

House Bill 868

By: Representatives Collins of the 27th, Carter of the 175th, Atwood of the 179th, Hatchett of the 143rd, Clark of the 98th, and others

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, computation, and exemptions from state income tax, so as to provide
3 for the comprehensive revision of income tax credits for business enterprises located in less
4 developed areas, designated by tiers, for business enterprises located in less developed areas
5 consisting of contiguous census tracts, for existing manufacturing and telecommunications
6 facilities located in certain tier counties, and for establishing new quality jobs or relocating
7 quality jobs; to provide for procedures, conditions, and limitations; to change certain
8 provisions so as to correct certain cross-references; to provide for an effective date and
9 applicability; to provide that this Act shall not abate or affect prosecutions, punishments,
10 penalties, administrative proceedings or remedies, or civil actions related to certain
11 violations; to provide for related matters; to repeal conflicting laws; and for other purposes.

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

13 **SECTION 1.**

14 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
15 imposition, computation, and exemptions from state income tax, is amended by revising
16 subsections (a), (e), (f), (h), and (l) of Code Section 48-7-40, relating to designation of
17 counties as less developed areas, as follows:

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

19 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
20 programming content to the general public, subscribers, or to third parties via radio,
21 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
22 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
23 is limited to establishments classified under the 2007 North American Industry
24 Classification System Codes 515, broadcasting; 519, Internet publishing and
25 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
26 industries.

27 (2) 'Business enterprise' means any business or the headquarters of any such business
 28 which is engaged in manufacturing, including, but not limited to, the manufacturing of
 29 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric
 30 vehicle enterprises, warehousing and distribution, processing, telecommunications,
 31 broadcasting, tourism, research and development industries, biomedical manufacturing,
 32 and services for the elderly and persons with disabilities. Such term shall not include
 33 retail businesses.

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

39 (4) 'Existing business enterprise' means any business or the headquarters of any such
 40 business which has operated for the immediately preceding three years a facility in this
 41 state which is engaged in manufacturing, including, but not limited to, the manufacturing
 42 of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and
 43 electric vehicle enterprises, warehousing and distribution, processing,
 44 telecommunications, broadcasting, tourism, biomedical manufacturing, or research and
 45 development industries. Such term shall not include retail businesses.

46 (5) 'New full-time employee job' means a newly created position of employment that was
 47 not previously located in this state, requires a minimum of 35 hours a week, and pays at
 48 or above the average wage earned in the county with the lowest average wage earned in
 49 this state, as reported in the most recently available annual issue of the Georgia
 50 Employment and Wages Averages Report of the Department of Labor."

51 "(e)(1) Business enterprises in counties designated by the commissioner of community
 52 affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article
 53 equal to \$3,500.00 annually per eligible new full-time employee job for five years
 54 beginning with the first taxable year in which the new full-time employee job is created
 55 and for the four immediately succeeding taxable years; provided, however, that where the
 56 amount of such credit exceeds a business enterprise's liability for such taxes in a taxable
 57 year, the excess may be taken as a credit against such business enterprise's quarterly or
 58 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year
 59 ~~\$3,500.00~~ \$3,750.00 for each new full-time employee job when aggregated with the
 60 credit applied against taxes under this article. Each employee whose employer receives
 61 credit against such business enterprise's quarterly or monthly payment under Code
 62 Section 48-7-103 shall receive credit against his or her income tax liability under Code
 63 Section 48-7-20 for the corresponding taxable year for the full amount which would be

