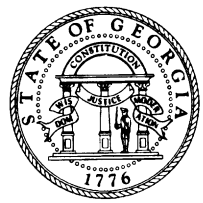
# OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

*Prepared by*

The Code Revision Commission
The Office of Legislative Counsel
*and*
The Editorial Staff of LexisNexis®




Published Under Authority of the State of Georgia

# Volume 37

## 2024 Edition

Title 48. Revenue and Taxation
(Chapters 7—8)

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

**LexisNexis®**
Miamisburg, Ohio
2024

ISBN 978-1-66338-193-4
503841

(Pub. 41805)

# THE STATE OF GEORGIA

## OFFICE OF SECRETARY OF STATE

*I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that*

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

**Brad Raffensperger, Secretary of State**

(Pub.41805)

## Preface

This volume, along with the 2024 edition of Volume 37, cumulates and replaces the 2021 edition of Volume 37 of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2021 Volume 37 and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 48 (Chapters 9 through 18) by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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## User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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# TITLE 48

# REVENUE AND TAXATION

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**Editor's notes.**

Ga. L. 1978, p. 309, et seq., enacted a recodification of the revenue laws for the state. Section 1 of the Act provides that the intent of the General Assembly was to provide for a general recodification of revenue laws, to omit obsolete and duplicative provisions, to make uniform administrative provisions where uniformity was possible without major substantive change, and to use simple understandable English in the revenue laws. The section further provides that it was not the intent of the General Assembly to make any substantive change in the revenue laws of this state as the laws existed prior to January 1, 1980, except as expressly provided in the reenactment.

**Law reviews.**

For article surveying taxpayers' remedies in Georgia, see 1 Ga. B. J. 19 (1939).

For article discussing application of the principle that he who would have equity must do equity to taxpayer's suits, see 7 Ga. St. B.J. 305 (1971).

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article surveying provisions of the Public Revenue Code, former Code 1933, T. 92 (see this title), see 14 Ga. St. B. J. 156 (1978).

For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B. J. 74 (1978).

For article surveying judicial decisions affecting Georgia's state and local taxation laws, decided under the prior Public Revenue Code, Code 1933, Title 92 (see this title), see 31 Mercer L. Rev. 217 (1979).

For article discussing ad valorem taxation and interest in real property in Georgia, prior to the enactment of the Georgia Public Revenue Code, T. 48, see 31 Mercer L. Rev. 293 (1979).

For article, "Reflections on the Revenue Act of 1978 and Future Tax Policy," see 13 Ga. L. Rev. 687 (1979).

For annual survey on state and local taxation, see 36 Mercer L. Rev. 307 (1984).

For article surveying state and local tax law, see 37 Mercer L. Rev. 361 (1985).

For annual survey of state and local taxation, see 40 Mercer L. Rev. 357 (1988).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For article, "Revenue and Taxation: Sales and Use Taxes," see 29 Ga. St. U.L. Rev. 112 (2012).

For article, "Simplexity: Plain Language and the Tax Law," see 66 Emory L.J. 189 (2017).

For article, "The Offshore Tax Enforcement Dragnet," see 67 Emory L.J. 655 (2018).

For article, "America's (D)evolving Childcare Tax Laws," see 53 Ga. L. Rev. 1093 (2019).

For article, "Taxation of Settlement Payments," see 25 Ga. St. B.J. 19 (Oct. 2019).

For article, "Borrowing from Millennials to Pay Boomers: Can Tax Policy Create Sustainable Intergenerational Equity," see 36 Ga. St. U.L. Rev. 799 (2020).

For note, "Pay Toll with Coins: Looking Back on FBAR Penalties and Prosecutions to Inform the Future of Cryptocurrency Taxation," see 55 Ga. L. Rev. 359 (2020).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 58 and former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

**Revenue laws to be construed in favor of taxpayer.** — Revenue laws are neither remedial statutes nor laws founded upon any permanent public policy, and are not, therefore, to be liberally construed. Hence, whenever there is a just doubt, that doubt should absolve the taxpayer from the burden. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

**Effect upon local laws.** — The 1978 Georgia Public Revenue Code, Ga. L. 1978, p. 309, did not repeal by implication a local Act authorizing a city and county to contract for a consolidated board of tax assessors, and a later statute repealing the local Act was not void. Chatham County v. Hussey, 267 Ga. 895, 485 S.E.2d 753.

**Revenue laws require strict construction.** — Statutes which impose restrictions upon trade or common occupations, and which levy an excise or tax upon those trades or occupations, must be construed strictly. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

**Revenue laws are not to be extended by implication.** — Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the government, and in favor of their subjects or citizens, and their provisions are not to be extended, by implication, beyond the clear import of the language used. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

**When taxpayer's remedies do not expressly include action at law, such action does not lie.** — When the General Assembly authorizes a tax for governmental purposes and provides an adequate remedy for the tax's collection by administrative officers, the necessary intent is that the collection of the tax is exclusively confined to that administrative department of the government, and when the statute undertakes to provide remedies for the collection of taxes, and those given do not embrace an action at law, a common-law action for the recovery of taxes as a debt will not lie. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

**Court of equity has no power to foreclose lien and order sale.** — Power to levy and collect taxes is exclusively a legislative function, and unless authorized by statute, a court of equity is without power to foreclose a lien for taxes and order a sale of the property. No such power having been conferred by statute on a court of equity in this state, a court errs in decreeing that land be sold by the sheriff for the payment of state and county taxes. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

**Transaction must have object other than tax evasion.** — While ordinarily

motive is not controlling in a transaction planned for tax avoidance purposes, the rule is subject to an exception. There must be some authentic object other than the defeat of a tax. 1962 Ga. Op. Att'y Gen. 558 (decided under former Code 1933, T. 92).

## RESEARCH REFERENCES

**ALR.**

Validity of statutory classifications based on population — tax statutes, 98 A.L.R.3d 1083.

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48-7-40.20. (Effective January 1, 2025.) Tax credits for businesses engaged in manufacturing cigarettes for exportation.
48-7-40.21. Tax credits for existing business enterprises undergoing qualified business expansion.
48-7-40.22. (Effective until January 1, 2025.) Tax credits for business enterprises that purchase or lease a motor vehicle to provide transportation for employees.
Sec.
48-7-40.22. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for business enterprises that purchase or lease a motor vehicle to provide transportation for employees.
48-7-40.23. Election to count new jobs on calendar year basis.
48-7-40.24. Tax credits for jobs associated with large-scale projects.
48-7-40.25. (Effective until January 1, 2025.) Tax credits for investment in expanding existing manufacturing facilities; enhancements for high-impact aerospace defense projects.
48-7-40.25. (Effective January 1, 2025.) Tax credits for investment in expanding existing manufacturing facilities; enhancements for high-impact aerospace defense projects.
48-7-40.26. (Effective until January 1, 2025.) Tax credits for film, gaming, video, or digital production.
48-7-40.26. (Effective January 1, 2025.) Tax credits for film, gaming, video, or digital production.
48-7-40.26A. (Effective until January 1, 2025.) Tax credits for post-production expenditures.
48-7-40.26A. (Effective January 1, 2025.) Tax credits for postproduction expenditures.
48-7-40.27. (Effective until January 1, 2025.) Tax credits for qualified investments in a research fund.
48-7-40.27. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for qualified investments in a research fund.
48-7-40.28. (Effective until January 1, 2025.) Limitation on the aggregate amount of tax credits allowed for qualified investments in a research fund.

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48-7-40.28. (Effective January 1, 2025. Reserved effective December 31, 2029.) Limitation on the aggregate amount of tax credits allowed for qualified investments in a research fund.
48-7-40.29. (Effective until January 1, 2025.) (For effective date until January 1, 2025, see note.) Tax credits for certain qualified equipment that reduces business or domestic energy or water usage.
48-7-40.29. (Effective January 1, 2025.) (For effective date as of January 1, 2025, see note.) Tax credits for certain qualified equipment that reduces business or domestic energy or water usage.
48-7-40.30. (Effective until January 1, 2025.) Tax credits for certain qualified investments for limited period of time.
48-7-40.30. (Effective January 1, 2025.) Tax credits for certain qualified investments for limited period of time.
48-7-40.31. Tax credits for employing qualified parolees.
48-7-40.32. (Effective until January 1, 2025.) Tax credits for certain expenditures in revitalization zones.
48-7-40.32. (Effective January 1, 2025. Reserved effective December 31, 2032.) Tax credits for certain expenditures in revitalization zones.
48-7-40.33. [Reserved] Tax credits for musical or theatrical performances.
48-7-40.34. (Effective until January 1, 2025.) Tax credits for Class III railroads; reporting.
48-7-40.34. (Effective January 1, 2025. Repealed effective January 1, 2027.) Tax credits for Class III railroads; reporting.
48-7-40.35. [Reserved] Tax credits for certain post-consumer waste material recycling facilities.
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48-7-40.36. Tax credits for timber producers incurring losses from Hurricane Michael.
48-7-41. [Reserved] Basic skills education program credits.
48-7-42. Affiliated entities; assignment of corporate income tax credits; carryover of unused credits; joint and severable liability.

**Article 3**

**Returns and Furnishing of Information**

48-7-50. Persons required to file returns; filing of copies of all or part of taxpayers' federal tax returns.
48-7-51. Corporation returns; contents; consolidated returns of two or more corporations; returns by receivers, trustees, and assignees; collection.
48-7-52. Returns by corporations of information concerning dividend payments; oath; contents.
48-7-53. Partnership returns; contents; oath; reporting of final federal adjustments; administrative adjustment request; rules and regulations.
48-7-54. Electronic filing for nonindividual taxpayers.
48-7-55. [Reserved] Required questions on returns for individuals.
48-7-56. Time and place of filing returns; extensions; tentative returns; extensions for members of armed forces; estimated returns.
48-7-57. Penalties for failure to file timely return; exceptions; reduction of tax due by partial payment, credit, or other penalty; impact of federal return extensions.
48-7-57.1. Filing of returns which are frivolous or desire to impede the administration of state income tax laws.

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48-7-58. Taxpayer activities distorting true net income; proper computation by commissioner; consideration of potential reasonable profits.
48-7-59. Examination of federal income tax returns.
48-7-60. Confidentiality of tax information; exceptions; authorized inspection by certain officials; furnishing information to local tax authorities; furnishing information to nonofficials; conditions; effect of Code section.
48-7-61. Unlawful divulging of confidential information concerning income taxes under Code Section 48-7-60; penalties.
48-7-62. Optional taxpayer contributions to the Georgia National Guard Foundation through income tax payment and refund process.
48-7-63. Optional taxpayer contributions to permitted stem cell research through income tax payment and refund process.
48-7-64. Tax exempt contributions to the Technical College System of Georgia Foundation for scholarships awards.

**Article 4**

**Payment: Deficiencies, Assessment, and Collection**

48-7-80. Time and place of payment of tax on basis of calendar or fiscal year.
48-7-81. Computation of interest due on taxes not timely paid; assessment, collection, and payment of interest on penalties or additions; assessment and collection period.
48-7-82. Periods of limitation for assessment of taxes; collection by execution; change or correction of net income.
48-7-83. Action for collection of tax out of assets of dissolved corporation; procedure.
48-7-84. Actions in restraint of assessment or collection of income tax.
48-7-85. Discretionary authority to prorate tax and exemptions for person moving into or out of state.
48-7-86. Penalties for nonpayment, failure to pay, or underpayment of taxes; reduction of tax by partial payments and credits; relief of liability on joint return.

**Article 5**

**Current Income Tax Payment**

48-7-100. Definitions.
48-7-100.1. Withholding of income tax from retirement benefits of federal annuitants.
48-7-101. Collection of income tax at source; withholding.
48-7-102. Withholding exemption status.
48-7-102.1. Withholding exemptions; rules and regulations; submission of certificates to commissioner.
48-7-103. Quarterly, monthly, and jeopardy returns; tax payments; forms.
48-7-104. Period adjustments for incorrect withholdings or payments.
48-7-105. Statements of wages paid and taxes withheld to employees; time; penalties; enforcement.
48-7-106. Annual and final returns; time; return to be filed upon sale of business; withholding unpaid withholding taxes from purchase prices; penalties for violations.
48-7-107. Filing of returns; persons authorized to sign; verification; furnishing of required forms by commissioner; effect of failure to furnish forms.
48-7-108. Employer's liability.
48-7-109. Effect as to employer's liability of employee's pay-

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ment of tax not deducted and withheld; effect on employee's income tax liability resulting from employer's failure to withhold tax.
48-7-109.1. Special accounting for withheld tax by employer who fails to deduct, withhold, collect, account for, or pay over taxes as required by article.
48-7-110. Effect of employer's voluntary compliance with requirements of article as to admission of doing business in state.
48-7-111. Employer's records; contents; period of preservation.
48-7-112. Employee refunds and credits; procedures.
48-7-113. Employer refunds and credits; procedure; claim for abatement of overassessment.
48-7-114. Estimated income tax due from individuals; returns, exemptions, and limitations; applicability to fiduciaries.
48-7-115. Time for filing estimated income tax by individuals.
48-7-116. Installment payments of estimated tax by individuals.
48-7-117. Estimated income tax by corporations.
48-7-118. [Reserved] Time for filing declarations of estimated income tax by corporations.
48-7-119. Installment payments of estimated tax by corporations.
48-7-120. Failure by taxpayer to pay estimated income tax.
48-7-121. Credit of estimated tax payment; credit or refund of estimated tax overpayment; rate of interest on refund; time.
48-7-122. Nondeductibility to employer of tax deducted and withheld.
48-7-123. Disregard of fractional parts of dollar in allowance of credits or refunds or in assessment or collection of deficiencies or underpayments.
48-7-124. Reciprocal arrangements for relief of taxpayers from operation of income tax payment laws of more than one jurisdiction.
48-7-125. Application of article to short taxable years.
48-7-126. Assessable penalties and interest.
48-7-127. Other violations of article; penalties.
48-7-128. Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents.
48-7-129. Withholding tax on distributions to nonresident members of partnerships, Subchapter "S" corporations, and limited liability companies.

**Article 6**

**Local Income Taxes**

48-7-140. Prohibition of local income taxes.

**Article 7**

**Setoff Debt Collection**

48-7-160. Purposes.
48-7-161. Definitions.
48-7-162. Collection remedy additional.
48-7-162.1. Submission of debts through Administrative Office of the Courts.
48-7-163. Collection of debts through setoff; minimum debt; procedure; exceptions; request for setoff; administrative collection assistance fee.
48-7-164. Procedure for setoffs and notification of taxpayers; certification of debts; transfer of refunds to claimant agency; notice to taxpayers; transferred funds in escrow account; costs borne by claimant agency.
48-7-165. Hearing procedure; adjust-

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ments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.
48-7-165.1. Hearing; final determination of debt.
48-7-166. Final determination of debt due; escrow account transfers; crediting of debt due; notice of setoff; refund of excess; disbursement of funds.
48-7-167. Effect of setoff on refund.
48-7-168. Priority of department over claimant agencies for collection by setoff.
48-7-169. Rules and regulations.
48-7-170. Disclosure of taxpayer information to claimant agency or Administrative Office of the Courts; confidentiality; use of information.

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**Cross references.**

Penalty for disclosure of information obtained by person, corporation, or others engaged in business of preparing federal or state income tax returns or assisting in such preparation, § 16-11-81.

Selection on tax form of nonprofit corporations for contribution, § 20-3-316.1.

Establishment of plans to provide tax deferral benefits for state, county, or other employees, § 45-18-30 et seq.

**Administrative rules and regulations.**

Signature Requirements for Tax Returns, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Fiscal Operations Division, Substantive Regulations, § 560-3-2-.27.

**Law reviews.**

For article, "Federal-Georgia Income Tax Differences: More Than Just a Nuisance," see 20 Ga. St. B. J. 20 (1983).

