

The House Committee on Ways and Means offers the following substitute to HB 266:

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 define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 clarify that any tax credits earned for qualified research expenses under Code Section
5 48-7-40.12 in any taxable year beginning before January 1, 2012, and any carryforward
6 attributable thereto, are governed by such Code section in effect for the taxable year in which
7 the credit was earned; to change the definition of energy used in agriculture; to provide for
8 dealers to elect between manufacturing and agricultural exemptions; to place a good faith
9 standard on a seller regarding exemptions from taxation; to provide for related matters; to
10 provide for effective dates and applicability; to repeal conflicting laws; and for other
11 purposes.

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

13 **SECTION 1.**

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions regarding
16 revenue and taxation, as follows:

17 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
18 beginning on or after January 1, ~~2011~~ 2012, the provisions of the United States Internal
19 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
20 ~~January 1, 2012~~ January 3, 2013, except that Section 85(c), Section 108(i), Section
21 163(e)(5)(F) Section 164(a)(6), Section 164(b)(6), Section 168(b)(3)(I), Section
22 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not
23 excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)),
24 Section 168(m), Section 168(n), Section 172(b)(1)(H), Section 172(b)(1)(J), Section
25 172(j), Section 179(f), Section 199, Section 810(b)(4), Section 1400L, Section
26 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section

27 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they
 28 were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), Section
 29 172(i)(1), and Section 1221 of the Internal Revenue Code of 1986, as amended, shall be
 30 treated as they were in effect before the 2008 enactment of federal Public Law 110-343,
 31 and except that Section 163(i)(1) of the Internal Revenue Code of 1986, as amended,
 32 shall be treated as it was in effect before the 2009 enactment of federal Public Law 111-5,
 33 and except that Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as
 34 if it was not in effect, and except that the limitations provided in Section 179(b)(1) shall
 35 be \$250,000.00 for tax years beginning in 2010, ~~and shall be \$250,000.00 for tax years~~
 36 ~~beginning in 2011, shall be \$250,000.00 for tax years beginning in 2012, and shall be~~
 37 \$250,000.00 for tax years beginning in 2013, and except that the limitations provided in
 38 Section 179(b)(2) shall be \$800,000.00 for tax years beginning in 2010, ~~and shall be~~
 39 ~~\$800,000.00 for tax years beginning in 2011, shall be \$800,000.00 for tax years~~
 40 ~~beginning in 2012, and shall be \$800,000.00 for tax years beginning in 2013, and~~
 41 provided that Section 1106 of federal Public Law 112-95 shall be treated as if it is in
 42 effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2013)' shall
 43 be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2013).'
 44 and notwithstanding any other provision in this title, no interest shall be refunded with
 45 respect to any claim for refund filed pursuant to Section 1106 of federal Public Law
 46 112-95. In the event a reference is made in this title to the Internal Revenue Code or the
 47 Internal Revenue Code of 1954 as it existed on a specific date prior to ~~January 1, 2012~~
 48 January 3, 2013, the term means the provisions of the Internal Revenue Code or the
 49 Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided
 50 in this title, any term used in this title shall have the same meaning as when used in a
 51 comparable provision or context in the Internal Revenue Code of 1986, as amended. For
 52 taxable years beginning on or after January 1, ~~2011~~ 2012, provisions of the Internal
 53 Revenue Code of 1986, as amended, which were as of ~~January 1, 2012~~ January 3, 2013,
 54 enacted into law but not yet effective shall become effective for purposes of Georgia
 55 taxation on the same dates upon which they become effective for federal tax purposes."

56 **SECTION 2.**

57 Said title is further amended by revising Code Section 48-7-40.12, relating to tax credits for
 58 qualified research expenses, by adding a new subsection to read as follows:

59 "(f) Any credit earned under this Code section in any taxable year beginning before
 60 January 1, 2012, and any credit carryforward attributable thereto, shall be governed by this
 61 Code section as in effect for the taxable year in which such credit was earned, including,
 62 but not limited to, when determining whether such credit or any credit carryforward may

63 be taken as a credit against the taxpayer's quarterly or monthly payments under Code
 64 Section 48-7-103."

65 **SECTION 3.**

66 Said title is further amended by revising paragraph (4) of subsection (a) and adding a new
 67 subsection to Code Section 48-8-3.3, relating to an exemption from state sales and use taxes
 68 for certain agricultural inputs and machinery, to read as follows:

69 "(4) 'Energy used in agriculture' means fuels used for agricultural ~~purposes, including,~~
 70 but purposes, other than fuels subject to prepaid state tax as defined in Code Section
 71 48-8-2. The term includes, but is not limited to, off-road diesel, propane, butane,
 72 electricity, natural gas, wood, wood products, or wood by-products; liquefied petroleum
 73 gas or other fuel used in structures in which broilers, pullets, or other poultry are raised,
 74 in which swine are raised, in which dairy animals are raised or milked or where dairy
 75 products are stored on a farm, in which agricultural products are stored, and in which
 76 plants, seedlings, nursery stock, or floral products are raised primarily for the purposes
 77 of making sales of such plants, seedlings, nursery stock, or floral products for resale;
 78 electricity or other fuel for the operation of an irrigation system which is used on a farm
 79 exclusively for the irrigation of agricultural products; and electricity or other fuel used
 80 in the drying, cooking, or further processing of raw agricultural products, including, but
 81 not limited to, food processing of raw agricultural products."

