

The Senate Committee on Rules offered the following substitute to HB 846:

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 allow political subdivisions to elect to repay over a period of time certain final refund  
5 amounts for refunds of local significance due to overpayments of sales and use taxes by a  
6 taxpayer through a direct pay permit; to require the Department of Revenue to establish and  
7 maintain a direct pay permit program that permits a qualified taxpayer to accrue and pay  
8 directly to the department certain state and local sales and use taxes; to provide definitions;  
9 to provide for a tax credit for certain personal protective equipment (PPE) manufacturers; to  
10 provide for conditions and limitations; to provide for related matters; to revise the use or  
11 calculation of certain tax credits for certain taxable years; to provide for effective dates and  
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**PART I**  
15 style="text-align:center">**SECTION 1-1.**

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

19 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years  
20 beginning on or after January 1, ~~2018~~ 2019, the provisions of the United States Internal  
21 Revenue Code of 1986, as amended, provided for in federal law enacted on or before  
22 ~~January 1, 2019~~ March 27, 2020, except that Section 108(i), Section 163(e)(5)(F), Section  
23 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8),  
24 Section 168(k), Section 168(m), Section 168(n), Section 179(d)(1)(B)(ii), Section 179(f),  
25 Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L,

26 Section 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), and Section  
 29 172(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were  
 30 in effect before the 2008 enactment of federal Public Law 110-343, and except that  
 31 Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as  
 32 it was in effect before the 2009 enactment of federal Public Law 111-5, and except that  
 33 Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in  
 34 effect, and except that Section 118, Section 163(j), and Section 382(k)(1) of the Internal  
 35 Revenue Code of 1986, as amended, shall be treated as they were in effect before the  
 36 2017 enactment of federal Public Law 115-97, and except that all provisions in federal  
 37 Public Law 116-136 (CARES Act) that change or affect in any manner Section 172 and  
 38 Section 461(l) shall be treated as if they were not in effect, and except that the limitations  
 39 provided in Section 179(b)(1) shall be \$250,000.00 for tax years beginning in 2010, shall  
 40 be \$250,000.00 for tax years beginning in 2011, shall be \$250,000.00 for tax years  
 41 beginning in 2012, shall be \$250,000.00 for tax years beginning in 2013, and shall be  
 42 \$500,000.00 for tax years beginning in 2014, and except that the limitations provided in  
 43 Section 179(b)(2) shall be \$800,000.00 for tax years beginning in 2010, shall be  
 44 \$800,000.00 for tax years beginning in 2011, shall be \$800,000.00 for tax years  
 45 beginning in 2012, shall be \$800,000.00 for tax years beginning in 2013, and shall be \$2  
 46 million for tax years beginning in 2014, and provided that Section 1106 of federal Public  
 47 Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in  
 48 effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2015)' shall  
 49 be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2015),'  
 50 and notwithstanding any other provision in this title, no interest shall be refunded with  
 51 respect to any claim for refund filed pursuant to Section 1106 of federal Public Law  
 52 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall  
 53 be treated as if it is in effect, except the phrase 'Code Section 48-2-35' shall be substituted  
 54 for the phrase 'section 6511(a) of the Internal Revenue Code of 1986' and the phrase 'such  
 55 section' shall be substituted for the phrase 'such subsection.' In the event a reference is  
 56 made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as  
 57 it existed on a specific date prior to ~~January 1, 2019~~ March 27, 2020, the term means the  
 58 provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it  
 59 existed on the prior date. Unless otherwise provided in this title, any term used in this  
 60 title shall have the same meaning as when used in a comparable provision or context in  
 61 the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after  
 62 January 1, ~~2018~~ 2019, provisions of the Internal Revenue Code of 1986, as amended,

63 which were as of ~~January 1, 2019~~ March 27, 2020, enacted into law but not yet effective  
 64 shall become effective for purposes of Georgia taxation on the same dates upon which  
 65 they become effective for federal tax purposes."