64 credited against such liability prior to the application of the credit provided for in this
65 paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103
66 and credits against liability under Code Section 48-7-20 established by this paragraph
67 shall not constitute income to the taxpayer. Business enterprises in counties designated
68 by the commissioner of community affairs as tier 2 counties shall be allowed a job tax
69 credit for taxes imposed under this article equal to \$2,500.00 annually; and business
70 enterprises in counties designated by the commissioner of community affairs as tier 3 and
71 tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal
72 to ~~\$1,250.00~~ \$2,000.00 annually, ~~and business enterprises in counties designated by the~~
73 ~~commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for~~
74 ~~taxes imposed under this article equal to \$750.00 annually~~ for each new full-time
75 employee job for five years beginning with the first taxable year in which the new
76 full-time employee job is created and for the four immediately succeeding taxable years.
77 Where a business enterprise is engaged in a competitive project located in a county
78 designated by the commissioner of community affairs as a tier 2 county and where the
79 amount of the credit provided in this paragraph exceeds such business enterprise's
80 liability for taxes imposed under this article in a taxable year, the excess may be taken as
81 a credit against such business enterprise's quarterly or monthly payment under Code
82 Section 48-7-103 but not to exceed in any one taxable year \$2,750.00 for each new
83 full-time employee job when aggregated with the credit applied against taxes under this
84 ~~article. or where~~ Where a business enterprise is engaged in a competitive project located
85 in a county designated by the commissioner of community affairs as a tier 3 or tier 4
86 county and where the amount of the credit provided in this paragraph exceeds 50 percent
87 of such business enterprise's liability for taxes imposed under this article in a taxable
88 year, the excess may be taken as a credit against such business enterprise's quarterly or
89 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year
90 ~~\$2,500.00~~ \$2,250.00 for each new full-time employee job when aggregated with the
91 credit applied against taxes under this article. Each employee whose employer receives
92 credit against such business enterprise's quarterly or monthly payment under Code
93 Section 48-7-103 shall receive credit against his or her income tax liability under Code
94 Section 48-7-20 for the corresponding taxable year for the full amount which would be
95 credited against such liability prior to the application of the credit provided for in this
96 paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103
97 and credits against liability under Code Section 48-7-20 established by this paragraph
98 shall not constitute income to the taxpayer. The number of new full-time employee jobs
99 shall be determined by comparing the monthly average number of full-time employees
100 subject to Georgia income tax withholding for the taxable year with the corresponding

101 period of the prior taxable year. In tier 1 counties, those business enterprises that increase
 102 employment by ~~five~~ two or more shall be eligible for the credit. In tier ~~2, 3, and 4~~
 103 counties, only those business enterprises that increase employment by ten or more shall
 104 be eligible for the credit. ~~In tier 3 counties, only those business enterprises that increase~~
 105 ~~employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those~~
 106 ~~business enterprises that increase employment by 25 or more shall be eligible for the~~
 107 ~~credit. The average wage of the new jobs created must be above the average wage of the~~
 108 ~~county that has the lowest average wage of any county in the state to qualify as reported~~
 109 ~~in the most recently available annual issue of the Georgia Employment and Wages~~
 110 ~~Averages Report of the Department of Labor. To qualify for a credit under this~~
 111 ~~paragraph, the employer must make health insurance coverage available to the employee~~
 112 ~~filling the new full-time employee job; provided, however, that nothing in this paragraph~~
 113 ~~shall be construed to require the employer to pay for all or any part of health insurance~~
 114 ~~coverage for such an employee in order to claim the credit provided for in this paragraph~~
 115 ~~if such employer does not pay for all or any part of health insurance coverage for other~~
 116 ~~employees. Credit shall not be allowed during a year if the net employment increase falls~~
 117 ~~below the number required in such tier. In any year in which the net employment~~
 118 ~~increase falls below the number required in such tier, the taxpayer shall forfeit the right~~
 119 ~~to the credit claimed for that taxable year. For the year that the net employment increase~~
 120 ~~falls below the number required in such tier, a taxpayer that forfeits such right is therefore~~
 121 ~~liable for all past taxes imposed by this article for that taxable year and all past payments~~
 122 ~~under Code Section 48-7-103 for that taxable year that were foregone by the state as a~~
 123 ~~result of the credits provided by this Code section; provided, however, that Code Section~~
 124 ~~48-2-40 shall not apply to any such forfeiture. The state revenue commissioner shall~~
 125 ~~adjust the credit allowed each year for net new employment fluctuations above the~~
 126 ~~minimum level of the number required in such tier.~~