For note on the 2002 amendment of this chapter, see 19 Georgia St. U.L. Rev. 281 (2002).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

For article, "Stay Schemin': Tax Courts Recent Ruling on Credit Card Rewards and the Impact This Ruling has on Future Rewards Programs," see 57 Ga. L. Rev. 805 (2023).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-30 through 92-33, which was subsequently repealed but was succeeded by provisions in this chapter, are included in the annotations for this chapter.

**Much of the state income tax law is patterned upon the United States Internal Revenue Code of 1954.** Carter v. Oxford, 102 Ga. App. 762, 118 S.E.2d 216 (decided under former Code 1933, Ch. 92-30 through 92-33).

**No intent to tax income earned outside state by domestic corporation.** — It is not the purpose and intent of former Code 1933, Ch. 92-30 through 92-33 to tax the net income of a domestic corporation derived from property owned or business done outside the territorial limits of this state, although this may constitutionally be done, as regards a domestic corporation. Interstate Bond Co. v. State Revenue Comm'n, 50 Ga. App. 744, 179 S.E. 559, 1934 Ga. App. LEXIS 587 (1934) (decided under former Code 1933, Ch. 92-30 through 92-33).

**"Doing business" construed.** — "Doing business" in order to incur tax liability under statutes imposing taxes on persons doing business in a state means that a foreign corporation must transact some substantial part of the corporation's ordinary business there, and that it must be continuous in character as distinguished from a mere casual or occasional transaction. A series of

transactions is not necessarily conclusive on the question of whether the corporation is doing business. Redwine v. United States Tobacco Co., 209 Ga. 725, 75 S.E.2d 556, 1953 Ga. LEXIS 378 (1953) (decided under former Code 1933, Ch. 92-30 through 92-33).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-99, which was subsequently repealed but was succeeded by provisions in this chapter, are included in the annotations for this chapter.

**Elements of proof of criminal violation of income tax laws.** — To sustain a criminal prosecution for violation of the state income tax laws, it must be shown that the violator is subject to the requirements of the laws; that after actual notice the violator failed to comply with the request of the commissioner, and that the violator resides in the county where the proceedings are instituted. 1945-47 Ga. Op. Att'y Gen. 564 (rendered under former Code 1933, Ch. 92-30 through 92-33).

### RESEARCH REFERENCES

**ALR.**

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

Damages for breach of contract as affected by income tax considerations, 50 A.L.R.4th 452.

## ARTICLE 1

## GENERAL PROVISIONS

### RESEARCH REFERENCES

**ALR.**

Bond or warrant of governmental subdivision as subject of taxation or exemption, 26 A.L.R. 547; 44 A.L.R. 510.

Tax computed upon aggregate income of husband and wife who make joint return as apportionable in respect of liability for its payment, 104 A.L.R. 430.

Retroactive effect of income tax, 109 A.L.R. 523; 118 A.L.R. 1153.

Income tax in respect of corporate earnings returned to stockholding customers in proportion to business transacted, 109 A.L.R. 969.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Valuation of gift property for purposes of gift tax, 60 A.L.R.2d 1304.

Exclusion of meals and lodging from gross income under "convenience of the employer" rule, 84 A.L.R.2d 1215.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

## 48-7-1. Definitions.

As used in this chapter, the term:

(1) "Corporation" includes, but is not limited to, all associations,

professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies.

(2) "Deficiency" means the amount by which the tax imposed by this chapter or any prior law exceeds the amount shown as the tax due by the taxpayer upon his return or, if no amount is shown as the tax due by a taxpayer upon his return or if no return is made by the taxpayer, the amount determined by the commissioner to be the correct amount of the tax.

(3) "Dividend," when used for the purpose of defining a taxable dividend, means any distribution made by a corporation out of its earnings or profits to its shareholders or members whether the distribution is made in cash, other property, or a stock different from the stock on which the dividend is paid. "Dividend" also includes, but is not limited to, the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings.

(4) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has elected a year consisting of 52 to 53 weeks for federal income tax purposes, the term means the period so elected.

(5) "Income tax day" means December 31 of each calendar year or, if a person can show to the satisfaction of the commissioner that the person has already established the fiscal year as his taxable year for income tax reporting purposes, the last day of the person's fiscal year.

(6) "Nonresidents" means taxable nonresidents and nontaxable nonresidents.

(7) "Nontaxable nonresident" means every individual who is not otherwise a resident of this state or a taxable nonresident of this state.

(7.1) "Owning property or doing business in this state" shall not include the following activities, either singularly or in the aggregate, with respect to any person that is not otherwise subject to income taxation in the State of Georgia that has contracted with a commercial printer for any printing, including printing related activities, and distribution services to be performed in Georgia:

(A) The ownership by that person of tangible or intangible property located at the Georgia premises of the commercial printer for use by the printer in performing its services for the owner;

(B) The sale and distribution by that person of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(C) The activities performed by or on behalf of that person at the Georgia premises of the commercial printer which are directly related to the services provided by that commercial printer; or

(D) The printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia for or on behalf of that person.

(8) "Paid," for the purpose of the deductions under this chapter, means "paid or accrued" or "paid or incurred." The terms "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(9) "Received," for the purpose of the computation of the net income under this chapter, means "received or accrued." The term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(10)(A) "Resident" means:

(i) Every individual who is a legal resident of this state on income tax day;

(ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and

(iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

(B) Every individual who, having become a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed to continue to be a resident of this state until the person shows to the satisfaction of the commissioner that he or she has become a legal resident or domiciliary of another state and that he or she does not come within division (iii) of subparagraph (A) of this paragraph. Upon such a showing with respect to any 12 month period immediately preceding income tax day, the person shall be taxable as a resident of this state only to the date of becoming a nonresident on an apportionment basis as prescribed in Code Section 48-7-85.

(C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time during the 12 month period

immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) of this paragraph shall be taxable as a resident only from the date of becoming a resident on an apportionment basis as prescribed in Code Section 48-7-85.

(11) "Taxable nonresident" means:

(A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engages within this state, by himself or herself or by means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit, including, but not limited to, the rental of real or personal property located within this state or for use within this state. "Taxable nonresident" does not include a legal resident of another state whose only activity for financial gain or profit in this state consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed the lesser of 5 percent of the income received by the person for performing services in all places during any taxable year or $5,000.00;

(B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of tangible property which at the time of the sale, exchange, or other disposition has a taxable situs within this state or who sells, exchanges, or otherwise disposes of intangible personal property which has acquired at the time of the sale, exchange, or other disposition a business or commercial situs within this state;

(C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery prize awarded by the Georgia Lottery Corporation;

(D) Every individual who is not a resident of this state for income tax purposes and who makes a withdrawal as provided for in paragraph (10) of subsection (b) of Code Section 48-7-27; and

(E)(i) For purposes of this subparagraph, the term:

(I) "Deferred compensation" means deferred compensation received from a nonqualified deferred compensation plan.

(II) "Nonqualified deferred compensation plan" means the same as it is defined in Section 3121(v)(2) of the Internal Revenue Code.

(ii) Every individual who is not otherwise a resident of this

state for income tax purposes and who regularly and not casually or intermittently engaged in a prior year within this state, by himself or herself, in activity for financial gain or profit and who receives income from such activity in the form of deferred compensation or income from the exercise of stock options and such income exceeds the lesser of 5 percent of the income received by the person in all places during the taxable year or $5,000.00; provided, however, that this subparagraph shall not apply in the case of an individual who receives such income when the state is prohibited from taxing such income pursuant to federal law. For stock options granted and deferred compensation plans established before January 1, 2011, this subparagraph shall apply only to the portion earned on or after January 1, 2011. The commissioner shall by rule and regulation provide the method of determining the amount earned in Georgia using a "days worked in Georgia" method. Such earned amount shall be included in the Georgia income of the taxable nonresident.

(iii) Employers shall withhold Georgia income tax as provided in Article 5 of this chapter on all deferred compensation and stock options which are required to be included in Georgia income of the taxable nonresident. For purposes of withholding only:

(I) The employer shall use records that are available to them. However, if the records are not available, the employer may reasonably rely upon a written representation, signed under penalties of perjury, from the employee of the number of days worked in Georgia. The employer shall only be held liable if the employer had actual or constructive knowledge that the employee's written representation was false or contained erroneous information; and

(II) The employer may elect to determine the number of days worked in Georgia by assuming the employee worked in Georgia only during the time the employee was a resident of Georgia.

(iv) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this paragraph.

(12) "Taxable year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net income is computed under this chapter.

**History.** Ga. L. 1931, Ex. Sess., p. 24, §§ 2, 35; Ga. L. 1931, p. 7, § 85; Code 1933, §§ 92-3002, 92-3302(f); Ga. L. 1937, p. 109, § 1;

Ga. L. 1937-38, Ex. Sess., p. 150, § 1; Ga. L. 1941, p. 221, § 1; Ga. L. 1957, p. 397, §§ 1, 2; Ga. L. 1962, p. 454, § 1; Ga. L. 1962, p. 703, § 1; Ga. L. 1963, p. 16, § 1; Ga. L. 1975, p. 858, § 1; Ga. L. 1976, p. 980, § 1; Code 1933, § 91A-3501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 61; Ga. L. 1994, p. 597, § 1; Ga. L. 1998, p. 124, § 2; Ga. L. 2002, p. 372, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159, § 7/HB 488; Ga. L. 2008, p. 159, § 6/HB 1014; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 525, § 1/HB 1198; Ga. L. 2011, p. 297, § 2/HB 346.

**Editor's notes.**

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that § 7 of this Act applies to all taxable years beginning on or after January 1, 2005.

Ga. L. 2010, p. 525, § 2/HB 1198, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2011, p. 297, § 5(b)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

**Law reviews.**

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article surveying Georgia cases in the area of business associations from June 1977 through May 1978, see 30 Mercer L. Rev. 1 (1978).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## JUDICIAL DECISIONS

**Analysis**

In General
Dividends

### In General

**Nature of income tax.** — General view is that an income tax is not a property tax, but more in the nature of an excise tax. However, an income tax is not an occupation or a poll tax, nor is it a franchise tax or a sales tax, but the very antithesis thereof. Interstate Bond Co. v. State Revenue Comm'n, 50 Ga. App. 744, 179 S.E. 559, 1934 Ga. App. LEXIS 587 (1934).

**Income tax relates to product or income from property or business.** — An income tax may be described as one relating to the product or income from property or from business pursuits, and has been defined as a tax on the yearly profits arising from property, professions, trades, or offices, or as a tax on a person's income, emoluments, profits, and the like, or the excess thereof over a certain amount. Interstate Bond Co. v. State Revenue Comm'n, 50 Ga. App. 744, 179 S.E. 559, 1934 Ga. App. LEXIS 587 (1934).

**Legislative intent as to income earned outside state before becoming resident.** — Former Code 1933, §§ 92-3002, 92-3101, 92-3112, and 92-3302 (see now O.C.G.A. §§ 48-7-1, 48-7-20, and 48-7-30), when construed together, authorize, if they do not compel, the interpretation that the General Assembly did not intend to impose a tax upon such portion of the income of a resident as was derived by the resident

**In General** (Cont'd)

from sources outside the state before the date on which the individual became a resident of this state. Forrester v. Culpepper, 194 Ga. 744, 22 S.E.2d 595, 1942 Ga. LEXIS 663 (1942).

### Dividends

**Legislative intent as to assets distributed at time of dissolution.** — General Assembly's intention in enacting this section is to ensure the taxation of those portions of a corporation's assets distributed at the time of dissolution as would in effect be a distribution of earnings by not allowing corporations to liquidate at depression values and take losses on the difference between the value on the date of liquidation and the sole stockholder's cost or original basis for the stock. Chilivis v. Cleveland Elec. Co., 142 Ga. App. 751, 236 S.E.2d 872, 1977 Ga. App. LEXIS 2131 (1977).

**Construction of definition of "dividend" with other provisions.** — In light of the legislative history of former Code 1933, § 91A-3501 (see now O.C.G.A. § 48-7-1) and Oxford v. Carter, 216 Ga. 821, 120 S.E.2d 298 (1961), the Court of Appeals is not willing to say that the term "dividend" as used in paragraph (b)(10) of former Code 1933, § 92-3102 (see now O.C.G.A. § 48-7-21(b)(8)), incorporates the definition in this section or that "dividend" as used in this section clearly and distinctly includes a final distribution in liquidation. Chilivis v. Cleveland Elec. Co., 142 Ga. App. 751, 236 S.E.2d 872, 1977 Ga. App. LEXIS 2131 (1977).

**Construction with Internal Revenue Code.** — Words "the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings" in the definition of "dividend" mean such portion of the assets as would be "essentially equivalent to the distribution of a taxable dividend" under 26 U.S.C. § 302 and the regulations interpreting that section. Carter v. Oxford, 102 Ga. App. 762, 118 S.E.2d 216, 1960 Ga. App. LEXIS 745 (1960).

## OPINIONS OF THE ATTORNEY GENERAL

**Taxation of stock distributed to shareholders pursuant to divestiture ruling.** — Stock held by a corporation which stock is distributed to the corporation's stockholders in accordance with divestiture ruling of federal courts is taxable as a dividend under state income tax laws. 1962 Ga. Op. Att'y Gen. 521.

**Becoming legal resident or domiciliary of another state.** — To become a legal resident or domiciliary of another state one must not only reside there but must do so with the intention of giving up one's legal residence or domicile in Georgia. 1969 Op. Att'y Gen. No. 69-171.

**Effect on status as a resident of temporary absence from state.** — If a citizen is a resident of this state, the citizen will remain a resident of this state and subject to the income tax laws, even though absent and temporarily living in another jurisdiction, until the citizen is legally qualified to become a resident of another state. 1954-56 Ga. Op. Att'y Gen. 763.

**What activity gives rise to classification as taxable nonresidents.** — This section does not attach merely because a nonresident happens to be administratively assigned to, and paid from, an office located in this state. However, if employment takes place within this state beyond the extent specified in this section, then these obligations do attach, irrespective of the fact of nonresidency, or other factors. 1960-61 Ga. Op. Att'y Gen. 502.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 385 et seq.
**C.J.S.**
85 C.J.S., Taxation, § 1752 et seq.
**ALR.**
Inhabitancy or residence, within provisions of income tax law as equivalent of domicile, 82 A.L.R. 982.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporations, 102 A.L.R. 77; 143 A.L.R. 147.

Meaning of association or joint stock company within statutes taxing associations or joint stock companies as corporations ("Massachusetts" or business trusts), 108 A.L.R. 340; 144 A.L.R. 1050; 166 A.L.R. 1461.

Income tax in respect of salaries of public officers and employees, 125 A.L.R. 1421.

Income tax on income of taxpayer who dies during taxable year, 142 A.L.R. 213.

Income tax on nonresident or on foreign corporation, 156 A.L.R. 1370.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends), 167 A.L.R. 554.

## 48-7-2. Unlawful failure to pay tax, file return, keep records, supply information, or exhibit books; penalty.

(a) It shall be unlawful for any person who is required under this chapter to pay any tax, make any return, keep any records, supply any information, or exhibit any books or records for the purpose of computation, assessment, or collection of any tax imposed by this chapter to fail to:

(1) Pay the tax;

(2) Make the return;

(3) Keep the records; or

(4) When requested to do so by the commissioner:

(A) Supply the information; or

(B) Exhibit the books or records.

(b) In addition to other penalties provided by law, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

**History.**
Code 1933, § 92-3217, enacted by Ga. L. 1937, p. 109, § 17; Code 1933, § 91A-9930, enacted by Ga. L. 1978, p. 309, § 2.
**Administrative rules and regulations.**
Electronic Record Keeping and Retention, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Administrative Unit, Organization, Rule 560-1-1-.19.

