

SENATE SUBSTITUTE to HB 346:

AS PASSED SENATE

**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 revise
5 and change the income tax credit for clean energy property; to change certain procedures,
6 conditions, and limitations; to provide for the transfer, devise, and distribution of unused
7 income tax credits for the donation of real property for conservation purposes; to provide
8 effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

SECTION 1.

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

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

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

31 SECTION 2.

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

34 "(11) 'Taxable nonresident' means:

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

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

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

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

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

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

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

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

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

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

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

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

91 SECTION 3.

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

95 "(d.1) Any tax credits under this Code section earned by a taxpayer and previously claimed
 96 but not used by such taxpayer against such taxpayer's income tax may be transferred or sold

97 in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following
 98 conditions:

99 (1) The transferor shall submit to the department a written notification of any transfer or
 100 sale of tax credits within 30 days after the transfer or sale of such tax credits. The
 101 notification shall include such transferor's tax credit balance prior to transfer, the
 102 remaining balance after transfer, all tax identification numbers for each transferee, the
 103 date of transfer, the amount transferred, and any other information required by the
 104 department;

105 (2) Failure to comply with this subsection shall result in the disallowance of the tax
 106 credit until the taxpayer is in full compliance;

107 (3) In no event shall the amount of the tax credit under this subsection claimed and
 108 allowed for a taxable year exceed the transferee's income tax liability. Any unused credit
 109 may be carried forward to subsequent taxable years provided that the transfer or sale of
 110 this tax credit does not extend the time in which such tax credit can be used. The
 111 carry-forward period for tax credit that is transferred or sold shall begin on the date on
 112 which the tax credit was originally earned; and

113 (4) A transferee shall have only such rights to claim and use the tax credit that were
 114 available to the transferor at the time of the transfer. To the extent that such transferor
 115 did not have rights to claim and use the tax credit at the time of the transfer, the
 116 department shall either disallow the tax credit claimed by the transferee or recapture the
 117 tax credit from the transferee. The transferee's recourse is against the transferor."

118 **SECTION 3A.**

119 Said title is further amended in subsection (b) of Code Section 48-7-29.14, relating to the
 120 income tax credit for clean energy property, by revising the introductory language of
 121 paragraph (1), subparagraph (A) of paragraph (1), paragraph (3), and subparagraph (B) of
 122 paragraph (4) as follows:

123 "(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for
 124 the construction, purchase, or lease of clean energy property that is placed into service
 125 in this state between July 1, 2008, and December 31, ~~2012~~ 2014; provided, however, this
 126 credit shall be further subject to the following conditions and limitations:"

127 "(A) A credit allowed by this Code section shall be taken for the taxable year in which
 128 the clean energy property is installed and may be taken against income tax or, if the
 129 taxpayer is an insurance company, against gross premium tax; provided, however, that
 130 for any credit under this Code section which is allowed for calendar year 2012, 2013,
 131 or 2014, the entire credit may not be taken for the year in which the property is placed

132 in service but must be taken in four equal installments over four successive taxable
 133 years beginning with the taxable year in which the credit is allowed;"

134 "(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

135 (A) For calendar year 2008, \$2.5 million;

136 (B) For calendar year 2009, \$2.5 million;

137 (C) For calendar year 2010, \$2.5 million;

138 (D) For calendar year 2011, \$2.5 million; ~~and~~

139 (E) For calendar year 2012, ~~\$2.5~~ \$5 million;

140 (F) For calendar year 2013, \$5 million; ~~and~~

141 (G) For calendar year 2014, \$5 million."

142 "(B) The commissioner shall allow the tax credits on a first come, first served basis.
 143 In no event shall the aggregate amount of tax credits approved by the commissioner for
 144 all taxpayers under this Code section in a calendar year exceed the limitations specified
 145 in paragraph (3) of this subsection. In the event a taxpayer filed a timely application
 146 for such credit but is not allowed all or part of the credit amount ~~to which~~ such taxpayer
 147 would be authorized to receive because the limitations specified in paragraph (3) of this
 148 subsection have been reached, ~~such taxpayer may reapply in the following taxable year~~
 149 ~~for a tax credit for those same eligible costs, and in such event, that taxpayer shall have~~
 150 ~~priority over other taxpayers for credit allocation in the year of such reapplication~~ the
 151 commissioner shall add such taxpayer to a priority waiting list of applications,
 152 prioritized by the date of the taxpayer's first filed application. With respect to the credit
 153 allocation in subsequent years, taxpayers on the priority waiting list shall have priority
 154 over other taxpayers who apply for the credit for an installation in the subsequent
 155 years;"

156 **SECTION 4.**

157 Said title is further amended in Code Section 48-7-60, relating to confidentiality of tax
 158 information, by revising subsection (d) as follows:

159 "(d) This Code section shall not be construed to prohibit persons or groups of persons other
 160 than employees of the department from having access to tax information where necessary
 161 to conduct research commissioned by the department ~~and~~ or where necessary for ~~data~~
 162 ~~processing operations and maintenance of data processing equipment, provided the persons~~
 163 ~~or groups of persons have obtained prior written approval from the commissioner and are~~
 164 ~~subject to the direct security control of department personnel during all periods of access~~
 165 in connection with the processing, storage, transmission, and reproduction of such tax
 166 information; the programming, maintenance, repair, testing, and procurement of
 167 equipment; and the providing of other services for purposes of tax administration. Any

168 such access shall be pursuant to a written agreement with the department providing for the
169 handling, permitted uses, and destruction of such tax information, requiring security
170 clearance checks for such persons or groups of persons similar to those required of
171 employees of the department, and including such other terms and conditions as the
172 department may require to protect the confidentiality of the tax information to be disclosed.
173 Any person who divulges or makes known any tax information obtained under this
174 subsection shall be subject to the same civil and criminal penalties as those provided for
175 divulgence of information by employees of the department."

176 **SECTION 5.**

- 177 (a) Except as otherwise provided in this section, this Act shall become effective upon its
178 approval by the Governor or upon its becoming law without such approval.
- 179 (b) Section 2 of this Act shall be applicable to all taxable years beginning on or after
180 January 1, 2011.
- 181 (c) Section 3A of this Act shall be applicable to all taxable years beginning on or after
182 January 1, 2011.
- 183 (d) Section 3 of this Act shall become effective on January 1, 2012, and shall apply to all
184 taxable years beginning on or after January 1, 2012.

185 **SECTION 6.**

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