise's Georgia ~~taxable net~~
429 ~~income~~ gross receipts in the current taxable year and the average of the ratios of its
430 aggregate qualified research expenses to Georgia ~~taxable net income~~ gross receipts for

431 the preceding three taxable years or 0.300, whichever is less; provided, however, that a
432 business enterprise need not have had a positive taxable net income for the preceding
433 three taxable years in order to claim the credit provided in this Code section. For
434 purposes of this paragraph, 'Georgia gross receipts' shall be the numerator of the gross
435 receipts factor provided in subsection (d) of Code Section 48-7-31.

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

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

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

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

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

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

462 (e) In the first five years of a newly formed business enterprise's operations in this state,
463 where the amount of a credit claimed under this Code section exceeds 50 percent of a
464 taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit
465 against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each
466 employee whose employer receives credit against such taxpayer's quarterly or monthly
467 payment under Code Section 48-7-103 shall receive a credit against his or her income tax

468 liability under Code Section 48-7-20 for the corresponding taxable year for the full amount
 469 which would be credited against such liability prior to the application of the credit provided
 470 for in this subsection. Credits against quarterly or monthly payments under Code Section
 471 48-7-103 and credits against liability under Code Section 48-7-20 established by this
 472 subsection shall not constitute income to the taxpayer."

473 **SECTION 5.**

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

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

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

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

492 "(5) 'Port traffic' means:

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

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

500 **SECTION 6.**

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

503 "48-7-40.17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

537 (3) ~~Elects not to receive the tax credits provided for by Code Sections 48-7-40,~~
538 ~~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~~
539 ~~jobs or such investment~~

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

544 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this
 545 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,
 546 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
 547 jobs and investments created by, arising from, related to, or connected in any way with the
 548 same project and, within one year of the first date on which the taxpayer pursuant to the
 549 provisions of Code Section 48-7-101 withholds wages for employees in this state and
 550 employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for
 551 taxes imposed under this article:

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

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

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

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

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

567 provided, however, that where the amount of such credit exceeds a taxpayer's liability for
 568 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's
 569 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one
 570 taxable year ~~\$2,500.00 annually per eligible new full-time job, or \$5,000.00 if the average~~
 571 ~~wage of the new full-time jobs created is 200 percent or more of the average wage of the~~
 572 ~~county in which such jobs are located for each new full-time job~~ the credit amounts in
 573 paragraphs (1) through (5) of this subsection for each new quality job when aggregated
 574 with the credit applied against taxes under this article. Each employee whose employer
 575 receives credit against such taxpayer's quarterly or monthly payment under Code Section
 576 48-7-103 shall receive a credit against his or her income tax liability under Code Section

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

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

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

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

603 (f) If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer
604 shall forfeit the right to the credit claimed for such job in that year. For each year such new
605 quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all
606 past taxes imposed by this article for that taxable year and all past payments under Code
607 Section 48-7-103 for that taxable year that were foregone by the state as a result of the
608 credits provided by this Code section; provided, however, that Code Section 48-2-40 shall
609 not apply to any such forfeiture.

610 (g) Taxpayers that initially claimed the credit under this Code section for any taxable year
611 beginning before January 1, 2009, shall be governed, for purposes of all such credits
612 claimed as well as any credits claimed in subsequent taxable years related to such initial

613 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
614 made such initial claim.
615 ~~(e)~~(h) The commissioner shall promulgate any rules and regulations necessary to
616 implement and administer this Code section.”

617 **SECTION 7.**

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

621 **SECTION 8.**

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