

The House Committee on Ways and Means offers the following substitute to HB 346:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-7-1 of the Official Code of Georgia Annotated, relating to
2 definitions regarding income taxes, so as to change the definition of taxable nonresident for
3 income tax purposes; to provide an effective date; to provide for applicability; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Code Section 48-7-1 of the Official Code of Georgia Annotated, relating to definitions
8 regarding income taxes, is amended by revising paragraph (11) as follows:

9 "(11) 'Taxable nonresident' means:

10 (A) Every individual who is not otherwise a resident of this state for income tax
11 purposes and who regularly and not casually or intermittently engages within this state,
12 by himself or herself or by means of employees, agents, or partners, in employment,
13 trade, business, professional, or other activity for financial gain or profit, including, but
14 not limited to, the rental of real or personal property located within this state or for use
15 within this state. 'Taxable nonresident' does not include a legal resident of another state
16 whose only activity for financial gain or profit in this state consists of performing
17 services in this state for an employer as an employee when the remuneration for the
18 services does not exceed the lesser of 5 percent of the income received by the person
19 for performing services in all places during any taxable year or \$5,000.00;

20 (B) Every individual who is not otherwise a resident of this state for income tax
21 purposes and who sells, exchanges, or otherwise disposes of tangible property which
22 at the time of the sale, exchange, or other disposition has a taxable situs within this state
23 or who sells, exchanges, or otherwise disposes of intangible personal property which
24 has acquired at the time of the sale, exchange, or other disposition a business or
25 commercial situs within this state;

26 (C) Every individual who is not otherwise a resident of this state for income tax
27 purposes and who receives the proceeds of any lottery prize awarded by the Georgia
28 Lottery Corporation;

29 (D) Every individual who is not a resident of this state for income tax purposes and
30 who makes a withdrawal as provided for in paragraph (10) of subsection (b) of Code
31 Section 48-7-27; and

32 (E)(i) For purposes of this subparagraph, the term:

33 (I) 'Deferred compensation' means deferred compensation received from a
34 nonqualified deferred compensation plan.

35 (II) 'Nonqualified deferred compensation plan' means the same as it is defined in
36 Section 3121(v)(2) of the Internal Revenue Code.

37 (ii) Every individual who is not otherwise a resident of this state for income tax
38 purposes and who regularly and not casually or intermittently engaged in a prior year
39 within this state, by himself or herself, in activity for financial gain or profit and who
40 receives income from such activity in the form of deferred compensation or income
41 from the exercise of stock options and such income exceeds the lesser of 5 percent of
42 the income received by the person in all places during the taxable year or \$5,000.00;
43 provided, however, that this subparagraph shall not apply in the case of an individual
44 who receives such income when the state is prohibited from taxing such income
45 pursuant to federal law. For stock options granted and deferred compensation plans
46 established before January 1, 2011, this subparagraph shall apply only to the portion
47 earned on or after January 1, 2011. The commissioner shall by rule and regulation
48 provide the method of determining the amount earned in Georgia using a 'days
49 worked in Georgia' method. Such earned amount shall be included in the Georgia
50 income of the taxable nonresident.

51 (iii) Employers shall withhold Georgia income tax as provided in Article 5 of this
52 chapter on all deferred compensation and stock options which are required to be
53 included in Georgia income of the taxable nonresident. For purposes of withholding
54 only:

55 (I) The employer shall use records that are available to them. However, if the
56 records are not available, the employer may reasonably rely upon a written
57 representation, signed under penalties of perjury, from the employee of the number
58 of days worked in Georgia. The employer shall only be held liable if the employer
59 had actual or constructive knowledge that the employee's written representation was
60 false or contained erroneous information; and

61 (II) The employer may elect to determine the number of days worked in Georgia
62 by assuming the employee worked in Georgia only during the time the employee
63 was a resident of Georgia.

64 (iv) The commissioner shall be authorized to promulgate any rules and regulations
65 necessary to implement and administer the tax provisions of this paragraph."

66 **SECTION 2.**

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

70 **SECTION 3.**

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