**JUDICIAL DECISIONS**

**O.C.G.A. § 48-7-2 is unconstitutional to the extent** that the statute authorizes imprisonment for mere nonpayment of income taxes. State v. Higgins, 254 Ga. 88,

326 S.E.2d 728, 1985 Ga. LEXIS 612 (1985).

**OPINIONS OF THE ATTORNEY GENERAL**

**Prosecution for violation of section.** — Georgia resident who files a state income tax return but who fails and refuses to pay such tax can be prosecuted for a misdemeanor. Venue for such prosecution is Fulton County. 1969 Op. Att'y Gen. No. 69-326.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 657 et seq.
**C.J.S.**
85 C.J.S., Taxation, § 1752 et seq.
**ALR.**
Construction and application of federal regulations governing retroactive revocation of tax-exempt status, 22 A.L.R. Fed. 3d 5.

## 48-7-3. Unlawful assisting, procuring, counseling, or advising in filing income tax return; penalty.

(a) With respect to any matter arising under this chapter, it shall be unlawful for any person willfully to aid or assist in, or procure, counsel, or advise the preparation or presentation of, a false or fraudulent return, affidavit, claim, or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.00 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 49; Code 1933, § 92-9912; Code 1933, § 91A-9931, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**ALR.**
Tax preparer's liability to taxpayer in connection with preparation of tax return, 81 A.L.R.3d 1119.
Disciplinary action against attorney or accountant for misconduct related to preparation of tax returns for others, 81 A.L.R.3d 1140.
Who is an "income tax return preparer" under 26 USCS § 7701(a)(36)?, 132 A.L.R. Fed. 265.

## 48-7-4. Unlawful disregard of rules and regulations of commissioner in preparing returns; penalty.

(a) It shall be unlawful for any person, with intent to evade the income tax imposed by this chapter, willfully to advise the preparation

or presentation of a return with intentional disregard of rules and regulations of the commissioner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100.00 nor more than $500.00 or imprisoned for not more than six months, or both.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 50; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-9913; Code 1933, § 91A-9932, enacted by Ga. L. 1978, p. 309, § 2.

## 48-7-5. Evasion of income tax, penalty, interest, or other amount in excess of $3,000.00.

Any person who willfully evades or defeats or willfully attempts to evade or defeat, in any manner, any income tax, penalty, interest, or other amount in excess of $3,000.00 imposed under this chapter, including but not limited to failure to file a return or report, shall, in addition to any other criminal or civil penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000.00 in the case of an individual or not more than $500,000.00 in the case of a corporation or imprisoned not less than one nor more than five years, or both. Conduct proscribed by this Code section shall be subject to punishment under this Code section notwithstanding the applicability to such conduct of any other provision of law.

**History.**
Code 1981, § 48-7-5, enacted by Ga. L. 1987, p. 444, § 1.

**RESEARCH REFERENCES**

**ALR.**
Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 A.L.R. Fed. 233; 161 A.L.R. Fed. 373.

Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax, 161 A.L.R. Fed. 373.

## 48-7-6. License or registration extensions for National Guard members and reservists on active duty.

(a) Notwithstanding any provision of law to the contrary, any member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days shall by operation of this subsection automatically be granted an extension, without fee charged for such extension, of any

annual license or registration otherwise required under any other provision of law by the state or any agency, department, board, bureau, or commission of the state. Such extension shall continue until the otherwise regular expiration date which occurs in the year next succeeding the year in which such active duty ceases.

(b) Notwithstanding any provision of law to the contrary, any member of the National Guard or any reserve component of the United States who qualifies for the license or registration extension under subsection (a) of this Code section shall be exempt from any continuing education requirements during such automatic extension period.

(c) This Code section shall not apply to attorneys.

**History.**
Code 1981, § 48-7-6, enacted by Ga. L. 2005, p. 220, § 1; Ga. L. 2013, p. 141, § 48/HB 79.

## ARTICLE 2

## IMPOSITION, RATE, COMPUTATION, EXEMPTIONS, AND CREDITS

**Cross references.**
Tax deduction for purchase of fluoride-removing device by person allergic to fluoridated water, § 12-5-175.

Tax deductions and exemptions relating to making of student loans by Georgia Higher Education Assistance Corporation, § 20-3-283 et seq.

Deduction for contributions made to Georgia Student Finance Authority, § 20-3-322.

Provision that payments for relocation assistance shall not be considered income, § 22-4-13.

**Editor's notes.**
Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Law reviews.**
For note on the 1994 amendments of Code Sections 48-7-40 to 48-7-40.1 and enactment of Code Sections 48-7-40.2 to 48-7-40.6 of this article, see 11 Ga. St. U.L. Rev. 249 (1994).

### RESEARCH REFERENCES

**ALR.**
Bond or warrant of governmental subdivision as subject of taxation or exemption, 26 A.L.R. 547; 44 A.L.R. 510.

Licensing tax on forwarding or local agency rendering services incidental to interstate shipments, 34 A.L.R. 912.

Nature of interest of special partner for purpose of income tax, 45 A.L.R. 1381.

Gains from unlawful business or transactions as subject of income tax, 51 A.L.R. 1026; 166 A.L.R. 891.

Year in which loss or bad debt must be charged in order to be allowed as a deduc-

tion from taxpayer's income, 55 A.L.R. 1280; 67 A.L.R. 1015; 121 A.L.R. 697; 135 A.L.R. 1430.

What is a personal service corporation within Internal Revenue Act, 59 A.L.R. 1279.

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 A.L.R. 870.

Excise tax on corporations as factor in determining question as to discrimination against individuals in favor of corporations in respect of property or income tax upon former, 73 A.L.R. 737.

Applicability, construction, and effect of provision of Income Tax Act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent, 73 A.L.R. 1536; 119 A.L.R. 415.

Right of taxpayer to relief from his own errors in assessing his income tax or making out his income tax return, 80 A.L.R. 377.

Liability for income tax in respect of amount of tax paid by another, 91 A.L.R. 1270.

Interest on bonds or other obligations issued by municipalities or other political units of state as subject of state income tax in absence of express exemption, 98 A.L.R. 1346.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Right of employer to deduct, for income tax purposes, premiums paid on insurance or annuity contracts for benefit of employees, 9 A.L.R.2d 280.

Income tax: market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss, 12 A.L.R.2d 589.

## 48-7-20. Individual tax rates; credit for withholding and other payments; applicability to estates and trusts.

(a) A tax is imposed upon every resident of this state with respect to the Georgia taxable net income of the taxpayer as defined in Code Section 48-7-27. A tax is imposed upon every nonresident with respect to such nonresident's Georgia taxable net income not otherwise exempted which is received by the taxpayer from services performed, property owned, proceeds of any lottery prize awarded by the Georgia Lottery Corporation, or from business carried on in this state. Except as otherwise provided in this chapter, the tax imposed by this subsection shall be levied, collected, and paid annually.

(a.1)(1) On and after January 1, 2024, the tax imposed pursuant to subsection (a) of this Code section shall be 5.39 percent for taxable years beginning on or after January 1, 2024; provided, however, that such rate shall be reduced by 0.10 percent annually beginning on January 1, 2025, until the rate reaches 4.99 percent, provided such annual reductions in the tax rate shall be subject to delays as provided in paragraph (2) of this subsection.

(2) Each prospective annual reduction in the tax rate that would otherwise occur as provided in paragraph (1) of this subsection shall be delayed by one year for each year that any of the following are true as of December 1:

(A) The Governor's revenue estimate for the succeeding fiscal year is not at least 3 percent above the Governor's revenue estimate for the present fiscal year;

(B) The prior fiscal year's net revenue collection was not higher than each of the preceding three fiscal years' net tax revenue collection; or

(C) The Revenue Shortfall Reserve provided for in Code Section 45-12-93 does not contain a sum that exceeds the amount of the decrease in state revenue projected to occur as a result of the prospective reduction in the tax rates set to occur the following year.

(3) The Office of Planning and Budget shall make the determinations necessary to implement the provisions of paragraph (2) of this subsection and shall report its determinations by December 1 of each year to the department, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House Appropriations Committee, the House Ways and Means Committee, the Senate Appropriations Committee, and the Senate Finance Committee. This paragraph shall not be applicable after the final reduction to the rate of 4.99 percent occurs.

(b) Reserved.

(c) The amount deducted and withheld by an employer from the wages of an employee pursuant to Article 5 of this chapter, relating to current income tax payments, shall be allowed the employee as a credit against the tax imposed by this Code section. Amounts paid by an individual as estimated tax under Article 5 of this chapter shall constitute payments on account of the tax imposed by this Code section. The amount withheld or paid during any calendar year shall be allowed as a credit or payment for the taxable year beginning in the calendar year in which the amount is withheld or paid.

(d) The tax imposed by this Code section applies to the Georgia taxable net income of estates and trusts, which shall be computed in the same manner as in the case of a single individual. The tax shall be computed on the Georgia taxable net income and shall be paid by the fiduciary.

**History.**

Ga. L. 1931, Ex. Sess., p. 3, § 24; Code 1933, § 92-3101; Ga. L. 1937, p. 109, § 2; Ga. L. 1937-38, Ex. Sess., p. 150, § 2; Ga. L. 1955, Ex. Sess., p. 27, § 1; Ga. L. 1960, p. 1005, § 1; Ga. L. 1971, p. 605, §§ 1, 2; Ga. L. 1975, p. 857, § 1; Code 1933, § 91A-3601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 62; Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 597, § 2; Ga. L. 2018, p. 8, § 1-2/HB 918; Ga. L. 2022, p. 114, § 2-1/HB 1437; Ga. L. 2023, p. 335, § 2-2/SB 56, effective January 1, 2024; Ga. L. 2023, p. 730, § 7(12)/HB 475, effective July 1, 2023; Ga. L. 2024, p. 18, § 1/HB 1015, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective January 1, 2024, added subsections (a.1) and (a.2), and reserved paragraph (b)(1), relating to individual income tax tables.

**The first 2023 amendment,** effective January 1, 2024, in subsection (a.1), rewrote paragraph (a.1)(1), which read: "On and after January 1, 2024, the tax imposed pursuant to subsection (a) of this

Code section shall be at the rates provided in subsection (a.2) of this Code section for each respective tax year; provided, however, that the actual rates for a given year tax year shall be subject to delays as provided in this subsection."; rewrote the introductory language of paragraph (a.1)(2), which read: "Each prospective change in the tax rates that would otherwise occur as provided in paragraphs (2) through (6) of subsection (a.2) of this Code section shall be delayed by one year for each year that any of the following are true as of December 1:"; substituted "preceding three fiscal" for "preceding five fiscal" in subparagraph (a.1)(2)(B); and substituted "final reduction to the rate of 4.99 percent occurs" for "final reduction in the rates occurs as provided in paragraph (6) of subsection (a.2) of this Code section" at the end of paragraph (a.1)(3); deleted subsection (a.2), which read: "Subject to the provisions of subsection (a.1) of this Code section:

"(1) For tax years beginning on or after January 1, 2024, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.49 percent;

"(2) For tax years beginning on or after January 1, 2025, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.39 percent;

"(3) For tax years beginning on or after January 1, 2026, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.29 percent;

"(4) For tax years beginning on or after January 1, 2027, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.19 percent;

"(5) For tax years beginning on or after January 1, 2028, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.09 percent; and

"(6) For tax years beginning on or after January 1, 2029, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 4.99 percent."; deleted the (b)(1) designation and deleted paragraph (b)(2), which read: "To facilitate the computation of the tax by those taxpayers whose federal adjusted gross income together with the adjustments set out in Code Section 48-7-27 for use in arriving at Georgia taxable net income is less than $10,000.00, the commissioner may construct tax tables which may be used by the taxpayers at their option. The tax shown to be due by the tables shall be computed on the bases of the standard deduction and the tax rates specified in paragraph (1) of this subsection. Insofar as practicable, the tables shall produce a tax approximately equivalent to the tax imposed by paragraph (1) of this subsection." See Editor's notes for applicability.

**The second 2023 amendment,** effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, deleted the second and third sentences in paragraph (b)(2), which read: "The tax shown to be due by the tables shall be computed on the bases of the standard deduction and the tax rates specified in paragraph (1) of this subsection. Insofar as practicable, the tables shall produce a tax approximately equivalent to the tax imposed by paragraph (1) of this subsection."

**The 2024 amendment,** effective July 1, 2024, substituted "5.39 percent" for "5.49 percent" near the beginning of paragraph (a.1)(1). See Editor's notes for applicability.

**Cross references.**

Legislative review of taxation, § 28-12-1.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1994, p. 597, § 4, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 2018, p. 8, § 3-1(b)/HB 918, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2019."

Ga. L. 2022, p. 114, § 1-1/HB 1437, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Tax Reduction and Reform Act of 2022.'"

Ga. L. 2022, p. 114, § 5-1/HB 1437, not codified by the General Assembly, provides: "(a) This Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval; provided, however, that Part II of this Act shall become effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024. makes this Code section applicable to all taxable years beginning on or after January 1, 2024.

"(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years [prior to January 1, 2024] shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall be effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2024, p. 18, § 2/HB 1015, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2024.

**Law reviews.**

For comment on Forrester v. Culpepper, 194 Ga. 744, 22 S.E.2d 595 (1942), see 6 Ga. B. J. 155 (1943).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

## JUDICIAL DECISIONS

**Constitutionality of income tax rates.** — Georgia Laws 1929, p. 92 (see now O.C.G.A. T. 48, C. 7) does not violate Ga. Const. 1877, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III), which declared that all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, for the reason that income is distinguished from property from which income flows, with the result that income was not property within the meaning of this provision, and did not need to be levied ad valorem. Green & Milam v. State Revenue Comm'n, 188 Ga. 442, 4 S.E.2d 144, 1939 Ga. LEXIS 551 (1939).

**Legislative intent as to income earned outside state before becoming resident.** — Former Code 1933, §§ 92-3002, 92-3101, 92-3112, 92-3302 (see now O.C.G.A. §§ 48-7-1, 48-7-20, and 48-7-30), when construed together, authorize if the statutes do not compel the interpretation that the legislature did not intend to impose a tax upon such portion of the income of a resident as was derived by the resident from sources outside the state before the date on which the individual became a resident of this state. Forrester v. Culpepper, 194 Ga. 744, 22

S.E.2d 595, 1942 Ga. LEXIS 663 (1942) (commented on in) 6 Ga. B.J. 155 (1943).

**Income earned by a nonresident but received after becoming a resident.** — Income earned by a cash basis taxpayer outside the state before becoming a resident is taxable under former Code 1933, Ch. 92-31 (see now O.C.G.A. § 48-7-1 et seq.) if actually or constructively received after becoming a resident. Rogers v. Chilivis, 141 Ga. App. 407, 233 S.E.2d 451, 1977 Ga. App. LEXIS 1926, cert. denied, 434 U.S. 891, 98 S. Ct. 266, 54 L. Ed. 2d 176, 1977 U.S. LEXIS 3551 (1977).

**Application to sentencing guidelines.** — In determining the amount of the tax loss for purposes of calculating the defendant's offense level for tax evasion under U.S. Sentencing Guidelines Manual § 2T1.1(c)(1), a court took into account the defendant's state tax liability in accordance with the six percent rate specified in O.C.G.A. § 48-7-20 for individual taxpayers. United States v. Campbell, No. 1:04-CR-0424-RWS, 2006 U.S. Dist. LEXIS 96565 (N.D. Ga. June 15, 2006), aff'd, 491 F.3d 1306, 2007 U.S. App. LEXIS 16722 (11th Cir. 2007).

## OPINIONS OF THE ATTORNEY GENERAL

**Resident must pay tax on income earned outside state.** — Resident of this state is required to pay state income taxes, notwithstanding the fact that the resident's income is earned in another state. 1952-53 Ga. Op. Att'y Gen. 443.

**Becoming legal resident or domiciliary of another state.** — To become a legal resident or domiciliary of another state one must not only reside there but must do so with the intention of giving up one's legal residence or domicile in Georgia. 1969 Op. Att'y Gen. No. 69-171.

**Payments by check, tendered by municipal corporation** to municipal officers and employees for unused sick leave, are, if the payments are legal, income and subject to taxation. 1971 Op. Att'y Gen. No. U71-16.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, §§ 392, 426 et seq.