127 (2) Existing business enterprises that are eligible for the credit established under
 128 paragraph (1) of this subsection shall be allowed an additional tax credit for taxes
 129 imposed under this article equal to ~~\$500.00~~ \$250.00 per eligible new full-time employee
 130 job ~~the first year in which the new full-time employee job is created. The additional~~
 131 ~~credit shall be claimed in the first taxable year in which the new full-time employee job~~
 132 ~~is created~~ for five years beginning with the first taxable year in which the new full-time
 133 employee job is created and for the four immediately succeeding taxable years. The
 134 number of new full-time employee jobs shall be determined by comparing the monthly
 135 average number of full-time employees subject to Georgia income tax withholding for
 136 the taxable year with the corresponding period of the prior taxable year. ~~In tier 1~~
 137 ~~counties, those existing business enterprises that increase employment by five or more~~

138 shall be eligible for the credit. In tier 2 counties, only those existing business enterprises
 139 that increase employment by ten or more shall be eligible for the credit. In tier 3
 140 counties, only those existing business enterprises that increase employment by 15 or more
 141 shall be eligible for the credit. In tier 4 counties, only those existing business enterprises
 142 that increase employment by 25 or more shall be eligible for the credit. The average
 143 wage of the new jobs created must be above the average wage of the county that has the
 144 lowest average wage of any county in the state to qualify as reported in the most recently
 145 available annual issue of the Georgia Employment and Wages Averages Report of the
 146 Department of Labor. To qualify for a credit under this paragraph, the employer must
 147 make health insurance coverage available to the employee filling the new full-time job;
 148 provided, however, that nothing in this paragraph shall be construed to require the
 149 employer to pay for all or any part of health insurance coverage for such an employee in
 150 order to claim the credit provided for in this paragraph if such employer does not pay for
 151 all or any part of health insurance coverage for other employees. Credit shall not be
 152 allowed during a year if the net employment increase falls below the number required in
 153 such tier. Any credit generated and utilized for years prior to the year in which the net
 154 employment increase falls below the number required in such tier shall not be affected.
 155 The state revenue commissioner shall adjust the credit allowed each year for net new
 156 employment fluctuations above the minimum level of the number required in such tier.
 157 This paragraph shall apply only to new eligible full-time jobs created in taxable years
 158 beginning on or after January 1, 2006, and ending no later than taxable years beginning
 159 prior to January 1, 2011.

160 (f) Tax credits for ~~four~~ five years for the taxes imposed under this article shall be awarded
 161 for additional new full-time employee jobs created by business enterprises qualified under
 162 subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs
 163 shall be determined by subtracting the highest total employment of the business enterprise
 164 during years two through five, or whatever portion of years two through five which has
 165 been completed, from the total increased employment. The state revenue commissioner
 166 shall adjust the credit allowed in the event of employment fluctuations during the five years
 167 of credit. An existing business enterprise shall also be allowed the additional amount
 168 provided in paragraph (2) of subsection (e) of this Code section for new full-time employee
 169 jobs created during years two through five."

170 "~~(h)(1) Except as provided in paragraph (2) of this subsection, any~~ Any credit claimed
 171 under this Code section but not used in any taxable year may be carried forward for ten
 172 years from the close of the taxable year in which the qualified jobs were established,
 173 subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section,
 174 but in tiers 3 and 4 the credit established by this Code section taken in any one taxable

175 year shall be limited to an amount not greater than 50 percent of the taxpayer's state
 176 income tax liability which is attributable to income derived from operations in this state
 177 for that taxable year. In tier 1 and 2 counties, the credit allowed under this Code section
 178 against taxes imposed under this article in any taxable year shall be limited to an amount
 179 not greater than 100 percent of the taxpayer's state income tax liability attributable to
 180 income derived from operations in this state for such taxable year.

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

185 "(1) Taxpayers that initially claimed the credit under this Code section for any taxable year
 186 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits
 187 claimed as well as any credits claimed in subsequent taxable years related to such initial
 188 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
 189 made such initial claim."

