

The Senate Finance Committee offered the following substitute to HB 346:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
2 taxation, so as to change certain provisions regarding conditions under which certain  
3 confidential tax information may be released or used; to provide for limitations and  
4 conditions; to change the definition of taxable nonresident for income tax purposes; to  
5 provide for the transfer, devise, and distribution of unused income tax credits for the donation  
6 of real property for conservation purposes; to provide an effective date; to provide for  
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
11 amended in Code Section 48-2-15, relating to confidential information, by revising  
12 subsection (e) as follows:

13 "(e) This Code section shall not be construed to prohibit persons or groups of persons other  
14 than employees of the department from having access to tax information when necessary  
15 to conduct research commissioned by the department ~~and when or where~~ necessary for data  
16 ~~processing operations and maintenance of data processing equipment, provided the persons~~  
17 ~~or groups of persons have obtained prior written approval from the commissioner and are~~  
18 ~~subject to the direct security control of department personnel during all periods of access~~  
19 in connection with the processing, storage, transmission, and reproduction of such tax  
20 information; the programming, maintenance, repair, testing, and procurement of  
21 equipment; and the providing of other services for purposes of tax administration. Any  
22 such access shall be pursuant to a written agreement with the department providing for the  
23 handling, permitted uses, and destruction of such tax information, requiring security  
24 clearance checks for such persons or groups of persons similar to those required of  
25 employees of the department, and including such other terms and conditions as the  
26 department may require to protect the confidentiality of the tax information to be disclosed.

27 Any person who divulges or makes known any tax information obtained under this  
 28 subsection shall be subject to the same civil and criminal penalties as those provided for  
 29 divulgence of information by employees of the department."

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## SECTION 2.

31 Said title is further amended in Code Section 48-7-1, relating to definitions regarding income  
 32 taxes, by revising paragraph (11) as follows:

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"(11) 'Taxable nonresident' means:

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

44

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

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

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

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

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

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

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(ii) Every individual who is not otherwise a resident of this state for income tax  
 62 purposes and who regularly and not casually or intermittently engaged in a prior year

63 within this state, by himself or herself, in activity for financial gain or profit and who  
 64 receives income from such activity in the form of deferred compensation or income  
 65 from the exercise of stock options and such income exceeds the lesser of 5 percent of  
 66 the income received by the person in all places during the taxable year or \$5,000.00;  
 67 provided, however, that this subparagraph shall not apply in the case of an individual  
 68 who receives such income when the state is prohibited from taxing such income  
 69 pursuant to federal law. For stock options granted and deferred compensation plans  
 70 established before January 1, 2011, this subparagraph shall apply only to the portion  
 71 earned on or after January 1, 2011. The commissioner shall by rule and regulation  
 72 provide the method of determining the amount earned in Georgia using a 'days  
 73 worked in Georgia' method. Such earned amount shall be included in the Georgia  
 74 income of the taxable nonresident.

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

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

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

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

### 90 SECTION 3.

91 Said title is further amended in Code Section 48-7-29.12, relating to the income tax credit  
 92 for donation of real property for conservation purposes, by adding a new subsection to read  
 93 as follows:

94 "(d.1) Any tax credits under this Code section earned by a taxpayer and previously claimed  
 95 but not used by such taxpayer against such taxpayer's income tax may be transferred or sold  
 96 in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following  
 97 conditions:



134 Any person who divulges or makes known any tax information obtained under this  
135 subsection shall be subject to the same civil and criminal penalties as those provided for  
136 divulgence of information by employees of the department."

137 **SECTION 5.**

138 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon  
139 its approval by the Governor or upon its becoming law without such approval, and Section 2  
140 of this Act shall be applicable to all taxable years beginning on or after January 1, 2011.

141 (b) Section 3 of this Act shall become effective on January 1, 2012, and shall apply to all  
142 taxable years beginning on or after January 1, 2012.

143 **SECTION 6.**

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