

House Bill 868 (COMMITTEE SUBSTITUTE)

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 style="text-align:center">**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.

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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. Businesses are eligible for the tax credit provided by this Code section
34 at an individual establishment of the business based on the classification of the individual
35 establishment under the North American Industry Classification System. For purposes
36 of this Code section, the term 'establishment' means an economic unit at a single physical
37 location where business is conducted or where services or industrial operations are
38 performed. If more than one business activity is conducted at the establishment, then
39 only those jobs engaged in the qualifying activity will be eligible for the tax credit
40 provided by this Code section.

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

46 (4) 'Existing business enterprise' means any business or the headquarters of any such
47 business which has operated for the immediately preceding three years a facility in this
48 state which is engaged in manufacturing, including, but not limited to, the manufacturing
49 of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and
50 electric vehicle enterprises, warehousing and distribution, processing,
51 telecommunications, broadcasting, tourism, biomedical manufacturing, or research and
52 development industries. Such term shall not include retail businesses. Businesses are
53 eligible for the tax credit provided by this Code section at an individual establishment of
54 the business based on the classification of the individual establishment under the North
55 American Industry Classification System. For purposes of this Code section, the term
56 'establishment' means an economic unit at a single physical location where business is
57 conducted or where services or industrial operations are performed. If more than one
58 business activity is conducted at the establishment, then only those jobs engaged in the
59 qualifying activity will be eligible for the tax credit provided by this Code section.

60 (5) 'New full-time employee job' means a newly created position of employment that was
61 not previously located in this state, requires a minimum of 35 hours a week, and pays at
62 or above the average wage earned in the county with the lowest average wage earned in

63 this state, as reported in the most recently available annual issue of the Georgia
64 Employment and Wages Averages Report of the Department of Labor."

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

100 \$2,500.00 for each new full-time employee job when aggregated with the credit applied
 101 against taxes under this article. Each employee whose employer receives credit against
 102 such business enterprise's quarterly or monthly payment under Code Section 48-7-103
 103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for
 104 the corresponding taxable year for the full amount which would be credited against such
 105 liability prior to the application of the credit provided for in this paragraph. Credits
 106 against quarterly or monthly payments under Code Section 48-7-103 and credits against
 107 liability under Code Section 48-7-20 established by this paragraph shall not constitute
 108 income to the taxpayer. The number of new full-time employee jobs shall be determined
 109 by comparing the monthly average number of full-time employees subject to Georgia
 110 income tax withholding for the taxable year with the corresponding period of the prior
 111 taxable year. In tier 1 counties, those business enterprises that increase employment by
 112 ~~five~~ two or more shall be eligible for the credit. In tier 2 counties, only those business
 113 enterprises that increase employment by ten or more shall be eligible for the credit. In
 114 tier 3 counties, only those business enterprises that increase employment by 15 or more
 115 shall be eligible for the credit. In tier 4 counties, only those business enterprises that
 116 increase employment by 25 or more shall be eligible for the credit. The average wage of
 117 the new jobs created must be above the average wage of the county that has the lowest
 118 average wage of any county in the state to qualify as reported in the most recently
 119 available annual issue of the Georgia Employment and Wages Averages Report of the
 120 Department of Labor. To qualify for a credit under this paragraph, the employer must
 121 make health insurance coverage available to the employee filling the new full-time
 122 employee job; provided, however, that nothing in this paragraph shall be construed to
 123 require the employer to pay for all or any part of health insurance coverage for such an
 124 employee in order to claim the credit provided for in this paragraph if such employer does
 125 not pay for all or any part of health insurance coverage for other employees. Credit shall
 126 not be allowed during a year if the net employment increase falls below the number
 127 required in such tier. ~~In any year in which the net employment increase falls below the~~
 128 ~~number required in such tier, the taxpayer shall forfeit the right to the credit claimed for~~
 129 ~~that taxable year. For the year that the net employment increase falls below the number~~
 130 ~~required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes~~
 131 ~~imposed by this article for that taxable year and all past payments under Code Section~~
 132 ~~48-7-103 for that taxable year that were foregone by the state as a result of the credits~~
 133 ~~provided by this Code section; provided, however, that Code Section 48-2-40 shall not~~
 134 ~~apply to any such forfeiture.~~ The state revenue commissioner shall adjust the credit
 135 allowed each year for net new employment fluctuations above the minimum level of the
 136 number required in such tier.