66 **SECTION 1-2.**

67 Said title is further amended by revising paragraph (2) of subsection (h) of Code Section  
 68 48-2-35, relating to refunds of taxes and fees, as follows:

69 "(2)(A) Within 30 business days following the department's receipt of a refund claim  
 70 of local significance, the department shall notify each affected political subdivision's  
 71 political subdivision designee that a refund claim of local significance to the political  
 72 subdivision has been received and shall furnish the taxpayer with a copy of such  
 73 notification. Such notification shall include the date the refund claim of local  
 74 significance was filed, the amount in the claim for refund for which the political  
 75 subdivision itself would be responsible if the request is granted, and a copy of the  
 76 confidentiality provisions in Code Section 48-2-15 and this Code section.

77 (B) After the department has completed an audit of the claim for refund and  
 78 determined a final refund amount, the department shall supplement the above notice by  
 79 transmitting to the political subdivision designee the final refund amount for which the  
 80 political subdivision is responsible.

81 (C)(i) With respect to a final refund amount due to a taxpayer that made an  
 82 overpayment of taxes pursuant to a direct pay permit issued in accordance with Code  
 83 Section 48-8-49.1, in lieu of a single payment of the final refund amount to the  
 84 taxpayer, an affected political subdivision may elect for the final refund amount,  
 85 including applicable interest, to be repaid by the department to the taxpayer over a  
 86 time period less than or equal to the total duration of the periods subject to the claim  
 87 for refund. Any such election must be made by the political subdivision, in a manner  
 88 prescribed by the department, within 30 days of the date the department notifies the  
 89 political subdivision of the final refund amount for which the political subdivision is  
 90 responsible.

91 (ii) When an election is made pursuant to division (i) of this subparagraph, the  
 92 department shall make payment of the total final refund amount, which shall include  
 93 amounts for local sales and use taxes, to the taxpayer in monthly installments due on  
 94 or before the fifteenth day of each calendar month during the repayment period.  
 95 Interest shall accrue on the unpaid balance during such repayment period pursuant to  
 96 subsection (a) of this Code section.

97 (iii) The provisions of this subparagraph shall only apply to refund claims of local  
 98 significance and resulting final refund amounts due to a taxpayer that made an

99 overpayment of local sales and use taxes pursuant to a direct pay permit issued in  
 100 accordance with Code Section 48-8-49.1."

101 **SECTION 1-3.**

102 Said title is further amended by revising subsection (a) of Code Section 48-2-35.1, relating  
 103 to refunds of sales and use taxes, as follows:

104 "(a)(1) If a certificate or exemption determination letter issued by the commissioner  
 105 certifying that the purchaser is entitled to purchase tangible personal property or taxable  
 106 services without the payment of sales and use tax has not been obtained and used prior  
 107 to purchasing such tangible personal property or taxable services, a refund of sales and  
 108 use taxes shall be made to such purchaser without interest.

109 (2) For refunds of overpayments of state and local sales and use taxes made pursuant to  
 110 a direct payment permit issued in accordance with Code Section 48-8-49.1, interest shall  
 111 be paid on the overpaid amount of the taxes or fees pursuant to subsection (a) of Code  
 112 Section 48-2-35, and subject to the provisions of Code Section 50-13A-19.1; provided,  
 113 however, that interest shall begin to accrue on the overpaid amount of taxes or fees from  
 114 the date an amended return or refund claim claiming a refund is filed."

115 **SECTION 1-4.**

116 Said title is further amended by adding a new Code section to read as follows:

117 "48-8-49.1.

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

119 (1) 'Direct payment permit' means a license that permits a qualified taxpayer to accrue  
 120 and pay directly to the department certain state and local sales and use taxes imposed by  
 121 this chapter.

122 (2) 'Qualified taxpayer' means a taxpayer that:

123 (A) Purchased more than \$2 million of tangible personal property in the 12 months  
 124 prior to application, purchased an annual average amount exceeding \$2 million of  
 125 tangible personal property during the 36 months prior to application, or met a lower  
 126 purchase threshold prescribed the department; and

127 (B) Was classified under the previous year's federal income tax return under any  
 128 industry classification code, as determined by the commissioner, that would facilitate  
 129 and expedite the collection of the taxes imposed by this chapter or would be equivalent  
 130 to one of the following North American Industry Classification System (NAICS) codes  
 131 as such existed on January 1, 2017:

132 (i) National Industry Code 517110 - Wired Telecommunications Carriers;