190 SECTION 2.

191 Said article is further amended by revising subsections (a), (e), (f), and (j) of Code Section
 192 48-7-40.1, relating to tax credits for business enterprises located in less developed areas, as
 193 follows:

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

195 (1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
 196 programming content to the general public, subscribers, or to third parties via radio,
 197 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture
 198 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
 199 is limited to establishments classified under the 2007 North American Industry
 200 Classification System Codes 515, broadcasting; 519, Internet publishing and
 201 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
 202 industries.

203 (2) 'Business enterprise' means any business or the headquarters of any such business
 204 which is engaged in manufacturing, including, but not limited to, the manufacturing of
 205 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric
 206 vehicle enterprises, warehousing and distribution, processing, telecommunications,
 207 broadcasting, tourism, biomedical manufacturing, and research and development
 208 industries. Such term shall not include retail businesses.

209 (3) 'Existing business enterprise' means any business or the headquarters of any such
 210 business which has operated for the immediately preceding three years a facility in this

211 state which is engaged in manufacturing, including, but not limited to, the manufacturing
 212 of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and
 213 electric vehicle enterprises, warehousing and distribution, processing,
 214 telecommunications, broadcasting, tourism, biomedical manufacturing, or research and
 215 development industries. Such term shall not include retail businesses."

216 "(e)(1) Business enterprises in areas designated by the commissioner of community
 217 affairs as less developed areas shall be allowed a job tax credit for taxes imposed under
 218 this article equal to \$3,500.00 annually per eligible new full-time employee job for five
 219 years beginning with the first taxable year in which the new full-time employee job is
 220 created and for the four immediately succeeding taxable years; provided, however, that
 221 where the amount of such credit exceeds a business enterprise's liability for such taxes
 222 in a taxable year, the excess may be taken as a credit against such business enterprise's
 223 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one
 224 taxable year ~~\$3,500.00~~ \$3,750.00 for each new full-time employee job when aggregated
 225 with the credit applied against taxes under this article. Each employee whose employer
 226 receives credit against such business enterprise's quarterly or monthly payment under
 227 Code Section 48-7-103 shall receive credit against his or her income tax liability under
 228 Code Section 48-7-20 for the corresponding taxable year for the full amount which would
 229 be credited against such liability prior to the application of the credit provided for in this
 230 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103
 231 and credits against liability under Code Section 48-7-20 established by this subsection
 232 shall not constitute income to the taxpayer. The number of new full-time jobs shall be
 233 determined by comparing the monthly average number of full-time employees subject to
 234 Georgia income tax withholding for the taxable year with the corresponding period of the
 235 prior taxable year. Only those business enterprises that increase employment by five or
 236 more in a less developed area shall be eligible for the credit; provided, however, that
 237 within areas of pervasive poverty as designated under paragraphs (2) and (4) of
 238 subsection (c) of this Code section businesses shall only have to increase employment by
 239 two or more jobs in order to be eligible for the credit, provided that, if a business only
 240 increases employment by two jobs, the persons hired for such jobs shall not be married
 241 to one another. The average wage of the new jobs created must be above the average
 242 wage of the county that has the lowest wage of any county in the state to qualify as
 243 reported in the most recently available annual issue of the Georgia Employment and
 244 Wages Averages Report of the Department of Labor. To qualify for a credit under this
 245 subsection, the employer must make health insurance coverage available to the employee
 246 filling the new full-time job; provided, however, that nothing in this subsection shall be
 247 construed to require the employer to pay for all or any part of health insurance coverage

248 for such an employee in order to claim the credit provided for in this subsection if such
 249 employer does not pay for all or any part of health insurance coverage for other
 250 employees. Credit shall not be allowed during a year if the net employment increase falls
 251 below five or two, as applicable. ~~In any year in which the net employment increase falls~~
 252 ~~below five or two, as applicable, the taxpayer shall forfeit the right to the credit claimed~~
 253 ~~for that taxable year. For the year that the net employment increase falls below five or~~
 254 ~~two, as applicable, a taxpayer that forfeits such right is therefore liable for all past taxes~~
 255 ~~imposed by this article for that taxable year and all past payments under Code Section~~
 256 ~~48-7-103 for that taxable year that were foregone by the state as a result of the credits~~
 257 ~~provided by this Code section; provided, however that Code Section 48-2-40 shall not~~
 258 ~~apply to any such forfeiture.~~ The state revenue commissioner shall adjust the credit
 259 allowed each year for net new employment fluctuations above the minimum level of five
 260 or two.

