House Bill 224

By: Representatives Williamson of the 115th, Kelley of the 16th, Powell of the 171st, Harrell of the 106th, Meeks of the 178th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income tax, so as to provide that credit for new purchases and acquisitions of qualified investment property shall be earnable for mining and mining facilities and allowed against a taxpayer's payroll withholding; to provide that certain previously claimed and unused tax credits earned by taxpayers may be applied against such taxpayers' payroll withholding under certain conditions; to provide for conditions and limitations; to provide for applications and proration; to revise definitions; to provide for related matters; to provide for an effective date and application; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income tax, is amended by revising Code Section 48-7-40.2, relating to tax credits for existing manufacturing and telecommunications facilities in tier 1 counties and conditions and limitations, as follows:

"48-7-40.2.

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

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

(2) 'Qualified investment property' means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing, mining, or telecommunications facility to be located in this state in a rural county or the expansion of an existing manufacturing, mining, or telecommunications facility located in this state in a rural county, including, but not limited to, amounts expended on land

acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing, mining, or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, mining facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(3) 'Recovered materials' means those materials, including but not limited to, such materials as aluminum, oil, plastic, paper, paper products, scrap metal, iron, glass, and rubber, which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(4) 'Recycling' means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(5) 'Recycling machinery and equipment' means all tangible personal property used, directly or indirectly, to sort, store, prepare, convert, process, fabricate, or manufacture recovered materials into finished products which are composed of at least 25 percent recovered materials, such term including, but not being limited to, power generation and pollution control machinery and equipment.

(6) 'Recycling manufacturing facility' means any facility, including land, improvements to land, buildings, building improvements, and any recycling machinery and equipment used in the recycling process resulting in the manufacture of finished products from recovered materials, provided that up to 10 percent of any building that is a component of a recycling facility may be used for office space to house support staff for the recycling operation.

(7) 'Rural county' means a county that is designated as a tier 1 county by the commissioner of community affairs in accordance with Code Section 48-7-40 and that has a population of less than 75,000 with 10 percent or more of such population living in poverty.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing, mining, or telecommunications facility or manufacturing, mining, or telecommunications support facility in this state in a ~~tier 1 county designated pursuant to Code Section 48-7-40~~ rural county, there shall be allowed a credit against the tax imposed under this article in an amount equal to 5 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 8 percent.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the investment in qualified investment property must occur no sooner than January 1, 1995. The credit may be taken beginning with the tax year immediately following the tax year in which the qualified investment property having an aggregate cost in excess of ~~$50,000.00~~ $1 million is purchased or acquired by the taxpayer. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the project;

(B) The amount of qualified investment property acquired during the taxable year;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified investment property acquired in prior taxable years;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

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

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

(H) The amount of tax credit to be carried over to subsequent tax years;

(2)(A) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that such qualified investment property remains in service~~.~~:

(B)(i) The credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(ii) Notwithstanding division (i) of this subparagraph, for credit earned pursuant to this Code section from purchases of qualified investment property occurring on or after July 1, 2019, such credit shall:

(I) First be applied to such taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year, limited to 75 percent of such liability before application of such credit; and

(II) If the amount of such credit exceeds the limit set forth in subdivision (I) of this division, the excess may be taken as a credit of up to $1 million for any one taxable year against such taxpayer's quarterly or monthly payments under Code

Section 48-7-103. Each employee for whom an employer receives credit against such employer's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subparagraph shall not constitute income to the employee.

provided, however, that credit allowed and used pursuant to subdivision (II) of this division shall not exceed $20 million in aggregate for all taxpayers for any calendar year. The commissioner shall establish an application process to ensure that the $20 million aggregate maximum and the $1 million per taxpayer maximum are not exceeded. If applications for such credit exceed $20 million for the calendar year, the commissioner shall allow for the credit to be applied to all eligible applicants in prorated amounts among such applicants, not to exceed $20 million for the calendar year.

(C) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility in any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer;

(2.1)(A) Any credit claimed prior to January 1, 2019, pursuant to this Code section by a taxpayer that remains unused by such taxpayer may be applied pursuant to subparagraph (B) of this paragraph for any taxable year beginning on or after January 1, 2019, for which such credit may be carried forward pursuant to paragraph (2) provided that within a single taxable year such taxpayer:

(i) Maintains within rural counties at least 100 full-time employee jobs as such term is defined in Code Section 48-7-40.24; and

(ii) On or after July 1, 2019, purchases or acquires at least $5 million of qualified investment property within rural counties.

(B) Subject to the requirements established by subparagraph (A) of this paragraph, a taxpayer may elect to apply such credit that has been carried forward as allowed pursuant to division (ii) of subparagraph (B) of paragraph (2) of this Code section.

(C)(i) Qualified investment property purchased or acquired in connection with division (ii) of subparagraph (A) of this paragraph may be eligible for credit granted under subsection (b) of this Code section, provided that the conditions for such credit are met independently of this paragraph. Any such new credit earned shall be applied as provided in paragraph (2) of this subsection.

(ii) For the taxable year in which the jobs that are required to be maintained in division (i) of subparagraph (A) of this subsection are maintained, such jobs shall not be eligible to be used or claimed as the basis for any other tax credit or benefit allowed by law.

(D) This paragraph shall not extend the carry forward period for any credit.

(E) This paragraph shall stand repealed by operation of law on the last moment of December 31, 2029;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection, information which demonstrates that the project includes the acquisition of qualified investment property having an aggregate cost in excess of ~~$50,000.00~~ $1 million;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing, mining, or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(5) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d)~~(1) Except as otherwise provided in paragraph (2) of this subsection, no~~ No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1.

~~(2) For taxable years beginning on or after January 1, 1995, and ending on or prior to December 31, 1998, a taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section and to claim, if otherwise qualified under Code Section 48-7-40, the tax credit applicable to tier 1 counties under Code Section 48-7-40, subject to the following limitations:~~

~~(A) Not less than 250 new full-time employee jobs must be created in the first taxable year and maintained through the end of the third taxable year in which the taxpayer claims both credits as authorized under this paragraph; and~~

~~(B) An otherwise qualified taxpayer shall not be entitled to receive the additional tax credit authorized under Code Section 36-62-5.1 in any taxable year in which that taxpayer claims both of the tax credits as authorized under this paragraph.~~

(e) On or before December 31 of each year, the commissioner of community affairs shall publish a list of Georgia counties that he or she has determined to have a population of less than 75,000 with 10 percent or more of such population living in poverty. Such determination shall be based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census."

SECTION 2.

This Act shall become effective on July 1, 2019, and shall be applicable to taxable years beginning on or after January 1, 2019.

SECTION 3.

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