**ALR.**

Constitutionality of provisions of income tax law as regards income of husband and wife, 78 A.L.R. 352.

Deductions in respect of leasehold in computing income tax, 82 A.L.R. 332.

Inhabitancy or residence, within provisions of income tax law as equivalent of domicile, 82 A.L.R. 982.

Income tax in respect of exchange of properties, 102 A.L.R. 6.

Income tax in respect of salaries of public officers and employees, 114 A.L.R. 1190.

When dividends on corporate stock become taxable as income to a taxpayer making his return on a cash basis, 120 A.L.R. 1280; 143 A.L.R. 596; 158 A.L.R. 1432; 167 A.L.R. 303.

Income tax in respect of salaries of public officers and employees, 120 A.L.R. 1477; 122 A.L.R. 1393; 125 A.L.R. 1421.

Computation of income tax of husband and wife as affected by the fact that they make a joint return, 121 A.L.R. 650; 131 A.L.R. 984.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of taxable year, 126 A.L.R. 455.

Liability of settlor, in absence of express provision in income tax law, for income tax on income of revocable trust or on trust income distributable to him, 159 A.L.R. 100.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

## 48-7-20.1. Tax refund credit for qualified taxpayers filing in the 2021 tax year.

(a) As used in this Code section, the term "qualified taxpayer" means an individual taxpayer who filed an individual income tax return for both the 2020 and 2021 taxable years by the due date for filing the income tax return for the 2021 taxable year, including any extensions which have been granted. Such term shall not include any:

(1) Nonresident alien individual;

(2) Individual who was claimed as a dependent by another taxpayer for federal or Georgia income tax purposes for the 2020 taxable year; or

(3) Estate or trust.

(b)(1) Once a qualified taxpayer files an individual income tax return for tax year 2021, the department shall automatically credit such qualified taxpayer with a one-time refund amount equal to the lesser of:

(A) The qualified taxpayer's 2020 individual income tax liability as properly reported on Line 16 of the 2020 Georgia Form 500 or Line 4 of the 2020 Georgia Form 500EZ; or

(B) An amount, which is based on such taxpayer's filing status for the 2020 taxable year, equal to:

(i) In the case of a single taxpayer or a married taxpayer filing a separate return, $250.00;

(ii) In the case of a head of household, $375.00; or

(iii) In the case of a married couple filing a joint return, $500.00.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any taxable nonresident or part-year resident whose tax was prorated as provided by Code Section 48-7-85, the amount of the refund credit determined pursuant to paragraph (1) of this subsection shall be prorated based on the ratio of income taxable to Georgia as properly reported on Schedule 3, Line 9 of the Georgia Form 500 for the 2020 taxable year.

(3) In no event shall the department credit pursuant to this Code section any taxpayer with a refund greater than the taxpayer's individual income tax liability as properly reported on Line 16 of the 2020 Georgia Form 500 or Line 4 of the 2020 Georgia Form 500EZ.

(c) The refunds and credits provided for in this Code section shall not constitute taxable income for Georgia individual income tax purposes.

(d) Any refunds due under this Code section to a taxpayer shall be either electronically transmitted or sent by check to such taxpayer, based on the taxpayer's refund instructions, if any, as indicated on the taxpayer's tax year 2021 return, provided that such refund shall first be credited against any outstanding liability existing at the time the refund provided for in this Code section is to be issued.

(e) In no event shall the amount of a refund or credit provided for in this Code section accrue interest for the benefit of the taxpayer or be paid or credited to the taxpayer with interest.

(f) Any amount due to be refunded or credited to a taxpayer pursuant to this Code section shall be subject to the setoff debt collection provisions of Article 7 of this chapter.

(g) The commissioner may promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-20.1, enacted by Ga. L. 2022, p. 21, § 1/HB 1302.

### 48-7-20.2. Tax refund credit for qualified taxpayers filing in the 2022 tax year.

(a) As used in this Code section, the term "qualified taxpayer" means an individual taxpayer who filed an individual income tax return for both the 2021 and 2022 taxable years by the due date for filing the income tax return for the 2022 taxable year, including any extensions which have been granted. Such term shall:

(1) Not include any:

(A) Nonresident alien individual;

(B) Individual who was claimed as a dependent by another taxpayer for federal or Georgia income tax purposes for the 2021 taxable year; or

(C) Estate or trust; and

(2) Include any individual taxpayer excluded solely due to subparagraph (B) of paragraph (1) of this subsection, provided that such individual had earned income for the 2021 taxable year.

(b)(1) Once a qualified taxpayer files an individual income tax return for the 2022 taxable year, the department shall automatically credit such qualified taxpayer with a one-time refund amount equal to the lesser of:

(A) The qualified taxpayer's 2021 individual income tax liabil-

ity as properly reported on Line 16 of the 2021 Georgia Form 500 or Line 4 of the 2021 Georgia Form 500EZ; or

(B) An amount, which is based on such taxpayer's filing status for the 2021 taxable year, equal to:

(i) In the case of a single taxpayer or a married taxpayer filing a separate return, $250.00;

(ii) In the case of a head of household, $375.00; or

(iii) In the case of a married couple filing a joint return, $500.00.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the case of any taxable nonresident or part-year resident whose tax was prorated as provided by Code Section 48-7-85, the amount of the refund credit determined pursuant to paragraph (1) of this subsection shall be prorated based on the ratio of income taxable to Georgia as properly reported on Schedule 3, Line 9 of the Georgia Form 500 for the 2021 taxable year.

(3) In no event shall the department credit pursuant to this Code section any taxpayer with a refund greater than the taxpayer's individual income tax liability as properly reported on Line 16 of the 2021 Georgia Form 500 or Line 4 of the 2021 Georgia Form 500EZ.

(c) The refunds and credits provided for in this Code section shall not constitute taxable income for Georgia individual income tax purposes.

(d) Any refunds due under this Code section to a taxpayer shall be either electronically transmitted or sent by check to such taxpayer, based on the taxpayer's refund instructions, if any, as indicated on the taxpayer's income tax return for the 2022 taxable year, provided that such refund shall first be credited against any outstanding liability existing at the time the refund provided for in this Code section is to be issued.

(e) In no event shall the amount of a refund or credit provided for in this Code section accrue interest for the benefit of the taxpayer or be paid or credited to the taxpayer with interest.

(f) Any amount due to be refunded or credited to a taxpayer pursuant to this Code section shall be subject to the setoff debt collection provisions of Article 7 of this chapter.

(g) The commissioner may promulgate any rules and regulations necessary to implement and administer this Code section.

**History.** Code 1981, § 48-7-20.2, enacted by Ga. L. 2023, p. 1, § 1/HB 162, effective March 14, 2023.

**48-7-21. Taxation of corporations.**

(a) Every domestic corporation and every foreign corporation shall pay annually an income tax on its Georgia taxable net income at the same rate of the tax imposed on individuals under subsection (a.1) of Code Section 48-7-20 for the corresponding taxable year. Georgia taxable net income of a corporation shall be the corporation's taxable income from property owned or from business done in this state. A corporation's taxable income from property owned or from business done in this state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with the adjustments provided for in subsection (b) of this Code section and allocated and apportioned as provided in Code Section 48-7-31.

(b)(1)(A) When interest income is derived from obligations of any state or political subdivision except this state and political subdivisions of this state, the interest income shall be added to taxable income to the extent that the interest income is not included in gross income for federal income tax purposes. Interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income tax shall also be added to taxable income.

(B) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent such interest or dividends are includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. There shall also be subtracted from taxable income any income derived from the authorized activities of a domestic international banking facility operating pursuant to the provisions of Article 5A of Chapter 1 of Title 7, the "Domestic International Banking Facility Act," and any income arising from the conduct of a banking business with persons or entities located outside the United States, its territories, or possessions. Any amount subtracted pursuant to this subparagraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(2) There shall be added to taxable income any taxes on, or measured by, net income or net profits paid or accrued within the taxable year imposed by the authority of the United States or any foreign country, by any state except the State of Georgia, or by any territory, county, school district, municipality, or other tax subdivi-

sion of any state, territory, or foreign country to the extent such taxes are deducted in determining federal taxable income.

(3) No portion of any deductions or losses which occurred in a year in which the taxpayer was not subject to taxation in this state, including, but not limited to, net operating losses may be deducted in any tax year. When the federal adjusted gross income or net income of a corporation includes such deductions or losses, an adjustment deleting them shall be made under rules established by the commissioner. The provisions of this subsection shall not prohibit the carry-over of any deductions or losses, including, but not limited to, net operating losses of any taxpayer which were incurred in a year or years in which the taxpayer was subject to methods of taxation in this state other than the corporate income tax.

(4) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income. The commissioner shall provide for needed adjustments by regulation.

(5) All elections under Section 338 of the Internal Revenue Code of 1986 shall also apply under this article.

(6) This article shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this article. Those exemptions and the exemptions provided for by federal law and treaty shall be deducted on forms provided by the commissioner.

(7) All elections made by corporate taxpayers under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article except elections involving consolidated corporate returns and Subchapter "S" elections which shall be treated as follows:

(A)(i) Affiliated corporations which file a consolidated federal income tax return must file separate income tax returns with this state unless they elect to file a consolidated return as provided in paragraph (7.1) of this subsection.

(ii) No depository financial institution shall be deprived of the benefit of any exemption, deduction, or credit authorized by this title as a consequence of its election to file otherwise lawful consolidated returns with its parent organization or any corporate subsidiaries with respect to any state or local tax levied against such depository financial institution as a result of this title. As used in this division, the term:

(I) "Bank" means any financial institution chartered under the laws of this state or under the laws of the United

States and domiciled in this state which is authorized to receive deposits in this state and which has a corporate structure authorizing the issuance of capital stock.

(II) "Depository financial institution" means a "bank" or a "savings and loan association."

(III) "Savings and loan association" means any financial institution, other than a credit union, chartered under the laws of this state or under the laws of the United States and domiciled in this state which is authorized to receive deposits in this state and which has a mutual corporate form;

(B) Subchapter "S" elections apply only if all stockholders are subject to tax in this state on their portion of the corporate income. If all nonresident stockholders pay the Georgia income tax on their portion of the corporate income, the election shall be allowed; and

(C)(i) A Subchapter "S" corporation may annually make an irrevocable election, on its timely filed return under Code Section 48-7-51, to pay the tax levied by this chapter at the entity level for the taxable period covered by such return. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted.

(ii) Notwithstanding the provisions of subparagraph (B) of this paragraph, an electing Subchapter "S" corporation, with respect to a taxable period, shall pay an income tax on its net income at the same rate of the tax imposed on individuals under subsection (a.1) of Code Section 48-7-20 for the corresponding taxable year as computed pursuant to this Code section, and allocated and apportioned pursuant to Code Section 48-7-31, for such taxable period, and such shareholders shall not recognize their respective share of the portion of income on which tax was actually paid pursuant to this subparagraph.

(iii) No electing Subchapter "S" corporation nor any of its shareholders shall be entitled to any credit under Code Section 48-7-28 with respect to such tax so paid or any deduction for such income under subsection (d) of Code Section 48-7-27; provided, however, that such electing Subchapter "S" corporation shall otherwise be eligible for credits provided by this chapter and shall be considered an "other entity" for purposes of Code Sections 48-7-29.16, 48-7-29.20, and 48-7-29.21.

(iv) The election under this subparagraph shall have no

impact on the determination of the basis of the shareholders of an electing Subchapter "S" corporation in such shareholders' stock and indebtedness of such electing Subchapter "S" corporation, except that such shareholders' pro rata share of the tax paid or accrued by such electing Subchapter "S" corporation pursuant to such election shall be taken into account in determining such basis.

(v) In computing the net income that is subject to taxation, the electing Subchapter "S" corporation shall not be allowed any deduction for taxes that are based on or measured by gross or net income or any other variant thereof.

(vi) This subsection shall only apply to a Subchapter "S" corporation that is 100 percent directly owned and controlled by persons eligible to be shareholders of an "S" corporation under Section 1361 of the Internal Revenue Code of 1986, as amended.

(vii) As used in this subparagraph, the term:

(I) "Electing Subchapter 'S' corporation" means, with respect to a taxable period, a Subchapter "S" corporation that has made the election under this subparagraph with respect to such taxable period.

(II) "Subchapter 'S' corporation" means an entity subject to taxation under Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986 and the regulations thereunder.

(7.1)(A) As used in this paragraph, the term:

(i) "Georgia affiliated group" means a group of corporations of which each member:

(I) Is a member of an affiliated group as defined in 26 U.S.C. Section 1504, provided that such affiliated group files a federal consolidated corporate income tax return;

(II) Is subject to taxation under this chapter;

(III) Is subject to taxation in Georgia, even after the application of Public Law 86-272 (15 U.S.C. Sections 381-384);

(IV) Has the same taxable year;

(V) Was a member of the affiliated group for the entire taxable year or was a member of the affiliated group for a portion of the taxable year if the member was subject to taxation under subsection (a) of this Code section during the

entire portion of the taxable year during which it was not a member of the federal consolidated group;

(VI) Apportions Georgia taxable income or loss separately for each corporation, unless the member is subject to paragraph (1) of subsection (b) of Code Section 48-7-31;

(VII) Allocates taxable income or loss separately for each corporation in accordance with Code Section 48-7-31;

(VIII) Computes apportionable income or loss utilizing separate apportionment factors for each corporation in accordance with Code Section 48-7-31, unless the member is subject to paragraph (1) of subsection (b) of Code Section 48-7-31; and

(IX) Combines and reports taxable income or loss on a single return for the Georgia affiliated group which includes all members of the affiliated group included on the federal consolidated corporate income tax return that are eligible under this Code section to be included in the Georgia affiliated group.

(ii) "Georgia consolidated return" means a Georgia corporate income tax return filed on behalf of the members of a Georgia affiliated group in accordance with this Code section pursuant to the election made under this subsection.

(B) A Georgia affiliated group may elect to file a Georgia consolidated return on an originally filed return, including extensions, if applicable. Under no circumstances may the department compel a taxpayer to file a Georgia consolidated return if the taxpayer has not so elected.

(C) For purposes of allocation and apportionment, each member of a Georgia affiliated group shall be considered a separate taxpayer, and any taxable loss of a member of a Georgia affiliated group shall be deductible against the taxable income of any other member of the Georgia affiliated group only if and to the extent such loss is apportioned and allocated to Georgia.

(D) The tax liability of the Georgia affiliated group shall be determined by applying the rate specified in subsection (a) of this Code section to the group's taxable income. The separate taxable income or loss of each corporation in the Georgia affiliated group shall be included in the consolidated taxable income or loss to the extent that its taxable income or loss is separately apportioned or allocated to the State of Georgia, as computed and determined in accordance with this chapter.

(E) Each corporation in a Georgia affiliated group that files a

Georgia consolidated return shall be jointly and severally liable for the group's Georgia income tax liability with respect to the taxable year, except that any corporation which was not a member of the Georgia affiliated group for the entire taxable year shall be jointly and severally liable only for the portion of the tax liability attributable to that part of the year during which the corporation was a member, prorated on a daily basis.

(F) The election provided for in this subsection is irrevocable and is binding on both the department and the Georgia affiliated group for a period of five years without modification, notwithstanding the powers granted to the department under this title. At the end of the five-year period of filing a Georgia consolidated return, the taxpayer's election shall be automatically terminated. Upon the automatic termination of such election, the taxpayer may reelect to file a Georgia consolidated return.

(G) Notwithstanding subparagraph (F) of this paragraph, due to the material change in the law and the procedure for qualification as a member of a Georgia affiliated group, a Georgia affiliated group filing a Georgia consolidated return under the provisions of this paragraph prior to May 5, 2022, shall have the option either to terminate its election with respect to tax years after the period covered by the last Georgia consolidated return due under this Code section or to continue filing a Georgia consolidated return under the previous criteria.