261 (2) Existing business enterprises that are eligible for the credit established under
 262 paragraph (1) of this subsection shall be allowed an additional tax credit for taxes
 263 imposed under this article equal to \$250.00 per eligible new full-time employee job for
 264 five years beginning with the first taxable year in which the new full-time employee job
 265 is created and for the four immediately succeeding taxable years. The number of new
 266 full-time employee jobs shall be determined by comparing the monthly average number
 267 of full-time employees subject to Georgia income tax withholding for the taxable year
 268 with the corresponding period of the prior taxable year.

269 (f) Tax credits for ~~four~~ five years for the taxes imposed under this article shall be awarded
 270 for additional new full-time employee jobs created by business enterprises qualified under
 271 subsection (b) or (c) of this Code section. Additional new full-time employee jobs shall
 272 be determined by subtracting the highest total employment of the business enterprise
 273 during years two through five, or whatever portion of years two through five which has
 274 been completed, from the total increased employment. The state revenue commissioner
 275 shall adjust the credit allowed in the event of employment fluctuations during the additional
 276 five years of credit. An existing business enterprise shall also be allowed the additional
 277 amount provided in paragraph (2) of subsection (e) of this Code section for new full-time
 278 employee jobs created during years two through five."

279 "(j) Taxpayers that initially claimed the credit under this Code section for any taxable year
 280 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits
 281 claimed as well as any credits claimed in subsequent taxable years related to such initial
 282 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
 283 made such initial claim."

284

SECTION 3.

285 Said article is further amended by revising subsection (e) of Code Section 48-7-40.12,
 286 relating to tax credit for qualified research expenses, as follows:

287 ~~"(e) In the first five years of a newly formed business enterprise's operations in this state,~~
 288 ~~where~~ Where the amount of a credit claimed under this Code section exceeds 50 percent
 289 of a ~~taxpayer's liability for such taxes~~ the business enterprise's remaining Georgia net
 290 income tax liability after all other credits have been applied in a taxable year, the excess
 291 may be taken as a credit against such taxpayer's quarterly or monthly payment under Code
 292 Section 48-7-103. Each employee whose employer receives credit against such taxpayer's
 293 quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against
 294 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
 295 year for the full amount which would be credited against such liability prior to the
 296 application of the credit provided for in this subsection. Credits against quarterly or
 297 monthly payments under Code Section 48-7-103 and credits against liability under Code
 298 Section 48-7-20 established by this subsection shall not constitute income to the taxpayer."

299

SECTION 4.

300 Said article is further amended by revising Code Section 48-7-40.15, relating to alternative
 301 tax credits for base year port traffic increases, as follows:

302 "48-7-40.15.

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

304 (1) 'Base year port traffic' means:

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

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

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

328 (3) 'Business enterprise' means any business or the headquarters of any such business
329 which is engaged in manufacturing, warehousing and distribution, processing,
330 telecommunications, broadcasting, tourism, and research and development industries but
331 shall not include retail businesses.

332 (4) 'Port facility' means any privately owned or publicly owned facility located within
333 this state through which product is transported by way of a waterborne ship or vehicle to
334 or from destinations outside this state.

335 (5) 'Port traffic' means:

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

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

343 (6) 'Product' means a marketable product or component of a product which has an
344 economic value to the wholesale or retail consumer and is ready to be used without
345 further alteration of its form or a product or material which is marketed as a prepared
346 material or is a component in the manufacturing and assembly of other finished products.

