

House Bill 983

By: Representative O`Neal of the 146th

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 define certain terms; to disallow expenses paid to captive factoring entities; to provide for
4 procedures, conditions, and limitations; to provide an effective date; to provide for
5 applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
9 imposition, rate, computation, and exemptions regarding income taxes, is amended in
10 subsection (b) of Code Section 48-7-21, relating to taxation of corporations, by adding a new
11 paragraph to read as follows:

12 "(17) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.5."

13 **SECTION 2.**

14 Said article is further amended in subsection (b) of Code Section 48-7-27, relating to
15 computation of taxable net income, by adding a new paragraph to read as follows:

16 "(14) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.5."

17 **SECTION 3.**

18 Said article is further amended by adding a new Code section to read as follows:

19 "48-7-28.5.

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

21 (1) 'Captive factoring entity' means any related member which buys accounts receivables
22 from persons that are related members.

23 (2) 'Related member' means the same as is defined in Code Section 48-7-28.3.

24 (b) For purposes of computing Georgia taxable net income under Code Sections 48-7-21
25 and 48-7-27, a taxpayer shall add back all expenses and costs directly or indirectly paid,
26 accrued, or incurred to a captive factoring entity. Such expenses and costs shall be added
27 back before the income is apportioned or allocated as provided by Code Section 48-7-31.

28 (c) The amount of the adjustment required by subsection (b) of this Code section shall be
29 reduced, but not below zero, to the extent the corresponding expenses and costs received
30 as income by the captive factoring entity are reduced by expenses that have been allowed
31 in computing the captive factoring entity's federal taxable income and that have not been
32 paid, accrued, or incurred by the captive factoring entity to persons that are related
33 members.

34 (d) The commissioner shall have the authority to reverse in whole or in part the
35 adjustments required in subsection (b) of this Code section when the taxpayer and the
36 commissioner agree in writing to the application or use of an alternative method of
37 apportionment under subparagraph (d)(2)(C) of Code Section 48-7-31, Code Section
38 48-7-35, or Code Section 48-7-31.1. Nothing in this Code section shall be construed to
39 limit or negate the commissioner's authority otherwise to enter into agreements and
40 compromises otherwise allowed by law.

41 (e)(1) For purposes of this subsection, the term:

42 (A) 'Allocated or apportioned, or both' does not mean the amount of income that is
43 subject to allocation or apportionment, or both. Rather it means the amount that is
44 arrived at after applying the allocation and apportionment rules of a state as defined in
45 subparagraph (B) of this paragraph. A tax or the portion of a tax, which is or would be
46 imposed regardless of the amount of the income, shall not be considered to be a tax on
47 or measured by the income of the captive factoring entity.

48 (B) 'State' means a state in the United States of America, including the District of
49 Columbia, but does not include those states under whose laws the taxpayer files with
50 the captive factoring entity, or the captive factoring entity files with another related
51 member, a combined income tax report or return, a consolidated income tax report or
52 return, or any other report or return where such report or return is due because of the
53 imposition of a tax on, or measured by, income and where such combined income tax
54 report or return, consolidated income tax report or return, or other report or return
55 results in the elimination of the tax effects from transactions directly or indirectly
56 between the taxpayer and the captive factoring entity or between the captive factoring
57 entity and another related member.

58 (2) The amount of the adjustment required by subsection (b) of this Code section shall
59 be reduced, but not below zero, to the extent the corresponding expenses and costs are
60 received as income in an arm's length transaction by the captive factoring entity and to

61 the extent such income is allocated or apportioned, or both, to and taxed by Georgia or
62 another state that imposes a tax on or measured by the income of the captive factoring
63 entity. For purposes of this paragraph, the corresponding expenses and costs shall not be
64 considered to have been received as income by the captive factoring entity to the extent
65 such income is reduced, in computing the income of the captive factoring entity in
66 Georgia or another state, by expenses paid, accrued, or incurred to persons that are not
67 related members as provided in subsection (c) of the Code section.

68 (f) In claiming the exceptions allowed by subsections (c) and (e) of this Code section, the
69 taxpayer shall disclose on its return, with respect to the captive factoring entity, the name,
70 the federal identification number, the name of each state, the amount of the expenses and
71 costs allocated or apportioned to and taxed by each state, and such other information as the
72 commissioner may prescribe. Failure to make this disclosure on the return shall preclude
73 the taxpayer from utilizing the exceptions provided in these subsections.

74 (g) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net
75 income more than once any amount of expenses and costs that the taxpayer pays, accrues,
76 or incurs to a captive factoring entity.

77 (h) Nothing in this Code section shall be construed to limit or negate the commissioner's
78 authority to make adjustments under Code Section 48-7-58.

79 (i) The adjustment required by this Code section shall apply to a corporation that files a
80 separate return with Georgia and to the separate taxable income computation of each
81 member of a Georgia consolidated return.

82 (j) In addition to other penalties imposed by this title, the penalty for failure to make the
83 adjustment required by this Code section shall be 10 percent of the additional tax that
84 results because of this Code section. The commissioner may waive this penalty pursuant
85 to the provisions of Code Section 48-2-43.

86 (k) The commissioner is authorized to prescribe forms and promulgate rules and
87 regulations deemed necessary in order to effectuate this Code section."

88 **SECTION 4.**

89 This Act shall become effective upon its approval by the Governor or upon its becoming law
90 without such approval and shall be applicable to all taxable years beginning on or after
91 January 1, 2011.

92 **SECTION 5.**

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