(H) Nothing in this subsection shall be construed as allowing or requiring the filing of combined income tax returns under the unitary business concept.

(I) The department shall promulgate regulations interpreting the provisions of this paragraph.

(8) There shall be subtracted from taxable income dividends received by:

(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received. The deduction provided by Section 250 shall apply to the extent the same income was included in Georgia taxable net income. The deduction, exclusion, or subtraction provided by Section 245A, Section 965, or any other section of the Internal

Revenue Code of 1986 shall not apply to the extent income has been subtracted pursuant to this subparagraph. Amounts to be subtracted under this subparagraph shall include the following unless excluded by this paragraph, as defined by the Internal Revenue Code of 1986:

(i) Qualified electing fund income;

(ii) Subpart F income, including income specified in Section 951A of the Internal Revenue Code of 1986; and

(iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and

(B) Corporations from affiliated corporations within the United States, when the corporation receiving the dividends is engaged in business in this state and is subject to the payment of taxes under the income tax laws of this state, to the extent that the dividends have been included in net income under this Code section. Dividends from affiliates shall be reduced by any expenses directly attributable to the dividend income.

(9) Where a corporation's salary and wage deductions are reduced in computing federal taxable income because the corporation has taken a federal jobs tax credit which required, as a condition to using the federal jobs tax credit, the elimination of salary and wage deductions, the eliminated salary and wage deductions shall be subtracted from taxable income.

(10) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(10.1) Net operating losses for corporations shall be treated as follows:

(A) For any taxable year in which the taxpayer takes a federal net operating loss deduction on its federal income tax return, the amount of such deduction shall be added back to federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer's federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year if such carrybacks are allowed by the Internal Revenue Code of 1986. Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a

taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income;

(B) The Georgia net operating loss for such taxable year shall be computed by making the adjustments to federal taxable income required by this article and in the case of corporations doing business both within and outside Georgia, by apportioning and allocating to Georgia, as provided in Code Section 48-7-31, only the amount of the loss attributable to operations within Georgia. The term "Georgia net operating loss" shall mean the loss computed as provided in this paragraph. In the event the net Georgia adjustments completely offset a federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the federal net operating loss shall constitute Georgia taxable net income after any such excess has been allocated and apportioned to Georgia as provided in Code Section 48-7-31. The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss for the applicable year carried back or carried over in the manner and for the number of years as provided in this paragraph;

(C) In the event the taxpayer elects to forgo the carryback period for the federal net operating loss as allowed under the Internal Revenue Code, the taxpayer shall also forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo the carryback period for the federal net operating loss, the election to forgo the net operating loss period shall not be allowed for Georgia purposes. If the taxpayer does not have a federal net operating loss, the taxpayer may make an irrevocable election to forgo the carryback period for the Georgia net operating loss, provided that an affirmative statement is attached to the Georgia return for the year of the loss. Such election must be made on or before the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted;

(D) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of 1986, as amended, as they relate to net operating losses also apply for Georgia purposes. The

commissioner shall by regulation provide the method of determining how such sections apply;

(E) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, a claim for such refund must be filed within three years after the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted. Such tax refund shall be deemed to have been erroneously assessed and collected, and shall be paid under the provisions of Code Section 48-2-35; provided, however, that no interest shall accrue or be paid for any period prior to the close of the taxable year in which such net operating loss arises and no interest shall be paid if the claim for refund is processed within 90 days from the last day of the month in which the claim for such refund is filed; and

(F) The commissioner shall have the authority to promulgate regulations regarding net operating losses with respect to this paragraph and with respect to consolidated return net operating losses.

(11) There shall be subtracted from taxable income a portion of qualified payments to classified subcontractors, as provided in Code Section 48-7-38.

(12) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(13) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(14) There shall be subtracted from taxable income the deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in the corporation's taxable income, as defined under the Internal Revenue Code of 1986.

(15) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(16) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(17) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53.

(18) For taxable years beginning on or after January 1, 2024, and prior to January 1, 2029, there shall be subtracted from taxable income any grant or subgrant pursuant to the Broadband Equity, Access, and Deployment Program established pursuant to 47 U.S.C. 1702, or the American Rescue Plan Act of 2021, Public Law 117-2, received for the purpose of making investments in broadband infrastructure but only to the extent that such grant or subgrant is included in the corporation's taxable income, as defined under the Internal Revenue Code of 1986.

**History.**

Ga. L. 1931, Ex. Sess., p. 26, § 4; Code 1933, § 92-3102; Ga. L. 1935, p. 121, § 1; Ga. L. 1937, p. 109, § 3; Ga. L. 1937-38, Ex. Sess., p. 150, § 3; Ga. L. 1949, Ex. Sess., p. 18, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 625, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 2; Ga. L. 1964, p. 67, § 1; Ga. L. 1969, p. 114, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 646, § 1; Ga. L. 1976, p. 980, § 1; Ga. L. 1977, p. 1133, § 2; Ga. L. 1979, p. 888, § 1; Code 1933, § 91A-3602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 63; Ga. L. 1979, p. 888, § 3; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 1350, § 11; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 1644, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 13, § 48; Ga. L. 1993, p. 1649, § 1; Ga. L. 1996, p. 117, § 8; Ga. L. 1996, p. 130, § 8; Ga. L. 1996, p. 181, § 6; Ga. L. 1999, p. 13, § 1; Ga. L. 2000, p. 1445, § 1; Ga. L. 2005, p. 30, § 2/HB 191; Ga. L. 2005, p. 157, § 1/HB 282; Ga. L. 2005, p. 159, §§ 8-10, 11/HB 488; Ga. L. 2007, p. 271, § 1/SB 184; Ga. L. 2008, p. 898, § 4/HB 1151; Ga. L. 2009, p. 796, § 1/HB 379; Ga. L. 2010, p. 895, § 2/HB 1138; Ga. L. 2018, p. 8, §§ 1-4, 1-5, 1-6/HB 918; Ga. L. 2018, p. 113, § 1/SB 328; Ga. L. 2018, p. 319, § 1/HB 849; Ga. L. 2021, p. 277, § 1/HB 149; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2022, p. 571, § 1/HB 1058; Ga. L. 2023, p. 43, § 1/HB 128, effective January 1, 2024; Ga. L. 2024, p. 15, § 1/HB 1023, effective July 1, 2024; Ga. L. 2024, p. 936, § 1/SB 344, effective July 1, 2024.

**Amendments.**

**The first 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(3) and subparagraph (b)(7)(B), and substituted "however, that such" for "however, such" in division (b)(7)(C)(iii).

**The second 2022 amendment,** effective May 5, 2022, rewrote division (b)(7)(A)(i), which read: "Affiliated corporations which file a consolidated federal income tax return must file separate income tax returns with this state unless they have prior approval or have been requested to file a consolidated return by the department. The commissioner shall by regulation provide the time period within which the permission must be requested. A request for permission beyond such time period will not be considered and will result in the filing of separate income tax returns for the applicable year.", and added paragraph (b)(7.1). See Editor's notes for applicability.

**The 2023 amendment,** effective January 1, 2024, in paragraph (b)(11), substituted "payments to classified subcontractors" for "payments to minority subcontractors."

**The first 2024 amendment,** effective July 1, 2024, in the first sentence in subsection (a) and in division (b)(7)(C)(ii), substituted "tax on its" for "tax equivalent to 5.75 percent of its" and inserted "at the same rate of the tax imposed on individuals under subsection (a.1) of Code Section 48-7-20 for the corresponding taxable year". See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, added paragraph (b)(18). See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section § 28-9-5, in 2005, paragraph (b)(10) of this Code section, as enacted by Ga. L. 2005, p. 159, § 11, was redesignated as paragraph (b)(10.1).

Pursuant to Code Section 28-9-5, in 2021, "this Code section" was substituted

for "Code Section 48-7-21" in division (b)(7)(C)(ii).

Pursuant to Code Section 28-9-5, in 2022, "May 5, 2022," was substituted for "the amendment by this Act" in subparagraph (b)(7.1)(G).

**Editor's notes.**

Ga. L. 1983, p. 1350, § 15, not codified by the General Assembly, effective January 1, 1984, provides that, should subsection (e) of Code Section 48-6-93 or paragraph (11) of subsection (b) of Code Section 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that that Act would apply to taxable years beginning on or after January 1, 1985.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1996, p. 117, § 9, not codified by the General Assembly, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective. Ga. L. 1996, p. 130 was passed at the 1996 Session and became effective January 1, 1997.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provided that the 1996 amendment became effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 at the November, 1996, general election. House Resolution 734 was ratified in 1996.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 181, § 10, not codified by the General Assembly, provides for a study and report by the state revenue commissioner regarding the effect of the Act on revenue received by the state, counties, and cities in 1997 and 1998 from the tax imposed by Article 4 of Chapter 6 of Title 48 of the Code.

Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 30, § 7(a)/HB 191, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(10) shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2005, p. 157, § 4/HB 282, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that the 2005 amendments to division (b)(1)(B) and (b)(10.1) shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 27(h)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(5) shall apply to all taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2010, p. 895, § 4(c)/HB 1138, not codified by the General Assembly, provides that the 2010 amendment shall apply with respect to stock purchases and sales occurring on or after June 3, 2010.

Ga. L. 2018, p. 8, § 3-1(a), (b)/HB 918, not codified by the General Assembly, provides that: "(a) Sections 1-1, 1-6, and 1-8 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and such sections shall be applicable to all taxable years beginning on or after January 1, 2017.

"(b) Sections 1-2 and 1-4 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2019. Sections 1-2 and 1-4 of this Act shall expire by operation of law on the last moment of December 31, 2025, and revert to the language of paragraph (1) of subsection (b) of Code Section 48-7-20 and subsection (a) of Code Section 48-7-21, respectively, as they existed on the day immediately preceding the effective date of this Act." This Act became effective March 2, 2018. Section 1-4 substituted "5.75 percent" for "6 percent" near the end of the first sentence of subsection (a). Section 1-5 substituted "5.5 percent" for "5.75 percent" near the end of the first sentence of subsection (a).

Ga. L. 2018, p. 113, § 5/SB 328, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2018.

Ga. L. 2018, p. 113, § 1/SB 328, purported to amend O.C.G.A. § 48-7-21 but actually amended O.C.G.A. § 48-7-21 as amended by Ga. L. 2018, p. 8, §§ 1-4, 1-5, and 1-6/HB 918, signed by the Governor on March 2, 2018, and designated as Act 284.

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

Ga. L. 2022, p. 571, § 3/HB 1058, not codified by the General Assembly, makes division (b)(7)(A)(i) and paragraph (b)(7.1) applicable to taxable years beginning on or after January 1, 2023.

Ga. L. 2024, p. 15, § 4/HB 1023, not codified by the General Assembly, makes subsection (a) and division (b)(7)(C)(ii) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2024, p. 936, § 2/SB 344, not codified by the General Assembly, makes paragraph (b)(18) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

**U.S. Code.**

The Internal Revenue Code, referred to throughout this Code section, is codified as 26 U.S.C. § 1 et seq.

Subchapter "S" of the Internal Revenue Code, referred to in paragraph (b)(7) of this Code section, is codified at 26 U.S.C. § 1361 et seq.

**Administrative rules and regulations.**

Taxation of Corporations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-3-.06.

Consolidated Returns, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Substantive Regulations, Rule 560-7-3-.13.

**Law reviews.**

For comment on Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959), upholding constitutionality of state net income tax levied on revenues of foreign corporation derived from interstate commerce where tax is "fairly apportioned," see 22 Ga. B. J. 107 (1959).

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For article, "Primary Tax Incentives for Industrial Investment in the Southeastern United States," see 25 Emory L.J. 789 (1976).

For article surveying Georgia cases in the area of business associations from June 1977 through May 1978, see 30 Mercer L. Rev. 1 (1978).

For article, "Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B. J. 82 (1985).

For article, "Issues and Opportunities Under Georgia's Updated Income Tax Provisions," see 25 Ga. St. B. J. 144 (1989).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993).

For review of 1996 revenue and taxation legislation, see 13 Ga. St. U.L. Rev. 294 (1996).

For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B. J. 24 (2004).

For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

## JUDICIAL DECISIONS

**Constitutionality of income tax.** — Right to impose an income tax is an inherent right of the people and there is nothing in the Constitution of Georgia which denies to the General Assembly the power to impose an income tax if the tax is levied without infringing some provision of that instrument. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**Income tax not violation of due process when corporation accepts and uses state services.** — Having accepted and utilized valuable state services, a corporation cannot consistently contend or successfully assert that the corporation's property, the taxes collected, has been taken from the corporation in violation of the due process clause of the Constitution of Georgia. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**Legislative intent.** — The General Assembly clearly and plainly showed the legislature's intention to tax the activities or transactions which every corporation carries on within this state for the purpose of financial profit or gain. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**Exemptions to be strictly construed in state's favor.** — Any and all tax exemptions must be strictly construed, and unless the language clearly grants the exemption, it is the duty of the court to rule in favor of the state and against the corporation. Thompson v. Atlantic Coast Line R.R., 200 Ga. 856, 38 S.E.2d 774, 1946 Ga. LEXIS 353 (1946), aff'd, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 1947 U.S. LEXIS 2027 (1947).

**Taxation of foreign corporations.** — Foreign corporation is not permitted to engage in income producing activities or transactions within this state in competition with domestic corporations, and at the same time escape payment of income tax to the very government which makes it possible for the corporation to earn profits from such activities or transactions. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**State income taxation of interstate operations of a foreign corporation.** — Net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming a sufficient nexus to support the taxation. Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 1959 U.S. LEXIS 1488 (1959), superseded by statute as stated in Quill

Corp. v. North Dakota, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91, 1992 U.S. LEXIS 3123 (1992), superseded by statute as stated in Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214, 112 S. Ct. 2447, 120 L. Ed. 2d 174, 1992 U.S. LEXIS 3694 (1992), superseded by statute as stated in United States v. Frega, 933 F. Supp. 1536, 1996 U.S. Dist. LEXIS 10036 (S.D. Cal. 1996).

**Sale of whiskey by unlicensed nonresident.** — It is illogical and unreasonable to contend that the sale of whiskey in this state by an unlicensed nonresident upon orders taken in this state and approved by the state revenue commissioner in conformity with regulations is doing business in this state and is subject to income tax on the income arising therefrom. Redwine v. Schenley Indus., Inc., 210 Ga. 769, 83 S.E.2d 16, 1954 Ga. LEXIS 452 (1954).

**Obligations and duties of domesticated foreign corporations.** — Foreign corporation domesticated under the laws of this state becomes subject to the same obligations, duties, liabilities, and disabilities as if originally created under the laws of Georgia. Montag Bros. v. State Revenue Comm'n, 50 Ga. App. 660, 179 S.E. 563, 1935 Ga. App. LEXIS 263 (1935), aff'd, 182 Ga. 568, 186 S.E. 558, 1936 Ga. LEXIS 496 (1936).

**Law does not purport to provide a formula for deducting the cost of earning interest.** — Method used in arriving at such cost will and must be examined in the light and circumstances of each case. Any fair means of arriving at such costs is available. State Revenue Comm'n v. Carson Naval Stores Co., 63 Ga. App. 540, 11 S.E.2d 678, 1940 Ga. App. LEXIS 495 (1940).

**Construction of definition of "dividend" with other provisions.** — In light of the legislative history of former Code 1933, § 92-3002 and Oxford v. Carter, 216 Ga. 821, 120 S.E.2d 298 (1961), the Court of Appeals was not willing to say that the term "dividend" as used in paragraph (b)(10) of former Code 1933, § 92-3102 incorporated the definition of "dividend" in former Code 1933, § 92-3002 or that "dividend" as used in former Code 1933, § 92-3102 (see now O.C.G.A. § 48-7-21) clearly and distinctly included a final distribution in liquidation. Chilivis v. Cleveland Elec. Co., 142 Ga. App. 751, 236 S.E.2d 872, 1977 Ga. App. LEXIS 2131 (1977).