137 (2) Existing business enterprises shall be allowed an additional tax credit for taxes
138 imposed under this article equal to \$500.00 per eligible new full-time employee job the
139 first year in which the new full-time employee job is created. The additional credit shall
140 be claimed in the first taxable year in which the new full-time employee job is created.
141 The number of new full-time employee jobs shall be determined by comparing the
142 monthly average number of full-time employees subject to Georgia income tax
143 withholding for the taxable year with the corresponding period of the prior taxable year.
144 In tier 1 counties, those existing business enterprises that increase employment by five
145 or more shall be eligible for the credit. In tier 2 counties, only those existing business
146 enterprises that increase employment by ten or more shall be eligible for the credit. In
147 tier 3 counties, only those existing business enterprises that increase employment by 15
148 or more shall be eligible for the credit. In tier 4 counties, only those existing business
149 enterprises that increase employment by 25 or more shall be eligible for the credit. The
150 average wage of the new jobs created must be above the average wage of the county that
151 has the lowest average wage of any county in the state to qualify as reported in the most
152 recently available annual issue of the Georgia Employment and Wages Averages Report
153 of the Department of Labor. To qualify for a credit under this paragraph, the employer
154 must make health insurance coverage available to the employee filling the new full-time
155 job; provided, however, that nothing in this paragraph shall be construed to require the
156 employer to pay for all or any part of health insurance coverage for such an employee in
157 order to claim the credit provided for in this paragraph if such employer does not pay for
158 all or any part of health insurance coverage for other employees. Credit shall not be
159 allowed during a year if the net employment increase falls below the number required in
160 such tier. Any credit generated and utilized for years prior to the year in which the net
161 employment increase falls below the number required in such tier shall not be affected.
162 The state revenue commissioner shall adjust the credit allowed each year for net new
163 employment fluctuations above the minimum level of the number required in such tier.
164 This paragraph shall apply only to new eligible full-time jobs created in taxable years
165 beginning on or after January 1, 2006, and ending no later than taxable years beginning
166 prior to January 1, 2011.

167 (f) Tax credits for ~~four~~ five years for the taxes imposed under this article shall be awarded
168 for additional new full-time employee jobs created by business enterprises qualified under
169 subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs
170 shall be determined by subtracting the highest total employment of the business enterprise
171 during years two through five, or whatever portion of years two through five which has
172 been completed, from the total increased employment. The state revenue commissioner

173 shall adjust the credit allowed in the event of employment fluctuations during the five years
174 of credit."

175 ~~"(h)(1) Except as provided in paragraph (2) of this subsection, any~~ Any credit claimed
176 under this Code section but not used in any taxable year may be carried forward for ten
177 years from the close of the taxable year in which the qualified jobs were established,
178 subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section,
179 but in tiers 3 and 4 the credit established by this Code section taken in any one taxable
180 year shall be limited to an amount not greater than 50 percent of the taxpayer's state
181 income tax liability which is attributable to income derived from operations in this state
182 for that taxable year. In tier 1 and 2 counties, the credit allowed under this Code section
183 against taxes imposed under this article in any taxable year shall be limited to an amount
184 not greater than 100 percent of the taxpayer's state income tax liability attributable to
185 income derived from operations in this state for such taxable year.

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

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

195 SECTION 2.

196 Said article is further amended by revising subsections (a), (e), (f), and (j) of Code Section
197 48-7-40.1, relating to tax credits for business enterprises located in less developed areas, as
198 follows:

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

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

208 (2) 'Business enterprise' means any business or the headquarters of any such business
 209 which is engaged in manufacturing, including, but not limited to, the manufacturing of
 210 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric
 211 vehicle enterprises, warehousing and distribution, processing, telecommunications,
 212 broadcasting, tourism, biomedical manufacturing, and research and development
 213 industries. Such term shall not include retail businesses. Businesses are eligible for the
 214 tax credit provided by this Code section at an individual establishment of the business
 215 based on the classification of the individual establishment under the North American
 216 Industry Classification System. For purposes of this Code section, the term
 217 'establishment' means an economic unit at a single physical location where business is
 218 conducted or where services or industrial operations are performed. If more than one
 219 business activity is conducted at the establishment, then only those jobs engaged in the
 220 qualifying activity will be eligible for the tax credit provided by this Code section."

