

House Bill 265 (AS PASSED HOUSE AND SENATE)

By: Representatives Efration of the 104<sup>th</sup>, Rogers of the 10<sup>th</sup>, Rhodes of the 120<sup>th</sup>, Kelley of the 16<sup>th</sup>, Stephens of the 164<sup>th</sup>, 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, rate, computation, and exemptions from state income tax, so as to  
3 revise the provisions relating to the credit for establishing or relocating quality jobs; to  
4 amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to  
5 exemptions from state sales and use taxes, so as to provide a state and local sales tax  
6 exemption for sales of tangible personal property used for or in the renovation or expansion  
7 of certain theaters; to provide a state sales tax exemption for sales of tickets, fees, or charges  
8 of admission to certain facilities that provide certain arts and education programming; to  
9 provide for related matters; to provide for an effective date and applicability; to repeal  
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
14 imposition, rate, computation, and exemptions from state income tax, is amended by revising  
15 subsection (a) of Code Section 48-7-40.17, relating to an income tax credit for establishing  
16 or relocating quality jobs, as follows:

17 "48-7-40.17.

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

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

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

23 (A) Is located in this state;

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

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

27 (D) Pays at or above 110 percent of the average wage of the county in which it is  
28 located.

29 (3) 'Qualified investment property' means all real and personal property purchased or  
30 acquired by a taxpayer for use in a qualified project, including, but not limited to,  
31 amounts expended on land acquisition, improvements, buildings, building improvements,  
32 and any personal property to be used in the facility or facilities. Any lease for a period  
33 of three years or longer of any real or personal property used in a new or expanded  
34 facility or facilities which would otherwise constitute qualified investment property shall  
35 be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the  
36 full value of the leased property as qualified investment property in the year in which the  
37 lease becomes binding on the lessor and the taxpayer.

38 (4) 'Qualified investment property requirement' means the requirement that a minimum  
39 of \$2.5 million in qualified investment property will have been purchased or acquired by  
40 the taxpayer to be used with respect to a qualified project. Such qualified investment  
41 property must be placed in service by the end of the two-year period specified in  
42 subsection (b) of this Code section.

43 (5) 'Qualified project' means a project which meets the qualified investment property  
44 requirement and which involves the lease or construction of one or more new facilities  
45 in this state or the expansion of one or more existing facilities in this state. For purposes  
46 of this paragraph, the term 'facilities' means all facilities comprising a single project,  
47 including noncontiguous parcels of land, improvements to such land, buildings, building  
48 improvements, and any personal property that is used in the facility or facilities.

49 ~~(3)~~(6) 'Taxpayer' means any person required by law to file a return or to pay taxes,  
50 except that any taxpayer may elect to consider the jobs within its disregarded entities, as  
51 defined in the Internal Revenue Code, for purposes of calculating the number of new  
52 quality jobs created by the taxpayer under this Code section.

53 (b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this  
54 state which elects not to receive the tax credits provided for by Code Sections 48-7-40,  
55 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  
56 jobs and investments created by, arising from, related to, or connected in any way with the  
57 same project and, within one year of the first date on which the taxpayer pursuant to the  
58 provisions of Code Section 48-7-101 withholds wages for employees in this state and  
59 employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for  
60 taxes imposed under this article; except that if the first date on which the taxpayer, pursuant  
61 to the provisions of Code Section 48-7-101, withholds wages for employees in this state  
62 occurs in a taxable year beginning on or after January 1, 2017, the taxpayer has two years  
63 to employ at least 50 persons in new quality jobs in this state:

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

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

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

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

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

79 provided, however, that where the amount of such credit exceeds a taxpayer's liability for  
80 such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's  
81 quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one  
82 taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each  
83 new quality job when aggregated with the credit applied against taxes under this article.  
84 Each employee whose employer receives credit against such taxpayer's quarterly or  
85 monthly payment under Code Section 48-7-103 shall receive a credit against his or her  
86 income tax liability under Code Section 48-7-20 for the corresponding taxable year for the  
87 full amount which would be credited against such liability prior to the application of the  
88 credit provided for in this subsection. Credits against quarterly or monthly payments under  
89 Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established  
90 by this subsection shall not constitute income to the taxpayer. For each new quality job  
91 created, the credit established by this subsection may be taken for the first taxable year in  
92 which the new quality job is created and for the four immediately succeeding taxable years;  
93 provided, however, that such new quality jobs must be created within seven years from the  
94 close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit  
95 shall not be allowed during a year if the net employment increase falls below the 50 new  
96 quality jobs required. Any credit received for years prior to the year in which the net  
97 employment increase falls below the 50 new quality jobs required shall not be affected  
98 except as provided in subsection ~~(f)~~(g) of this Code section. The state revenue  
99 commissioner shall adjust the credit allowed each year for net new employment  
100 fluctuations above the 50 new quality jobs required.