**Distribution of earnings and profits does not qualify as dividend.** — It is the Internal Revenue Code of 1954 definition of dividends received from sources outside the United States, not the treatment by the federal tax authorities, that is controlling. Under the Internal Revenue Code of 1954, the distribution of earnings and profits does not qualify as a dividend. Chilivis v. Cleveland Elec. Co., 142 Ga. App. 751, 236 S.E.2d 872, 1977 Ga. App. LEXIS 2131 (1977).

**Constitutional provision revoking perpetual corporate charter is void.** — When a perpetual corporate charter granted by the General Assembly confers tax exemptions upon the corporation, the exemption is irrevocable. Accordingly, former Ga. Const. 1945, Art. I, Sec. III, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. X) purporting to revoke such charter provisions, is void and of no effect. Thompson v. Atlantic Coast Line R.R., 200 Ga. 856, 38 S.E.2d 774, 1946 Ga. LEXIS 353 (1946), aff'd, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 1947 U.S. LEXIS 2027 (1947).

**Effect of charter provision limiting tax on stock of corporation.** — Charter provision which limits the tax on the stock of the corporation to a certain percentage of the net proceeds of their investments is a property tax and constitutes no bar to the collection by the state of an income tax from a lessee of the corporation on the lessee's net income derived from the use of the corporate property on which the charter thus limits the property tax. Thompson v. Atlantic Coast Line R.R., 200 Ga. 856, 38 S.E.2d 774, 1946 Ga. LEXIS 353 (1946), aff'd, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 1947 U.S. LEXIS 2027 (1947).

**Effect of tax exemption found in charter enacted before existence of income tax.** — When there existed in Georgia no corporate income tax law at the time a corporate charter exemption was enacted and in the exemption clause it was expressly stated that the limitation

there provided was upon the taxation of stock of the corporation, the General Assembly in enacting this exemption clause did not intend to include exemption from an income tax. Such limitation or exemption was not necessary because no income tax, under the law as the law then existed, would have been exacted of the corporation. Thompson v. Atlantic Coast Line R.R., 200 Ga. 856, 38 S.E.2d 774, 1946 Ga. LEXIS 353 (1946), aff'd, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 1947 U.S. LEXIS 2027 (1947).

**Research tax credit.** — Trial court erred in finding invalid a regulation which interpreted a research tax credit codified in a statute; the regulation's requirement that a business enterprise have a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's intent that research activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc., 270 Ga. App. 615, 607 S.E.2d 207, 2004 Ga. App. LEXIS 1543 (2004), cert. denied, No. S05C0574, 2005 Ga. LEXIS 272 (Ga. Mar. 28, 2005).

## OPINIONS OF THE ATTORNEY GENERAL

**What activity constitutes doing business in this state.** — When an out-of-state lending institution intermittently merely purchases from a Georgia real estate and mortgage company notes secured by mortgages on Georgia real estate, such activity is not enough to constitute doing business in this state for purposes of income tax liability under former Code 1933, §§ 92-3102 and 92-3113 (see now O.C.G.A. §§ 48-7-21 and 48-7-31). 1960-61 Ga. Op. Att'y Gen. 501.

When a foreign corporation merely qualifies as a fiduciary or merely holds a fiduciary title to property located in this state, and engages in no other activity in this state with respect to such property, it is not engaged in sufficient activity in this state to constitute its personally doing business in this state. Such corporation, as a fiduciary, would have an income tax liability on account of income or gains derived from such property. 1960-61 Ga. Op. Att'y Gen. 497.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, §§ 159, 175, 237 et seq.

**Am. Jur. Proof of Facts.**

Business Bad Debt, 5 POF2d 89.

**C.J.S.**

85 C.J.S., Taxation, § 1773.

**ALR.**

Deduction of salaries in computing excise or income tax of corporations, 15 A.L.R. 1316; 145 A.L.R. 834.

Constitutionality of taxing statute which refuses to corporation deduction of credits allowed to individual taxpayer, 42 A.L.R. 1049.

Income tax: deduction for loss or depreciation of good will, 49 A.L.R. 469.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 57 A.L.R. 899; 65 A.L.R. 878.

What is a personal service corporation within Internal Revenue Act, 59 A.L.R. 1279.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 65 A.L.R. 878.

Deduction of salaries in computing excise or income tax on corporations, 68 A.L.R. 705; 145 A.L.R. 834.

Income tax: deductibility as business expense of contributions by corporation for benevolent, charitable, or religious purposes, 68 A.L.R. 742; 111 A.L.R. 1226.

Constitutionality of tax on corporations in nature of, or purporting to be, excise or privilege tax measured by income or receipts, 71 A.L.R. 256.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation for purposes of property or income taxes, 71 A.L.R. 971.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 76 A.L.R. 806; 143 A.L.R. 361.

Discrimination by state against foreign corporations in imposition of taxes and license fees, 77 A.L.R. 1490.

Taxation of insurance reserves, 78 A.L.R. 562.

Building and loan associations as within contemplation of constitutional or statutory provisions relating to taxation of corporation or stockholders, 86 A.L.R. 826.

What amounts to "reorganization" of corporation within income tax statutes, 97 A.L.R. 1359; 173 A.L.R. 912.

Holding companies as within contemplation of statutes taxing franchises or property of certain classes of corporations, 98 A.L.R. 1511.

Subjection to public supervision because of public service nature of business as basis of classification for purposes of taxation, 99 A.L.R. 1164.

Right of bank in computing income tax to deduction corresponding to amount which it has been required by banking authorities to write down or charge off in respect of securities held by it, 100 A.L.R. 702.

State excise, privilege, or franchise tax upon foreign corporation as affected by commerce clause, 105 A.L.R. 11; 139 A.L.R. 950.

Premium or discount at which a corporation issues or sells, or purchases or retires, its stock, bonds, or other obligations as income, or as deductible in computing income tax of corporation, 112 A.L.R. 186.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

Transactions between affiliated corporations as basis of "bad debt" deduction in computing income tax or corporate franchise tax, 128 A.L.R. 1251.

State income tax in respect of business that extends into other states, 130 A.L.R. 1183.

Express limitations on deduction of interest paid to stockholders or their families, in computing state income tax or franchise tax of corporation, 140 A.L.R. 1350.

Validity and construction of state statutes as applied to the taxation of income derived from dividends on stock of foreign corporations, 143 A.L.R. 147.

Constitutionality, construction, and application of privilege dividend tax, 146 A.L.R. 1214.

Stock contemplated by statute imposing tax upon, or measuring it by, capital stock, 153 A.L.R. 693.

Meaning of association or joint-stock company within statutes taxing associations or joint-stock companies as corporations ("Massachusetts" or business trusts), 166 A.L.R. 1461.

Income of subsidiary as taxable to it or to parent corporation, 10 A.L.R.2d 576.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

Validity, under federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322.

Reasonableness of compensation paid to officers or employees, so as to warrant deduction thereof in computing employer's income tax, 10 A.L.R.3d 125.

Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 A.L.R.5th 509.

State income tax treatment of intangible holding companies, 11 A.L.R.6th 543.

State corporate income taxation of foreign dividends, 17 A.L.R.6th 623.

## 48-7-21.1. Compensation paid by taxpayer disallowed as business expense.

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

(1) "Authorized employee" means any individual whose hiring for employment or continuing employment in the United States does not violate the provisions of 8 U.S.C. Section 1324a.

(2) "Basic pilot program" shall mean the electronic verification of a work authorization program of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P. L. 104-208, Division C, Section 1324a note, and operated by the United States Department of Homeland Security.

(3) "Labor services" means the physical performance of services in this state.

(b) On or after January 1, 2008, no payment or compensation or other remuneration, including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses, or any other economic benefit, paid for labor services to an individual totaling $600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 or Form W-2 is issued in conjunction with such payments, compensation, or other remuneration.

(c) This Code section shall not apply to any business which:

(1) Has enrolled and participates in the basic pilot program; or

(2) Is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.**

Code 1981, § 48-7-21.1, enacted by Ga. L. 2006, p. 105, § 7/SB 529; Ga. L. 2007, p. 271, § 2/SB 184.

**Editor's notes.**

Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

**Law reviews.**

For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 247 (2006).

For annual survey of labor and employment law, see 58 Mercer L. Rev. 211 (2006).

For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally . . . Act Locally'," see 13 Ga. St. B. J. 14 (2007).

## 48-7-22. Taxation of fiduciaries, estates, and trusts; rate; taxable net income; computation; exemptions; determination of taxable year; tax as charge against estate or trust.

(a) The tax imposed by this chapter shall be:

(1) Imposed upon resident fiduciaries and upon nonresident fiduciaries:

(A) Receiving income from business done in this state;

(B) Managing funds or property located in this state; or

(C) Managing funds or property for the benefit of a resident of this state;

(2) Imposed upon fiduciaries subject to the tax at the rates provided in this article for single individuals;

(3) Levied, collected, and paid annually with respect to:

(A) That part of the net income of an estate or trust which has not become distributable during the taxable year. It is the purpose of this Code section to tax fiduciaries or beneficiaries on all income otherwise taxable under this chapter. Income received by a resident fiduciary shall not be subject to the tax imposed by this chapter when the income is accumulated for, is distributed, or becomes distributable during the taxable year to a nonresident of this state and when the income was received from business done outside this state, property held outside this state, or intangible property, other than from the licensing for use of the property, held by a fiduciary, including, but not limited to, gains from the sale or exchange of the property. No return of income exempt under this subparagraph shall be required;

(B) The taxable net income received during the taxable year by a deceased individual who at the time of death was a taxpayer and who died during the taxable year or subsequent to the taxable year without having made a return; and

(C) The entire taxable net income of an insolvent or incompetent person, whether or not any portion of the taxable net income

is held for the future use of the beneficiaries, when the fiduciary has complete charge of the net income.

(b) The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual.

(c) If the taxable year of a beneficiary is different from that of the estate or trust, the amount which the beneficiary is required to include in computing his net income shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending with or within the beneficiary's taxable year.

(d) The tax imposed upon a fiduciary shall be a charge against the estate or trust.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 6; Code 1933, § 92-3103; Ga. L. 1937, p. 109, § 4; Ga. L. 1937-38, Ex. Sess., p. 150, § 4; Ga. L. 1966, p. 219, § 1; Code 1933, § 91A-3603, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 64; Ga. L. 1987, p. 191, § 2.

**Cross references.**

Trusts generally, § 53-12-1 et seq.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Law reviews.**

For article, "To Tax or Not to Tax: State Income Tax on Trusts After North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust," see 25 Ga. St. B.J 26 (Feb. 2020).

## RESEARCH REFERENCES

**C.J.S.**

85 C.J.S., Taxation, §§ 1779 et seq., 1857 et seq.

**ALR.**

Deductibility, in determining individual income tax of trustee or other fiduciary, or amount paid by him, or for which he is responsible, on account of an improper investment, 107 A.L.R. 443.

Allocation between capital and income of income tax in respect of trust, 108 A.L.R. 1138.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 166 A.L.R. 1308.

Income tax: construction and application of 1942 amendment of § 162(b) of Internal Revenue Code as to taxation or deduction of income of trust or estate to be distributed by fiduciary to legatees, heirs, or beneficiaries, 1 A.L.R.2d 1283.

Modern status of rules governing allocation of stock dividends or splits between principal and interest, 81 A.L.R.3d 876.

**48-7-23. Taxation of partnerships.**

(a) The net income of a partnership shall be computed in the same manner and on the same basis as in the case of an individual except that the deduction of contributions for charitable purposes allowed by the Internal Revenue Code of 1986 shall not be allowed. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity; and each partner shall include in his or her individual return his or her distributive shares, whether distributed or not, of the net income of the partnership for the taxable year except as provided in subsection (c) of Code Section 48-7-24. If the taxable year of a partner is different from that of the partnership, the amount included in a partner's individual return shall be based upon the income of the partnership for the taxable year of the partnership ending with or within the partner's taxable year.

(b)(1) As used in this subsection, the term "electing partnership" means, with respect to a taxable period, a partnership that has made the election pursuant to paragraph (2) of this subsection with respect to such taxable period.

(2) A partnership may annually make an irrevocable election, on its timely filed return under Code Section 48-7-53, to pay the tax levied by this chapter at the entity level for the taxable period covered by such return. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted.

(3) Notwithstanding subsection (a) of this Code section, an electing partnership with respect to a taxable period shall pay an income tax on its net income at the same rate of the tax imposed on individuals under subsection (a.1) of Code Section 48-7-20 for the corresponding taxable year as computed pursuant to this Code Section, and allocated and apportioned pursuant to Code Section 48-7-31, for such taxable period, and such partners shall not recognize their respective share of the portion of income on which tax was actually paid pursuant to this subsection.

(4) No electing partnership nor any of its partners shall be entitled to any credit under Code Section 48-7-28 with respect to such tax so paid or any deduction for such income under subsection (d) of Code Section 48-7-27; provided, however, that such electing partnership shall otherwise be eligible for credits provided by this chapter and shall be considered an "other entity" for purposes of Code Sections 48-7-29.16, 48-7-29.20, and 48-7-29.21.

(5) The election under this subsection shall have no impact on the determination of the basis of the partners of an electing partnership

in their interests of such electing partnership, except that such partners' distributive share of the tax paid or accrued by such partnership pursuant to such election shall be taken into account in determining such basis.

(5.1) The election under this subsection shall have no impact on the accounting or tax treatment of distributions for an electing pass-through entity.

(6) In computing the net income that is subject to taxation, the electing partnership shall not be allowed any deduction for taxes that are based on or measured by gross or net income or any other variant thereof.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 7; Code 1933, § 92-3104; Code 1933, § 91A-3604, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 1997, p. 450, § 1; Ga. L. 2021, p. 277, § 2/HB 149; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2023, p. 346, § 1/HB 412, effective July 1, 2023; Ga. L. 2024, p. 15, § 2/HB 1023, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "this Code section," for "this Code Section," in paragraph (b)(3), substituted "however, that such" for "however, such" in paragraph (b)(4), and revised punctuation in paragraph (b)(7).

**The 2023 amendment,** effective July 1, 2023, added paragraph (b)(5.1), and deleted paragraph (b)(7), which read: "This subsection shall only apply to a partnership that is 100 percent directly owned and controlled by persons eligible to be shareholders of an 'S' corporation under Section 1361 of the Internal Revenue Code of 1986, as amended." See Editor's notes for applicability.

**The 2024 amendment,** effective July 1, 2024, in paragraph (b)(3), substituted "tax on its" for "tax equivalent to 5.75 percent of its", inserted "at the same rate of the tax imposed on individuals under subsection (a.1) of Code Section 48-7-20 for the corresponding taxable year", and substituted "this Code Section" for "Code Section 48-7-23". See Editor's notes for applicability.

**Cross references.**

Partnerships generally, § 14-8-1 et seq.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

Ga. L. 2023, p. 346, § 2/HB 412, not codified by the General Assembly, provides, in part, that the Act shall be applicable to all taxable years beginning on or after January 1, 2023.

Ga. L. 2024, p. 15, § 4/HB 1023, not codified by the General Assembly, makes paragraph (b)(3) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

**Administrative rules and regulations.**

Partnerships, Official Compilation of the Rules and Regulations of the State of

Georgia, Rules of Department of Revenue, Income Tax Division, Substantive Regulations, Rule 560-7-3-.08.

**Law reviews.**

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997).

For article, "Aggregate-Plus Theory of Partnership Taxation," see 43 Ga. L. Rev. 717 (2009).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

**JUDICIAL DECISIONS**

**Deduction for fixed liability to make rebate to copartners.** — Fixed liability to rebate to copartners a percentage of the purchase price of goods offered for sale to such partners and to the public generally, when based upon the amount of merchandise purchased by the partner, rather than upon the partner's interest in the partnership or upon total sales, and when the rebate is actually paid during the taxable year, may be an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business, so as to be deductible from the gross income of the partnership in arriving at the net income of the partnership. Bessemer Auto Parts, Inc. v. State Revenue Comm'r, 110 Ga. App. 500, 139 S.E.2d 157, 1964 Ga. App. LEXIS 681 (1964), aff'd, 221 Ga. 61, 142 S.E.2d 912, 1965 Ga. LEXIS 382 (1965).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 396.