347 (7) 'Qualified investment property' means all real and personal property purchased or
348 acquired by a taxpayer for use in the construction of an additional manufacturing or
349 telecommunications facility to be located in this state or in the expansion of an existing
350 manufacturing or telecommunications facility located in this state, including, but not
351 limited to, moneys expended on land acquisition, improvements, buildings, building
352 improvements, and machinery and equipment to be used in the manufacturing or
353 telecommunications facility. The department shall promulgate rules defining eligible
354 manufacturing facilities, telecommunications facilities, and qualified investment property
355 pursuant to this Code section.

356 (b)(1) In the case of any business enterprise which has increased its port traffic of
357 products during the previous 12 month period by more than 10 percent above its base
358 year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or
359 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed
360 an additional \$1,250.00 job tax credit against the tax imposed under this article.

361 (2) The tax credit described in this subsection shall be allowed subject to the conditions
362 and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to
363 the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that
364 such credit shall not be allowed during a year if the port traffic does not remain above the
365 minimum level established in this Code section.

366 (c) In the case of any business enterprise which has increased its port traffic of products
367 during the previous 12 month period by more than 10 percent above its base year port
368 traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3,
369 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added
370 at any time on or after January 1, 1998, there shall be allowed a credit against the tax
371 imposed under this article in an amount equal to the applicable percentage amount
372 otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for
373 the cost of such property. The tax credit described in this subsection shall be allowed
374 subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7,
375 as applicable, except that such property may be placed in service in any county without
376 regard to its tier designation. Such credit shall also be in lieu of and not in addition to the
377 credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7,
378 48-7-40.8, and 48-7-40.9.

379 (d) No business enterprise shall be authorized to claim the credits provided for in both
380 subsections (b) and (c) of this Code section on a tax return for any taxable year unless such
381 business enterprise has increased its port traffic of products during the previous 12 month
382 period by more than 20 percent above its base year port traffic, has increased employment
383 by 400 or more no sooner than January 1, 1998, and has purchased or acquired qualified
384 investment property having an aggregate cost in excess of \$20 million no sooner than
385 January 1, 1998.

386 (e) The credit granted under this Code section shall be subject to the following conditions
387 and limitations:

388 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a
389 schedule to the taxpayer's state income tax return which shall set forth the following
390 information, as a minimum, in addition to the information required under Code Sections
391 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

- 392 (A) A description of how the base year port traffic and the increase in port traffic was
393 determined;
- 394 (B) The amount of the base year port traffic;
- 395 (C) The amount of the increase in port traffic for the taxable year, including
396 information which demonstrates an increase in port traffic in excess of the minimum
397 amount required to claim the tax credit under this Code section;
- 398 (D) Any tax credit utilized by the taxpayer in prior years;
- 399 (E) The amount of tax credit carried over from prior years;
- 400 (F) The amount of tax credit utilized by the taxpayer in the current taxable year; and
- 401 (G) The amount of tax credit to be carried over to subsequent tax years.
- 402 (2)(A) Any tax credit claimed under subsection (b) of this Code section but not used
403 in any taxable year may be carried forward for ten years from the close of the taxable
404 year in which the qualified jobs were established, provided that the increase in port
405 traffic remains above the minimum levels established in Code Section 48-7-40 or
406 48-7-40.1 and this Code section, respectively.
- 407 (B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code
408 Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 but not used in any taxable year may be
409 carried forward for ten years from the close of the taxable year in which the qualified
410 investment property was acquired, provided that the increase in port traffic remains
411 above the minimum level established in this Code section and the qualified investment
412 property remains in service.
- 413 (3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code
414 Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable
415 years following the taxable year the qualified investment property was first placed in
416 service, provided that the increase in port traffic remains above the minimum level
417 established in this Code section and the qualified investment property remains in
418 service.
- 419 (B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2,
420 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount
421 not greater than 50 percent of the taxpayer's state income tax liability which is
422 attributable to income derived from operations in this state for that taxable year.
- 423 (C) The tax credit established by this Code section in addition to that pursuant to Code
424 Section 48-7-40 or 48-7-40.1 and taken in any one taxable year shall be limited to an
425 amount not greater than 50 percent of the taxpayer's state income tax liability which is
426 attributable to income derived from operations in this state for that taxable year.