82 "(f) A dealer that performs both manufacturing and agricultural operations at a single place
 83 of business may avail itself of the exemptions under either Code Section 48-8-3.2 or this
 84 Code section, but not both, for that place of business in any one calendar year."

85 **SECTION 4.**

86 Said title is further amended by revising Code Section 48-8-38, relating to the burden of
 87 proof on the seller as to taxability, as follows:

88 "48-8-38.

89 (a) All gross sales of a retailer are subject to the tax imposed by this article until the
 90 contrary is established. The burden of proving that a sale of tangible personal property is
 91 not a sale at retail ~~is~~ shall be upon the person who makes the sale unless such person, in
 92 good faith, takes from the purchaser a certificate stating that the property is purchased for
 93 resale or is otherwise tax exempt.

94 (b) The certificate relieves the seller from the burden of proof as provided in subsection
 95 (a) of this Code section if the seller acquires from the purchaser a properly completed
 96 certificate taken in good faith. A properly completed certificate taken in good faith means
 97 a seller shall obtain a certificate:

- 98 (1) That is fully completed, including, but not limited to, the name, address, sales tax
 99 number, and signature of the taxpayer when required;
- 100 (2) In a form appropriate for the type of exemption claimed;
- 101 (3) Claiming an exemption that was statutorily available on the date of the transaction
 102 in the jurisdiction where the transaction is sourced;
- 103 (4) Claiming an exemption that could be applicable to the item being purchased; and
- 104 (5) Claiming an exemption that is reasonable for the purchaser's type of business.
- 105 (c) The certificate relieves the seller from the burden of proof on sales for resale as
 106 provided in subsection (a) of this Code section if the seller acquires from the purchaser a
 107 properly completed certificate, taken in good faith, from a purchaser who:
- 108 (1) Is engaged in the business of selling tangible personal property;
- 109 (2) Has a valid sales tax registration number at the time of purchase and has listed his or
 110 her sales tax number on the certificate; and
- 111 (3) At the time of purchasing the tangible personal property, the seller has no reason to
 112 believe that the purchaser does not intend to resell it in his or her regular course of
 113 business.
- 114 ~~(c)(d)~~ The certificate shall include such information as is determined by the commissioner
 115 and is signed by the purchaser if it is a paper exemption certificate.
- 116 ~~(d) A purchaser claiming an exemption electronically shall use the standard form as~~
 117 ~~adopted by the Streamlined Sales Tax Governing Board.~~
- 118 (e) A seller shall obtain the same information for proof of a claimed exemption regardless
 119 of the medium in which the transaction occurred.
- 120 ~~(f) The department shall relieve a seller of the tax otherwise applicable if the seller obtains~~
 121 ~~a fully completed exemption certificate approved by the Streamlined Sales Tax Governing~~
 122 ~~Board, the department, or the Multistate Tax Commission or captures the relevant data~~
 123 ~~elements required under the Streamlined Sales and Use Tax Agreement within 90 days~~
 124 ~~subsequent to the date of sale. If the seller has not obtained a fully completed exemption~~
 125 ~~certificate or all relevant data elements required under the Streamlined Sales and Use Tax~~
 126 ~~Agreement within 90 days subsequent to the date of sale, the department shall provide the~~
 127 ~~seller with 120 days subsequent to a request for substantiation to either:~~
- 128 ~~(1) Obtain a fully completed exemption certificate from the purchaser, taken in good~~
 129 ~~faith which means that the seller obtain a certificate that claims an exemption that:~~
- 130 ~~(A) Was statutorily available on the date of the transaction in the jurisdiction where the~~
 131 ~~transaction is sourced;~~
- 132 ~~(B) Could be applicable to the item being purchased; and~~
- 133 ~~(C) Is reasonable for the purchaser's type of business; or~~
- 134 ~~(2) Obtain other information establishing that the transaction was not subject to the tax.~~

135 ~~(g) The department shall relieve a seller of the tax otherwise applicable if the seller obtains~~
136 ~~a blanket exemption certificate from a purchaser with which the seller has a recurring~~
137 ~~business relationship."~~

138

SECTION 5.

139 (a) This section and Section 1 of this Act shall become effective upon its approval by the
140 Governor or upon its becoming law without such approval, and Section 1 shall be
141 applicable to all taxable years beginning on or after January 1, 2012, except the provisions
142 in Section 1 relating to Section 1106 of federal Public Law 112-95 shall also apply to
143 taxable years beginning before January 1, 2012.

144 (b) Section 2 of this Act shall become effective upon its approval by the Governor or upon
145 its becoming law without such approval and shall be applicable to all taxable years
146 beginning on or after January 1, 2012.

147 (c) Sections 3, 4, and 6 of this Act shall become effective upon its approval by the
148 Governor or upon its becoming law without such approval.

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SECTION 6.

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