**C.J.S.**

85 C.J.S., Taxation, § 1775.

**ALR.**

Wife's share of income of partnership of which husband is also a member as taxable to husband or wife, 164 A.L.R. 1144.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

State income tax treatment of partnerships and partners, 2 A.L.R.6th 1.

## 48-7-24. Nonresident members of resident partnerships; resident members of nonresident partnerships; profits; distributive shares; taxability.

(a) When one or more of the individual members of a partnership doing business in this state are nonresidents of this state, the nonresidents shall be taxable on their share of the net profits of the partnership.

(b) When one or more of the individual members of a partnership doing business outside this state are residents of this state, the residents shall include in their individual returns their distributable share, whether distributed or not, of the net income of the partnership for the taxable year.

(c) Notwithstanding any other provision of this chapter to the contrary, the distributive share of a nonresident member of a resident limited partnership or other similar nontaxable entity which derives

income exclusively from buying, selling, dealing in, and holding securities on its own behalf and not as a broker shall not constitute taxable income under this chapter. For purposes of this subsection, a resident limited partnership or similar nontaxable entity shall not include a family limited partnership or similar nontaxable entity the majority interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of reckoning according to the laws of descent and distribution. This subsection shall not apply to a person that participates in the management of the resident limited partnership or other similar nontaxable entity or that is engaged in a unitary business with another person that participates in the management of the resident limited partnership or other similar nontaxable entity.

(d) This Code section shall not apply to the partners of an electing partnership as defined in paragraph (1) of subsection (b) of Code Section 48-7-23.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 19; Code 1933, § 92-3117; Ga. L. 1937, p. 109, § 10; Ga. L. 1937-38, Ex. Sess., p. 150, § 6; Code 1933, § 91A-3615, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 1997, p. 450, § 2; Ga. L. 2005, p. 159, § 12/HB 488; Ga. L. 2021, p. 277, § 3/HB 149; Ga. L. 2022, p. 352, § 48/HB 1428.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "This Code section" for "This Code Section" at the beginning of subsection (d).

**Cross references.**

Partnerships generally, § 14-8-1 et seq.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

**Law reviews.**

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

**JUDICIAL DECISIONS**

**Legislative intent.** — Former Code 1933, § 92-3117 (see now O.C.G.A. § 48-7-24) was enacted to eliminate any doubt as to taxation of net income of a resident of this state who had an income from business or property not located in Georgia. However, former Code 1933, § 92-3111 (see now O.C.G.A. § 48-7-28) was broad enough to cover such income. Head v. Maxwell, 60 Ga. App. 488, 4 S.E.2d 45, 1939 Ga. App. LEXIS 67 (1939).

**As applicable to tax years 1992, 1993, and 1994,** when a partnership did business in Georgia, the individual members were taxable on the partners' share of the net profits of the partnership — regardless of whether the individual members qualified as doing business in Georgia. Department of Revenue v. Sledge, 241 Ga. App. 833, 528 S.E.2d 260, 2000 Ga. App. LEXIS 40 (2000), cert. denied, No. S00C0801, 2000 Ga. LEXIS 451 (Ga. May 26, 2000).

**Deduction for fixed liability to make rebate to copartners.** — Fixed liability to rebate to copartners a percentage of the purchase price of goods offered for sale to such partners and to the public generally, when based upon the amount of merchandise purchased by the partner, rather than upon the partner's interest in the partnership or upon total sales, and when the rebate is actually paid during the taxable year, may be an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business so as to be deductible from the gross income of the partnership in arriving at the net income of the partnership. Bessemer Auto Parts, Inc. v. State Revenue Comm'r, 110 Ga. App. 500, 139 S.E.2d 157, 1964 Ga. App. LEXIS 681 (1964), aff'd, 221 Ga. 61, 142 S.E.2d 912, 1965 Ga. LEXIS 382 (1965).

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1775.

**ALR.**

Nature of interest of special partner for purpose of income tax, 45 A.L.R. 1381.

Income tax on gain or loss realized by partner upon sale of his interest in partnership, 144 A.L.R. 354.

Wife's share of income of partnership of which husband is also a member as taxable to husband or wife, 164 A.L.R. 1144.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

State income tax treatment of partnerships and partners, 2 A.L.R.6th 1.

## 48-7-25. Exempt corporations and organizations; eligibility for and revocation of exempt status; retroactivity; statute of limitations; information returns; unrelated business income; deductibility of death benefit payments.

(a) The following organizations shall be exempt from taxation imposed by Code Section 48-7-21 as indicated:

(1) Subject to subsections (b) and (c) of this Code section, those organizations which are exempt from federal income taxation pursuant to Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 shall be deemed to have similar exempt status for purposes of Code Section 48-7-21; and

(2) Insurance companies which pay to the state a tax upon premium income.

(b)(1) An organization's exempt status under paragraph (1) of subsection (a) of this Code section shall be subject to review and revocation by the commissioner in accordance with the provisions of paragraph (2) of this subsection.

(2)(A) The commissioner may revoke the exempt status of any organization described in paragraph (1) of subsection (a) of this Code section when:

(i) The Internal Revenue Service revokes the exempt status of the organization;

(ii) The organization ceases to be organized or operated in the manner in which it was organized or operated at the time the exempt status was granted;

(iii) The organization engages in any prohibited transaction as set forth in the Internal Revenue Code of 1986; or

(iv) There is any material change in the character or purpose of the organization or in the mode of operation of the organization.

(B) Revocation of an exempt status shall revoke the exempt status retroactively to the time of the occurrence of the disqualifying event or events. All exempt organizations shall immediately notify the commissioner in writing of the occurrence of any of the disqualifying events described in subparagraph (A) of this paragraph or of receipt by the organization of a notice of intent to terminate its exempt status by the Internal Revenue Service. The statute of limitations governing the assessment of any taxes determined to be due this state due to the revocation of exempt status shall be tolled as of the date of the occurrence of the disqualifying event or events described in subparagraph (A) of this paragraph. The commissioner at any time may require an organization which is exempt from taxation to file an information return stating the organization's gross income, receipts, disbursements, accumulation of income, and other data deemed necessary for the proper administration of this Code section.

(c)(1) A tax is imposed on income of an organization exempted pursuant to paragraph (1) of subsection (a) of this Code section when the income is derived from trade or business which is not related to exempt purposes of organizations described in paragraph (1) of subsection (a) of this Code section. This income shall be referred to as unrelated business income and shall be the income which is defined in Section 512 of the Internal Revenue Code of 1986. The tax imposed on unrelated business income shall be at the rate provided in Code Section 48-7-21.

(2) If an organization is exempt under Section 501(c)(4) of the United States Internal Revenue Code of 1986, if the organization makes payments of death benefits as a result of the death of a member of the organization, and if payments have been made by the organization for at least five years prior to January 1, 1977, the payments shall be deductible from the unrelated business income tax which might be owed by the organization. The payment of such death benefits shall not operate to generate a rebate or a refund. If the amount of death benefits paid within the taxable year exceeds the unrelated business income tax owed for the same taxable year, the excess may be carried forward for a period of five years.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 5; Code 1933, § 92-3105; Ga. L. 1937, p. 109, § 5; Ga. L. 1943, p. 320, § 1; Ga. L. 1950, p. 75, § 1; Ga. L. 1952, p. 273, § 3; Ga. L. 1955, Ex. Sess., p. 27, § 7; Ga. L. 1960, p. 249, § 1; Ga. L. 1961, p. 180, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1975, p. 154, § 2; Ga. L. 1976, p. 405, § 9; Ga. L. 1976, p. 613, § 1; Ga. L. 1977, p. 1133, § 1; Code 1933, § 91A-3605, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 65; Ga. L. 1983, p. 1350, § 12; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 13, § 48; Ga. L. 2008, p. 898, § 5/HB 1151.

**Cross references.**

Authority of the Georgia Athletic and Entertainment Commission, § 43-4B-4.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, a period was deleted preceding the semicolon at the end of paragraph (a)(1).

**Editor's notes.**

Ga. L. 1983, p. 1350, § 15, not codified by the General Assembly, effective January 1, 1984, provides that, should subsection (e) of Code Section 48-6-93 or paragraph (b)(11) of Code Section 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2008, p. 898, § 13, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

**U.S. Code.**

The Internal Revenue Code of 1986, referred to in this Code section, is codified at Title 26 of U.S.C.

**Administrative rules and regulations.**

Corporations and Organizations Exempt from Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Substantive Regulations, Rule 560-7-3-.09.

**Law reviews.**

For note on discriminatory charitable trusts in Georgia, with regard to application of the cy pres doctrine, in light of Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966), see 6 Ga. St. B. J. 428 (1970).

For article, "Why Captives, Lord, What Have They Ever Done?: The Georgia Captive Insurance Company Act," see 26 Ga. St. B. J. 119 (1990).

For article, "Tackling the Social Determinants of Health: A Central Role for Providers," see 33 Georgia St. U.L. Rev. 217 (2017).

## OPINIONS OF THE ATTORNEY GENERAL

**What income of tax exempt corporation taxable.** — State can tax the unrelated business income of a tax exempt corporation, but when this tax exempt corporation is engaged in competitive commerce with a nonexempt business the corporation loses the corporation's tax exemption as to that portion of the corporation's net income attributable to such competitive commerce, notwithstanding the fact that all other businesses are excluded from the plants where this business is conducted, or that this business is only conducted within these plants. 1968 Op. Att'y Gen. No. 68-378.

**Out-of-state university is exempt from payment of Georgia income taxes** on the income derived from real property owned in Georgia in the name of the university so long as the university continues to operate exclusively for educational purposes and so long as no part of the university's earnings inure to the benefit of any private stockholder or individual. The university would of course be required to pay ad valorem property tax on the realty owned under these circumstances and should qualify to do business with the Secretary of State. 1967 Op. Att'y Gen. No. 67-13.

**Medical College of Georgia exempt from ad valorem taxes.** — Medical College of Georgia Foundation, Inc., being a corporation established for educational purposes with no part of its proceeds or property capable of inuring to the benefit of private persons, is exempt from ad valorem taxes. 1962 Ga. Op. Att'y Gen. 503.

**Limits on scope of exemption for banks and trust companies.** — Exemption for banks and trust companies doing a general banking business must be applied narrowly to only state or federally chartered companies doing such business and is not to be applied broadly to every enterprise engaged in the banking business. The General Assembly intends to treat private banks in the same manner as private individuals for income tax purposes and not like chartered banks. Private banks may not avail themselves of an exemption granted national and state banks under income tax provisions. 1954-56 Ga. Op. Att'y Gen. 693.

**Applicability of state revenue laws to international banking corporation.** — International banking corporation whose sole contact with Georgia was the corporation's operation of an agency office licensed under former Code 1933, § 41A-3301 et seq. was not a bank for purposes of state revenue laws. 1976 Op. Att'y Gen. No. 76-105.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 243, 244. 71 Am. Jur. 2d, State and Local Taxation, § 237 et seq.

**ALR.**

Exemption from taxation of the property of a Y.M.C.A. or Y.W.C.A., 34 A.L.R. 1067; 81 A.L.R. 1453.

What is a social club within statute imposing tax on dues or membership fees, 80 A.L.R. 1296; 143 A.L.R. 1381.

Exemption from taxation of property of fraternal or relief associations, 83 A.L.R. 773.

Subjection to public supervision because of public service nature of business as basis of classification for purposes of taxation, 99 A.L.R. 1164.

Exemption of charitable organization from taxation or special assessment, 108 A.L.R. 284.

What is a municipal corporation within constitutional or statutory tax exemption provisions, 108 A.L.R. 577.

Tax on corporations as affected by fact

that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

Hospital as within tax exemption provision not specifically naming hospitals, 144 A.L.R. 1483.

Exemption of chamber of commerce from taxation, 152 A.L.R. 181.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 A.L.R. 895.

Tax exemptions and the contract clause, 173 A.L.R. 15.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031.

State tax on trust income as affected by foreign elements, 5 A.L.R.3d 606.

Religious Use Tax Exemption of Specific Property Under State or Local Laws, 66 A.L.R.7th 1.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed 395.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

## 48-7-26. Personal exemptions.

(a) As used in this Code section, the term "dependent" shall have the same meaning as in the Internal Revenue Code of 1986; provided, however, that any unborn child with a detectable human heartbeat, as such terms are defined in Code Section 1-2-1, shall qualify as a dependent minor.

(b) Each taxpayer shall be allowed as a deduction in computing his or her Georgia taxable income a personal exemption in the amount of $4,000.00 for each dependent of such taxpayer.

(c) No exemption shall be allowed under this Code section for any dependent who has made a joint return with such dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(d) A deduction in lieu of a personal exemption deduction shall be allowed an estate or a trust as follows:

(1) An estate — $2,700.00; and

(2) A trust — $1,350.00.

**History.**

Code 1981, § 48-7-26, enacted by Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 381, § 1; Ga. L. 1998, p. 1, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2012, p. 257, § 2-1/HB 386; Ga. L. 2019, p. 711, § 12/HB 481; Ga. L. 2022, p. 114, § 2-2/HB 1437, p. 114, § 2-2/HB 1437; Ga. L. 2023, p. 335, § 2-3/SB 56, effective January 1, 2024; Ga. L. 2024, p. 17, § 1/HB 1021, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective January 1, 2024, rewrote subsection (b), relating to personal exemptions from income tax. See Editor's notes for applicability.

**The 2023 amendment,** effective January 1, 2024, rewrote subsection (b), which read: "(b) Each taxpayer shall be allowed as a deduction in computing his or her

Georgia taxable income a personal exemption in an amount as follows:

"(1) For each married couple filing a joint return:

"(A) For taxable years beginning on or after January 1, 2024, $18,500.00;

"(B) For taxable years beginning on or after January 1, 2026, $20,000.00;

"(C) For taxable years beginning on or after January 1, 2028, $22,000.00; or

"(D) For taxable years beginning on or after January 1, 2030, $24,000.00;

"(2) For each married taxpayer filing a separate return, one-half of the amount of the personal exemption allowed under paragraph (1) of this subsection for the given year;

"(3) For each single taxpayer or head of household, $12,000.00; and

"(4) For each dependent of a taxpayer, $3,000.00." See Editor's notes for applicability.

**The 2024 amendment,** effective July 1, 2024, substituted "$4,000.00" for "$3,000.00" in subsection (b). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed the former Code section and enacted the current Code section covering substantially the same subject matter. The former Code section was based on Ga. L. 1931, Ex. Sess., p. 24, § 8; Code 1933, § 91A-3606; Code 1933, § 92-3106; Ga. L. 1937, p. 109, § 6; Ga. L. 1941, p. 210, § 1; Ga. L. 1943, p. 321, § 1; Ga. L. 1952, p. 273, §§ 1, 2; Ga. L. 1952, p. 405, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 272, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 297, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 197, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 3; Ga. L. 1960, p. 1005, § 2; Ga. L. 1965, p. 260, §§ 1, 2; Ga. L. 1966, p. 239, § 1; Ga. L. 1966, p. 271, § 1; Ga. L. 1968, p. 1037, § 1; Ga. L. 1971, p. 605, § 3; Ga. L. 1976, p. 250, § 1; Ga. L. 1978, p. 1471, § 1; Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 66; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 48.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes subsections (b)-(d) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons, and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Ga. L. 2022, p. 114, § 1-1/HB 1437, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Tax Reduction and Reform Act of 2022.'"