221 "(e) Business enterprises in areas designated by the commissioner of community affairs
 222 as less developed areas shall be allowed a job tax credit for taxes imposed under this
 223 article equal to \$3,500.00 annually per eligible new full-time employee job for five years
 224 beginning with the first taxable year in which the new full-time employee job is created
 225 and for the four immediately succeeding taxable years; provided, however, that where the
 226 amount of such credit exceeds a business enterprise's liability for such taxes in a taxable
 227 year, the excess may be taken as a credit against such business enterprise's quarterly or
 228 monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year
 229 \$3,500.00 for each new full-time employee job when aggregated with the credit applied
 230 against taxes under this article. Each employee whose employer receives credit against
 231 such business enterprise's quarterly or monthly payment under Code Section 48-7-103
 232 shall receive credit against his or her income tax liability under Code Section 48-7-20 for
 233 the corresponding taxable year for the full amount which would be credited against such
 234 liability prior to the application of the credit provided for in this subsection. Credits
 235 against quarterly or monthly payments under Code Section 48-7-103 and credits against
 236 liability under Code Section 48-7-20 established by this subsection shall not constitute
 237 income to the taxpayer. The number of new full-time jobs shall be determined by
 238 comparing the monthly average number of full-time employees subject to Georgia
 239 income tax withholding for the taxable year with the corresponding period of the prior
 240 taxable year. Only those business enterprises that increase employment by five or more
 241 in a less developed area shall be eligible for the credit; provided, however, that within
 242 areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c)
 243 of this Code section businesses shall only have to increase employment by two or more
 244 jobs in order to be eligible for the credit, provided that, if a business only increases

245 employment by two jobs, the persons hired for such jobs shall not be married to one
 246 another. The average wage of the new jobs created must be above the average wage of
 247 the county that has the lowest wage of any county in the state to qualify as reported in the
 248 most recently available annual issue of the Georgia Employment and Wages Averages
 249 Report of the Department of Labor. To qualify for a credit under this subsection, the
 250 employer must make health insurance coverage available to the employee filling the new
 251 full-time job; provided, however, that nothing in this subsection shall be construed to
 252 require the employer to pay for all or any part of health insurance coverage for such an
 253 employee in order to claim the credit provided for in this subsection if such employer
 254 does not pay for all or any part of health insurance coverage for other employees. Credit
 255 shall not be allowed during a year if the net employment increase falls below five or two,
 256 as applicable. ~~In any year in which the net employment increase falls below five or two,
 257 as applicable, the taxpayer shall forfeit the right to the credit claimed for that taxable
 258 year. For the year that the net employment increase falls below five or two, as applicable,
 259 a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this
 260 article for that taxable year and all past payments under Code Section 48-7-103 for that
 261 taxable year that were foregone by the state as a result of the credits provided by this
 262 Code section; provided, however that Code Section 48-2-40 shall not apply to any such
 263 forfeiture.~~ The state revenue commissioner shall adjust the credit allowed each year for
 264 net new employment fluctuations above the minimum level of five or two.

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

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

278 SECTION 3.

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

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

293

SECTION 4.

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

296 "48-7-40.15.

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

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

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

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

314 (2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other
 315 programming content to the general public, subscribers, or to third parties via radio,
 316 television, cable, satellite, or the Internet or Internet Protocol and includes motion picture

317 and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'
 318 is limited to establishments classified under the 2007 North American Industry
 319 Classification System Codes 515, broadcasting; ~~516~~, 519, Internet publishing and
 320 broadcasting; 517, telecommunications; and 512, motion picture and sound recording
 321 industries.

322 (3) 'Business enterprise' means any business or the headquarters of any such business
 323 which is engaged in manufacturing, including, but not limited to, the manufacturing of
 324 alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric
 325 vehicle enterprises, warehousing and distribution, processing, telecommunications,
 326 broadcasting, tourism, biomedical manufacturing, and research and development
 327 industries. Such term but shall not include retail businesses. Businesses are eligible for
 328 the tax credit provided by subsection (b) of this Code section at an individual
 329 establishment of the business based on the classification of the individual establishment
 330 under the North American Industry Classification System. For purposes of this Code
 331 section, the term 'establishment' means an economic unit at a single physical location
 332 where business is conducted or where services or industrial operations are performed.
 333 If more than one business activity is conducted at the establishment, then only those jobs
 334 engaged in the qualifying activity will be eligible for the tax credit provided by this Code
 335 section.