- 133 (ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except  
134 Satellite);
- 135 (iii) National Industry Code 517410 - Satellite Telecommunications;
- 136 (iv) NAICS Industry Code 48111 - Scheduled Air Transportation;
- 137 (v) NAICS Industry Code 48211 - Rail Transportation;
- 138 (vi) Industry Group Code 4841 - General Freight Trucking;
- 139 (vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction;
- 140 (viii) Economic Sector Code 22 - Utilities; or
- 141 (ix) Economic Sector Codes 31-33 - Manufacturing.
- 142 (b) The department shall establish and maintain a direct pay permit program for the  
143 purpose of enabling qualified taxpayers to pay directly to the department taxes that are  
144 imposed by this chapter on the qualified taxpayers; provided, however, that such program  
145 shall exclude taxation on the following:
- 146 (1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section  
147 48-8-2;
- 148 (2) Purchases of meals, beverages, or tobacco;
- 149 (3) Purchases of local telephone services, transportation of persons, or lodging  
150 accommodations and ancillary charges associated with lodging accommodations;
- 151 (4) Purchases to places of amusement, entertainment, or athletic events; admissions to  
152 displays or exhibitions; participation in games or sports; or charges for the use of  
153 amusement devices; or
- 154 (5) Rental charges for periods of 31 days or less for motor vehicles required to be titled  
155 in this state.
- 156 (c) The commissioner shall not require a qualified taxpayer to waive interest on refunds  
157 made in accordance with Code Section 48-2-35 as a condition for obtaining a direct pay  
158 permit.
- 159 (d) The department shall, at a minimum, provide for the following by rule or regulation:
- 160 (1) Certain attestations to be made by a qualified taxpayer in its application for a direct  
161 pay permit;
- 162 (2) Responsibilities and duties for holders of direct pay permits;
- 163 (3) Transferability or nontransferability of direct pay permits;
- 164 (4) Expiration and renewal of direct pay permits; and
- 165 (5) Revocation of direct pay permits."

## PART II

## SECTION 2-1.

166

167

168 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
 169 imposition, rate, and computation, and exemptions, is amended by adding a new Code  
 170 section to read as follows:

171 "48-7-40.1A.

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

173 (1) 'Establishment' means an economic unit at a single physical location where business  
 174 is conducted or where services or industrial operations are performed.

175 (2) 'Hand sanitizer' means any hand antiseptic, hand rub, soap, or agent applied to the  
 176 hands for the purpose of removing common pathogens, including, but not limited to, hand  
 177 cleaners and sanitizers provided for under 7 C.F.R. Section 3201.18.

178 (3) 'Personal protective equipment' or 'PPE' means any protective clothing, helmets,  
 179 gloves, face shields, goggles, facemasks, hand sanitizer, and respirators or other  
 180 equipment designed to protect the wearer from injury or to prevent the spread of  
 181 infection, disease, virus, or other illness. Such term shall include equipment identified  
 182 under 29 C.F.R. Section 1910, Subpart I.

183 (4) 'Personal protective equipment manufacturer' or 'PPE manufacturer' means any  
 184 business enterprise which is engaged in the manufacturing of PPE in this state. Such term  
 185 shall include any business enterprise which, in response to COVID-19, began  
 186 manufacturing PPE in this state. Such term shall not include retail businesses that sell  
 187 PPE.

188 (b)(1) When any PPE manufacturer is qualified to claim a job tax credit under Code  
 189 Section 48-7-40 or 48-7-40.1, there shall be allowed an additional \$1,250.00 job tax  
 190 credit against the tax imposed under this article for those qualifying jobs to the extent  
 191 they are engaged in the qualifying activity of manufacturing PPE in this state during the  
 192 taxable year. Such PPE manufacturer shall be eligible for such additional job tax credit  
 193 at an individual establishment of the business. If more than one business activity is  
 194 conducted at the establishment, then only those jobs engaged in the qualifying activity  
 195 of manufacturing PPE in this state shall be eligible for such additional job tax credit.

196 (2) The additional tax credit provided for in paragraph (1) of this subsection shall be  
 197 claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but  
 198 shall, except as provided in this Code section, be allowed subject to the conditions and  
 199 limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the  
 200 credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the  
 201 amount allowed to offset taxes imposed by this article shall be 100 percent; and provided,

202 further, that when such tax credit exceeds a business enterprise's liability for taxes  
 203 imposed by this article in a taxable year, the excess may be taken as a credit against such  
 204 business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the  
 205 same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the  
 206 dollar limitations provided therein. Additionally, such tax credit shall be disallowed  
 207 during any year that a business enterprise does not qualify as a PPE manufacturer.