427 (D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new
 428 eligibility for any succeeding taxpayer, but any unused credit may be transferred and
 429 continued by any transferee of the taxpayer."

430 **SECTION 5.**

431 Said article is further amended by revising Code Section 48-7-40.17, relating to establishing
 432 or relocating headquarters and tax credit, as follows:

433 "48-7-40.17.

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

435 (1) 'Average wage' means the average wage of the county in which a new quality job is
 436 located as reported in the most recently available annual issue of the Georgia
 437 Employment and Wages Averages Report of the Department of Labor.

438 (2) 'New quality job' means employment for an individual which:

439 (A) Is located in this state;

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

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

443 (D) Pays at or above 110 percent of the average wage of the county in which it is
 444 located; ~~and~~

445 ~~(E) Has no predetermined end date.~~

446 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this
 447 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,
 448 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
 449 jobs and investments created by, arising from, related to, or connected in any way with the
 450 same project and, within one year of the first date on which the taxpayer pursuant to the
 451 provisions of Code Section 48-7-101 withholds wages for employees in this state and
 452 employs at least ~~50~~ 15 persons in new quality jobs in this state, shall be allowed a credit
 453 for taxes imposed under this article:

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

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

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

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

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

469 provided, however, that where the amount of such credit exceeds a taxpayer's liability for
470 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's
471 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one
472 taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each
473 new quality job when aggregated with the credit applied against taxes under this article.
474 Each employee whose employer receives credit against such taxpayer's quarterly or
475 monthly payment under Code Section 48-7-103 shall receive a credit against his or her
476 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the
477 full amount which would be credited against such liability prior to the application of the
478 credit provided for in this subsection. Credits against quarterly or monthly payments under
479 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established
480 by this subsection shall not constitute income to the taxpayer. For each new quality job
481 created, the credit established by this subsection may be taken for the first taxable year in
482 which the new quality job is created and for the four immediately succeeding taxable years;
483 provided, however, that such new quality jobs must be created within seven years from the
484 close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit
485 shall not be allowed during a year if the net employment increase falls below the ~~50~~ 15 new
486 quality jobs required. Any credit received for years prior to the year in which the net
487 employment increase falls below the ~~50~~ 15 new quality jobs required shall not be affected
488 except as provided in subsection (f) of this Code section. The state revenue commissioner
489 shall adjust the credit allowed each year for net new employment fluctuations above the ~~50~~
490 15 new quality jobs required.

491 (c) The number of new quality jobs to which this Code section shall be applicable shall be
492 determined by comparing the monthly average of new quality jobs subject to Georgia
493 income tax withholding for the taxable year with the corresponding average for the prior
494 taxable year.

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

498 (e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section
499 shall be claimed within one year of the earlier of the date the original return was filed or

500 the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,
501 including any approved extensions.

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

509 ~~(g)~~ Taxpayers that initially claimed the credit under this Code section for any taxable year
510 beginning before January 1, ~~2009~~ 2012, shall be governed, for purposes of all such credits
511 claimed as well as any credits claimed in subsequent taxable years related to such initial
512 claim, by this Code section as it was in effect for the taxable year in which the taxpayer
513 made such initial claim.

514 ~~(h)~~(g) The state revenue commissioner shall promulgate any rules and regulations
515 necessary to implement and administer this Code section."

516 **SECTION 6.**

517 (a) This Act shall become effective upon its approval by the Governor or upon its
518 becoming law without such approval and shall be applicable to all taxable years beginning
519 on or after January 1, 2012.

520 (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall
521 not be affected by the passage of this Act and shall continue to be governed by the
522 provisions of general law as it existed immediately prior to January 1, 2012.

523 (c) This Act shall not abate any prosecution, punishment, penalty, administrative
524 proceedings or remedies, or civil action related to any violation of law committed prior to
525 January 1, 2012.

526 **SECTION 7.**

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