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

339 (5) 'Port traffic' means:

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

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

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

351 (7) 'Qualified investment property' means all real and personal property purchased or
 352 acquired by a taxpayer for use in the construction of an additional manufacturing or
 353 telecommunications facility to be located in this state or in the expansion of an existing

354 manufacturing or telecommunications facility located in this state, including, but not
355 limited to, moneys expended on land acquisition, improvements, buildings, building
356 improvements, and machinery and equipment to be used in the manufacturing or
357 telecommunications facility. The department shall promulgate rules defining eligible
358 manufacturing facilities, telecommunications facilities, and qualified investment property
359 pursuant to this Code section.

360 (b)(1) In the case of any business enterprise which has increased its port traffic of
361 products during the previous 12 month period by more than 10 percent above its base
362 year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or
363 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed
364 an additional \$1,250.00 job tax credit against the tax imposed under this article.

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

370 (c) In the case of any business enterprise which has increased its port traffic of products
371 during the previous 12 month period by more than 10 percent above its base year port
372 traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3,
373 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added
374 at any time on or after January 1, 1998, there shall be allowed a credit against the tax
375 imposed under this article in an amount equal to the applicable percentage amount
376 otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for
377 the cost of such property. The tax credit described in this subsection shall be allowed
378 subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7,
379 as applicable, except that such property may be placed in service in any county without
380 regard to its tier designation. Such credit shall also be in lieu of and not in addition to the
381 credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7,
382 48-7-40.8, and 48-7-40.9.

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

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

392 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a
393 schedule to the taxpayer's state income tax return which shall set forth the following
394 information, as a minimum, in addition to the information required under Code Sections
395 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

396 (A) A description of how the base year port traffic and the increase in port traffic was
397 determined;

398 (B) The amount of the base year port traffic;

399 (C) The amount of the increase in port traffic for the taxable year, including
400 information which demonstrates an increase in port traffic in excess of the minimum
401 amount required to claim the tax credit under this Code section;

402 (D) Any tax credit utilized by the taxpayer in prior years;

403 (E) The amount of tax credit carried over from prior years;

404 (F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

405 (G) The amount of tax credit to be carried over to subsequent tax years.

406 (2)(A) Any tax credit claimed under subsection (b) of this Code section but not used
407 in any taxable year may be carried forward for ten years from the close of the taxable
408 year in which the qualified jobs were established, provided that the increase in port
409 traffic remains above the minimum levels established in Code Section 48-7-40 or
410 48-7-40.1 and this Code section, respectively.

411 (B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code
412 Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 but not used in any taxable year may be
413 carried forward for ten years from the close of the taxable year in which the qualified
414 investment property was acquired, provided that the increase in port traffic remains
415 above the minimum level established in this Code section and the qualified investment
416 property remains in service.

417 (3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code
418 Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable
419 years following the taxable year the qualified investment property was first placed in
420 service, provided that the increase in port traffic remains above the minimum level
421 established in this Code section and the qualified investment property remains in
422 service.

423 (B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2,
424 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount
425 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 (C) The tax credit established by this Code section in addition to that pursuant to Code
 428 Section 48-7-40 or 48-7-40.1 and taken in any one taxable year shall be limited to an
 429 amount not greater than 50 percent of the taxpayer's state income tax liability which is
 430 attributable to income derived from operations in this state for that taxable year.

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

434 **SECTION 5.**

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

437 "48-7-40.17.

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

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

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

443 (A) Is located in this state;

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

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

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

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

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

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

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

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

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

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

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

495 (c) The number of new quality jobs to which this Code section shall be applicable shall be
496 determined by comparing the monthly average of new quality jobs subject to Georgia

497 income tax withholding for the taxable year with the corresponding average for the prior
498 taxable year.

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

502 (e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section
503 shall be claimed within one year of the earlier of the date the original return was filed or
504 the date such return was due as prescribed in subsection (a) of Code Section 48-7-56,
505 including any approved extensions.

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

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

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

520 SECTION 6.

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

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

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

530 SECTION 7.

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