208 (3) The additional tax credit provided for in paragraph (1) of this subsection may be used  
 209 in conjunction with the tax credit provided for under Code Section 48-7-40.15.

210 (c) The additional tax credit provided for under paragraph (1) of subsection (b) of this  
 211 Code section shall be subject to the following conditions and limitations:

212 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a  
 213 schedule to the taxpayer's state income tax return which shall set forth the following  
 214 information, as a minimum, in addition to the information required under Code  
 215 Sections 48-7-40 and 48-7-40.1:

216 (A) The number of jobs otherwise qualified to claim a credit under this Code section;

217 (B) A verification that the taxpayer is a PPE manufacturer and a description of the PPE  
 218 manufactured during the current taxable year;

219 (C) Any tax credit utilized by the taxpayer in prior years;

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

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

222 (F) The amount of tax credit to be carried over to subsequent tax years.

223 (2) Any tax credit claimed under subsection (b) of this Code section, but not used in any  
 224 taxable year, may be carried forward for ten years from the close of the taxable year in  
 225 which the qualified jobs were established.

226 (d) No tax credit shall be claimed and allowed pursuant to this Code section for any jobs  
 227 created on or after January 1, 2025.

228 (e) This Code section shall be effective as of January 1, 2020, and shall be applicable to  
 229 taxable years beginning on and after January 1, 2020."

230

### **PART III**

231

#### **SECTION 3-1.**

232 Said article is further amended by adding a new subsection to Code Section 48-7-40, relating  
 233 to designation of counties as less developed areas and tax credits for certain business  
 234 enterprises, to read as follows:

235 "(m) For the taxable years beginning in 2020 and 2021, a taxpayer with a business  
 236 enterprise that in the taxable year beginning on or after January 1, 2019, and before

237 December 31, 2019, was claiming a tax credit under this Code section shall have the option  
 238 to utilize the number of new full-time employee jobs that the taxpayer claimed in such  
 239 taxable year or calculate the number of new full-time employee jobs based upon subsection  
 240 (e) of this Code section."

241 **SECTION 3-2.**

242 Said article is further amended by adding a new subsection to Code Section 48-7-40.1,  
 243 relating to tax credits for business enterprises in less developed areas, to read as follows:

244 "(k) For the taxable years beginning in 2020 and 2021, a taxpayer with a business  
 245 enterprise that in the taxable year beginning on or after January 1, 2019, and before  
 246 December 31, 2019, was claiming a tax credit under this Code section shall have the option  
 247 to utilize the number of new full-time employee jobs that the taxpayer claimed in such  
 248 taxable year or calculate the number of new full-time employee jobs based upon subsection  
 249 (e) of this Code section."

250 **SECTION 3-3.**

251 Said article is further amended by adding a new subsection to Code Section 48-7-40.17,  
 252 relating to establishing or relocating quality jobs and tax credit, to read as follows:

253 "(i) For the taxable years beginning in 2020 and 2021, a taxpayer that in the taxable year  
 254 beginning on or after January 1, 2019, and before December 31, 2019, was claiming a tax  
 255 credit under this Code section shall have the option to utilize the number of new quality  
 256 jobs that the taxpayer claimed in such taxable year, or calculate the number of new quality  
 257 jobs based upon subsection (d) of this Code section."

258 **PART IV**

259 **SECTION 4-1.**

260 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 261 without such approval; provided, however, that:

262 (a) Section 1-1 of this Act shall be applicable to all taxable years beginning on or after  
 263 January 1, 2019.

264 (b) Sections 1-2, 1-3, and 1-4 of this Act shall become effective on September 1, 2020.  
 265 The revisions to paragraph (2) of subsection (h) of Code Section 48-2-35 in Section 1-2 of  
 266 this Act shall apply to notices for final refund amounts received by a political subdivision  
 267 on or after September 1, 2020, and the interest rate provided in Section 1-3 of this Act shall  
 268 apply to interest accruing on or after September 1, 2020.

269

**SECTION 4-2.**

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