101 (c) Only a taxpayer that completes the creation of a qualified project in a taxable year  
102 beginning on or after January 1, 2017, shall be eligible to begin a subsequent seven-year  
103 job creation period for the qualified project, provided that the taxpayer creates 50 or more  
104 new quality jobs, at the site or sites of a qualified project or the facility or facilities  
105 resulting therefrom, above its single previous high yearly average number of new quality  
106 jobs during any prior seven-year job creation period. A subsequent seven-year job creation  
107 period is subject to all the requirements of this Code section. A taxpayer must notify the  
108 commissioner of their intent to begin a subsequent seven-year job creation period. The  
109 commissioner shall provide by regulation the time in which such notification shall occur.  
110 New quality jobs generated under previous seven-year job creation periods shall continue  
111 to be eligible for the credit as provided by this Code section. No new quality jobs may be  
112 generated under previous periods of eligibility after a subsequent period of eligibility has  
113 begun. New quality jobs created in a subsequent seven-year job creation period shall not  
114 be counted as additional new quality jobs under a previous seven-year job creation period;  
115 instead those new quality jobs shall count toward the subsequent period. For purposes of  
116 determining the number of new quality jobs in a particular year that are attributable to each  
117 seven-year job creation period, the taxpayer shall begin with the first seven-year job  
118 creation period and then attribute the remainder to each subsequent seven-year job creation  
119 period from the oldest to the newest. Such attributions shall be made up to the single high  
120 yearly average number of new quality jobs for each seven-year job creation period. A  
121 taxpayer may create more than one subsequent seven-year job creation period. If at the  
122 time a taxpayer begins a subsequent seven-year job creation period, the taxpayer had a year  
123 or years in the prior seven-year job creation period where the number of new quality jobs  
124 were below the single high yearly average number of new quality jobs, the taxpayer shall  
125 be allowed to make an irrevocable election to use the average number of new quality jobs  
126 for the completed years in the prior seven-year job creation period instead of the single  
127 high yearly average number of new quality jobs for all purposes of this subsection. If such  
128 election is made, the number of new quality jobs in the years subsequent to the completed  
129 years for the prior seven-year job creation period shall be deemed to not exceed the average  
130 number of new quality jobs for the completed years in the prior seven-year job creation  
131 period. New quality jobs over such average number shall be attributed to the subsequent  
132 seven-year job creation period as provided in this subsection.

133 ~~(c)~~(d) The number of new quality jobs to which this Code section shall be applicable shall  
134 be determined by comparing the monthly average of new quality jobs subject to Georgia  
135 income tax withholding for the taxable year with the corresponding average for the prior  
136 taxable year.

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

140 ~~(e)~~(f) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code  
 141 section shall be claimed within one year of the earlier of the date the original return was  
 142 filed or the date such return was due as prescribed in subsection (a) of Code Section  
 143 48-7-56, including any approved extensions.

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

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

151 **SECTION 2.**

152 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from  
 153 state sales and use taxes, is amended by deleting "or" at the end of paragraph (97), by  
 154 deleting the period and adding a semicolon at the end of paragraph (98), and by adding new  
 155 paragraphs to read as follows:

156 "(99)(A) The sale or use of tangible personal property used for or in the renovation or  
 157 expansion of a theater located within a facility in this state that contains an art museum,  
 158 symphonic hall, and theater that charges for admission and is owned or operated by an  
 159 organization which is exempt from taxation under Section 501(c)(3) of the Internal  
 160 Revenue Code, if such organization's primary mission is to provide arts and education  
 161 programming for the benefit of the citizens of this state, to the extent provided in  
 162 subparagraphs (B) and (C) of this paragraph.

163 (B) This exemption shall apply from July 1, 2017, until January 1, 2019, and until the  
 164 aggregate state sales and use tax refunded pursuant to this paragraph exceeds  
 165 \$750,000.00. A qualifying organization must pay sales and use tax on all purchases and  
 166 uses of tangible personal property and may obtain the benefit of this exemption from  
 167 state sales and use tax by filing a claim for refund of tax paid on qualifying items. All  
 168 refunds made pursuant to this paragraph shall not include interest.

169 (C) This exemption shall apply from July 1, 2017, until January 1, 2019, to any local  
 170 sales and use tax levied or imposed at any time in any area consisting of less than the  
 171 entire state, however authorized, including, but not limited to, such taxes authorized by  
 172 or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243),

173 as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such  
 174 taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

175 (D) Notwithstanding any provision of Code Section 48-8-63 to the contrary, purchases  
 176 by a contractor may qualify for the exemption provided for in this paragraph. However,  
 177 when a contractor purchases qualifying tangible personal property, the contractor shall  
 178 pay the tax at the time of purchase or at the time of first use in this state; and the  
 179 ultimate owner of the property may file a claim for refund of the tax paid on the  
 180 qualifying property.

181 (E) Items qualifying for exemption include all tangible personal property that will  
 182 remain at the theater after completion of construction and all tangible personal property  
 183 that becomes incorporated into the real property structures of the theater. The  
 184 exemption excludes all items that remain tangible personal property in the possession  
 185 of a contractor after the completion of construction; or

186 (100)(A) Sales of tickets, fees, or charges for admission to a fine arts performance or  
 187 exhibition conducted within a facility in this state that is owned or operated by an  
 188 organization which is exempt from taxation under Section 501(c)(3) of the Internal  
 189 Revenue Code, or a museum of cultural significance, if such organization's or museum's  
 190 primary mission is to advance the arts in this state and to provide arts, educational, and  
 191 culturally significant programming and exhibits for the benefit and enrichment of the  
 192 citizens of this state.

193 (B) As used in this paragraph, the term 'fine arts' means music performed by a  
 194 symphony orchestra, poetry, photography, ballet, dance, opera, theater, dramatic arts,  
 195 painting, sculpture, ceramics, drawing, watercolor, graphics, printmaking, and  
 196 architecture.

197 (C) This paragraph shall be automatically repealed on July 1, 2020."

198 **SECTION 3.**

199 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 200 without such approval and Section 1 of this Act shall be applicable to all taxable years  
 201 beginning on or after January 1, 2017.

202 **SECTION 4.**

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