Ga. L. 2022, p. 114, § 5-1/HB 1437, not codified by the General Assembly, provides: "(a) This Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval; provided, however, that Part II of this Act shall become effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

"(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall be effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2024, p. 17, § 2/HB 1021, not codified by the General Assembly, makes subsection (b) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

**Law reviews.**

For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated,

Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 112 (2012).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 155 (2019).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-3106, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Recipient of income liable for income tax.** — Liability for income tax rests upon the person by whom the income, in respect of which the tax is imposed, is received or receivable. The recipient of the income is the person taxable, and unless expressly exempted every recipient is liable therefore. Brandon v. State Revenue Comm'n, 54 Ga. App. 62, 186 S.E. 872, 1936 Ga. App. LEXIS 454 (1936), aff'd, 184 Ga. 225, 190 S.E. 660, 1937 Ga. LEXIS 481 (1937) (decided under former Code 1933, § 92-3106).

**Liability for income received by a married woman.** — When a married woman living with her husband has an income of her own independent of her marital status, that income is not to be considered as a part of her husband's income. The wife is the recipient, the income is taxable, and the wife is the person liable. Brandon v. State Revenue Comm'n, 54 Ga. App. 62, 186 S.E. 872, 1936 Ga. App. LEXIS 454 (1936), aff'd, 184 Ga. 225, 190 S.E. 660, 1937 Ga. LEXIS 481 (1937) (decided under former Code 1933, § 92-3106).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3106, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Personal exemptions and credits are not considered in arriving at net income.** 1969 Op. Att'y Gen. No. 69-17 (decided under former Code 1933, § 92-3106).

**No exemption for child cared for but not adopted by grandparents.** — Grandparent, caring for a grandchild under an award of custody in divorce proceedings, without formal or virtual adoption, is not entitled to an exemption by reason thereof. 1948-49 Ga. Op. Att'y Gen. 674 (decided under former Code 1933, § 92-3106).

## RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 442.

**C.J.S.**

85 C.J.S., Taxation, § 1806 et seq.

**ALR.**

Deductions in respect of leasehold in computing income tax, 82 A.L.R. 332.

Income tax: deductibility of amount paid or expense incurred by taxpayer on account of his liability or alleged liability for tort, crime, or statutory violation, 104 A.L.R. 680; 20 A.L.R.2d 600.

Deductibility, in determining individual income tax of trustee or other fiduciary, or amount paid by him, or for which he is responsible, on account of an improper investment, 107 A.L.R. 443.

Constitutionality, construction, and application of state statutes relating to ex-

emption from taxation of amounts paid as pensions, war risk insurance, compensation, bonus, or other relief for veterans of World War, 116 A.L.R. 1437.

Income tax: deductibility of taxes on property sold or purchased by taxpayer, 128 A.L.R. 769.

Construction and application of statutory provisions allowing deduction, in computing income tax of decedent's estate or of trust, of amounts distributable or distributed to legatees, heirs, or beneficiaries, 142 A.L.R. 1109.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 153 A.L.R. 550; 166 A.L.R. 1308.

Income taxes: when deduction for traveling and living expenses while away from home on business may be claimed, 159 A.L.R. 1217.

Tax exemptions and the contract clause, 173 A.L.R. 15.

Construction of provisions of Internal Revenue Code relating to alimony or maintenance payments, 4 A.L.R.2d 252.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031.

## 48-7-27. (Effective until January 1, 2025.) Computation of taxable net income.

(a) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) At the taxpayer's election, either:

(A) The sum of all itemized nonbusiness deductions used in computing such taxpayer's federal taxable income; or

(B) A standard deduction in an amount as follows:

(i) In the case of a married couple filing a joint return, $24,000.00; or

(ii) In the case of a single taxpayer, head of household, or married taxpayer filing a separate return, $12,000.00;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection (b) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual's federal adjusted gross income because the individual has taken a federal jobs tax credit which requires, as a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by

federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, for taxable years beginning on or after January 1, 1989, no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of $8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of $10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of $11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of $12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of $13,000.00;

(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of $13,500.00 per year received from any source;

(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of $14,000.00;

(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of $14,500.00;

(ix) For taxable years beginning on or after January 1, 2003,

and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of $15,000.00;

(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of $25,000.00;

(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of $30,000.00;

(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of $35,000.00; and

(xiii) For taxable years beginning on or after January 1, 2012, retirement income from any source not to exceed an exclusion amount of $35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of $65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

(iii) Is 65 years of age or older during any part of the year.

(E)(i) For the purposes of this paragraph, retirement income shall include but not be limited to income from military retirement, interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than $5,000.00 of an individual's earned income. Earned income in excess of $5,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement

income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this division.

(ii) Any income received by a surviving family member that is based on the service record of a deceased veteran shall be excluded from Georgia taxable net income without regard to the age of the surviving family member.

(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph.

(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;

(5.1)(A) Up to $17,500.00 of income received by an individual who is less than 62 years of age paid to such individual as retirement benefits from military service in the armed forces of the United States or the reserve components thereof and an additional amount of up to $17,500.00 of such income, provided that he or she has Georgia earned income otherwise included in his or her Georgia taxable net income in an amount that exceeds $17,500.00.

(B) In the case of a married couple filing jointly, each spouse who is otherwise qualified for an exclusion allowed by this paragraph shall be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection;

(6) A portion of the qualified payments to classified subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;

(9) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such taxpayer and to establish the same basis for federal and state income tax purposes;

(10) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

(11) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding $2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed $2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed $100,000.00 for a joint return or $50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by $400.00 for each $1,000.00 of federal adjusted gross income over $100,000.00 for a joint return or $50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1) For taxable years beginning on or after January 1, 2020:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding $4,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $4,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $8,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(11.2) For taxable years beginning on or after January 1, 2019, and ending on or before December 31, 2023, income received as payments from a federal disaster relief or assistance grant program administered by this state or its instrumentalities or the United States Department of Agriculture, if such federal grant program was established specifically to address agricultural losses suffered due to Hurricane Michael which was a weather event declared to be a major disaster in this state by the President of the United States during the 2018 calendar year, to the extent such income is included in federal adjusted gross income or federal taxable income;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the borders of

the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders;

(12.1)(A) Disability income from the United States Department of Veterans Affairs received by a disabled veteran who is a citizen and resident of Georgia.

(B) As used in this paragraph, the term "disabled veteran" means any wartime veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being at least 90 percent totally and permanently disabled and entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Loss of sight in one or both eyes; or

(iv) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(12.2) Payments received by a firefighter pursuant to paragraph (2) of subsection (b) of Code Section 25-3-23, to any extent such amounts are included in the taxpayer's federal adjusted gross income and are not otherwise exempt under any other provision of this Code section;

(12.3) An amount equal to 100 percent of any premium paid by the individual taxpayer during the taxable year for coverage pursuant to paragraph (2) of subsection (b) of Code Section 25-3-23, to any extent such deduction has not been included in the taxpayer's federal adjusted gross income and such amount is not otherwise deductible under any other provision of this Code section;

(12.4)(A) An amount equal to 100 percent of the payments made to and received by a disabled first responder pursuant to Code Section 45-9-85, provided that and to the extent such amounts are included in the taxpayer's federal adjusted gross income and are not otherwise exempt from the tax imposed by this article under any other provision of law.

(B) As used in this paragraph, the term "disabled first responder" means a law enforcement officer, fireman, publicly employed emergency medical technician, or a surviving spouse of such an individual, receiving payments pursuant to Code Section 45-9-85 due to total permanent disability, partial permanent disability, organic brain damage, or death occurring in the line of duty;

(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of $25,000.00 incurred in accordance with the "National Organ Procurement Act."

(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person's liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;

(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;

(14) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

(15) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

(b)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any amount deducted pursuant to Section 164 of the Internal Revenue Code in determining federal taxable income that exceeds the following:

(A) For a single taxpayer, a taxpayer filing as head-of-household, or a married taxpayer filing jointly, $10,000.00; or

(B) For a married taxpayer filing separately, $5,000.00.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

(6) Reserved.

(7) Except as otherwise provided in paragraph (4) of subsection (a) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

(8) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

(9) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection (a) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

(10.1)(A) The amount of any qualified withdrawals from an ABLE account established pursuant to a Georgia ABLE program or any Qualified ABLE Program, as such programs are defined under Chapter 9 of Title 30, shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such an ABLE account, the proportion of earnings in the account

balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the designated beneficiary's taxable net income in the year of withdrawal.

(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(12) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(13) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(14) Georgia net operating losses shall be treated in the same manner as provided in paragraph (10.1) of subsection (b) of Code Section 48-7-21 but shall be based on the income as computed pursuant to this Code section. Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income.

(15) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53.

(16) Georgia taxable net income shall be adjusted as provided in subparagraph (b)(7)(C) of Code Section 48-7-21 and subsection (b) of Code Section 48-7-23.

(c) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(d)(1)(A) As used in this paragraph, the term "individual" shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter "S" corporations may make an adjustment to federal adjusted gross income for Subchapter "S" corporation income where another state does not recognize a Subchapter "S" corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter "S" corporation, partnership, or limited liability company. In multitiered situations, the adjustment for such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter "S" corporation shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for such Subchapter "S" corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter "S" corporation is first required to file a Georgia income tax return. For a Subchapter "S" corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter "S" corporation in that year. Shareholders of a federal Subchapter "S" corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation. The provisions of this paragraph shall not apply to an electing Subchapter "S" corporation as defined in paragraph (7) of subsection (b) of Code Section 48-7-21.

**History.**

Code 1933, § 92-3107, enacted by Ga. L. 1971, p. 605, § 4; Ga. L. 1975, p. 843, § 1; Ga. L. 1978, p. 1456, § 1; Ga. L. 1979, p. 888, § 2; Code 1933, § 91A-3607, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 67; Ga. L. 1979, p. 888, § 4; Ga. L. 1980, p. 10, §§ 17, 18; Ga. L. 1981, p. 1857, §§ 35, 36; Ga. L. 1981, p. 1903, §§ 3, 4; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1644, § 2; Ga. L. 1986, p. 749, § 1; Ga. L. 1986, p. 1480, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 475, § 2; Ga. L. 1989, p. 1112, §§ 1-3; Ga. L. 1989, Ex. Sess., p. 5, § 1; Ga. L. 1990, p. 1369, § 1; Ga. L. 1992, p. 1296, § 1; Ga. L. 1992, p. 2977, § 1; Ga. L. 1994, p. 381, § 2; Ga. L. 1998, p. 1, § 2; Ga. L. 1998, p. 1515, § 1; Ga. L. 1998, p. 1516, § 1; Ga. L. 1999, p. 13, § 2; Ga. L. 2000, p. 408, § 1; Ga. L. 2001, p. 76, §§ 2, 3; Ga. L. 2002, p. 372, §§ 2, 3; Ga. L. 2002, p. 1149, § 1; Ga. L. 2003, p. 637, § 1; Ga. L. 2003, p. 665, §§ 4, 5; Ga. L. 2004, p. 102, § 1; Ga. L. 2005, p. 18, § 1/HB 263; Ga. L. 2005, p. 30, § 1/HB 191; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 157, § 2/HB 282; Ga. L. 2005, p. 159, §§ 13, 14/HB 488; Ga. L. 2005, p. 529, § 1/HB 556; Ga. L. 2006, p. 526, § 1/HB 1160; Ga. L. 2007, p. 112, § 2/HB 225; Ga. L. 2007, p. 271, §§ 3, 4/SB 184; Ga. L. 2008, p. 159, §§ 7, 8/HB 1014; Ga. L. 2008, p. 292, § 4/HB 977; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2008, p. 898, §§ 6, 7/HB 1151; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 4/HB 410; Ga. L. 2009, p. 796, § 2/HB 379; Ga. L. 2010, p. 9, § 4-1/HB 1055; Ga. L. 2012, p. 108, § 1/HB 808; Ga. L. 2012, p. 257, § 2-2/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 83, § 2-1/SB 391; Ga. L. 2016, p. 588, § 2/HB 768; Ga. L. 2016, p. 805, § 1/HB 802; Ga. L. 2017, p. 336, § 5/HB 146; Ga. L. 2018, p. 8,

§§ 1-7, 1-8/HB 918; Ga. L. 2018, p. 308, § 1/HB 749; Ga. L. 2018, p. 319, § 2/HB 849; Ga. L. 2019, p. 195, § 3/HB 287; Ga. L. 2019, p. 455, § 1/HB 266; Ga. L. 2019, p. 908, § 4/SB 138; Ga. L. 2020, p. 903, § 1-1/HB 105; Ga. L. 2021, p. 4, § 2/HB 593; Ga. L. 2021, p. 277, § 4/HB 149; Ga. L. 2022, p. 94, § 1/HB 1064; Ga. L. 2022, p. 114, §§ 2-3, 2-4/HB 1437; Ga. L. 2022, p. 188, § 3/HB 275; Ga. L. 2023, p. 43, § 2/HB 128, effective January 1, 2024; Ga. L. 2023, p. 335, § 2-4/SB 56, effective January 1, 2024; Ga. L. 2024, p. 1052, § 5(27)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-27 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The first 2022 amendment,** effective July 1, 2022, added paragraph (a)(5.1). See Editor's notes for applicability.

**The second 2022 amendment,** effective July 1, 2022, substituted "$25,000.00" for "$10,000.00" in subparagraph (a)(13)(A). See Editor's notes for applicability.

**The third 2022 amendment,** effective January 1, 2024, rewrote paragraph (a)(1), relating to computation of state taxable net income, substituted "$5,000.00" for "$4,000.00" twice in division (a)(5)(E)(i), and rewrote paragraph (b)(3), which read: "There shall be added to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income." See Editor's notes for applicability.

**The first 2023 amendment,** effective January 1, 2024, substituted "payments to classified subcontractors" for "payments to minority subcontractors" in paragraph (a)(6).

**The second 2023 amendment,** effective January 1, 2024, rewrote paragraph (a)(1), which read: "The sum of all itemized nonbusiness deductions used in computing such taxpayer's federal taxable income;". See Editor's notes for applicability.

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraph (a)(12.4)(B).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2005, "and" was deleted at the end of paragraph (a)(13), "; and" was substituted for the period at the end of paragraph (a)(14), and paragraph (a)(14), as enacted by Ga. L. 2005, p. 157, § 2, was redesignated as paragraph (a)(15).

Pursuant to Code Section 28-9-5, in 2010, "to" was inserted between "subject" and "an" in subparagraph (a)(5)(A).

Pursuant to Code Section 28-9-5, in 2018, paragraph (b)(14), as added by Ga. L. 2018, p. 319, § 2/HB 849, was redesignated as paragraph (b)(15).

**Editor's notes.**

Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that the Act would apply to taxable years beginning on or after January 1, 1985.

Ga. L. 1986, p. 749, § 2, not codified by the General Assembly, provided: "This Act shall become effective upon its approval by the Governor [approved April 3, 1986] or upon its becoming law without his approval and shall apply to tax years beginning on or after January 1, 1986."

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1988, p. 475, § 3, not codified by the General Assembly, provided that the Act applies to taxable years beginning on or after January 1, 1988.

Ga. L. 1988, p. 475, § 3, not codified by the General Assembly, also provided that

provisions of the Internal Revenue Code of 1986 which were as of January 1, 1988, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1989, p. 1112, § 4, not codified by the General Assembly, provides that the Act shall be effective for tax years beginning on or after January 1, 1989.

Ga. L. 1989, Ex. Sess., p. 5, § 2, not codified by the General Assembly, provided: "(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to taxable years beginning on or after January 1, 1989.

"(b) Tax, penalty, and interest liabilities for taxable years beginning prior to January 1, 1989, shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Code Section 48-7-27 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." The Act was approved by the Governor September 20, 1989.

Ga. L. 1990, p. 1369, § 2, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 1990.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes subsection (a) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 1998, p. 1515, § 2, not codified by the General Assembly, makes subsection (a) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 1999, p. 13, § 4, not codified by the General Assembly, makes subsection (b) of this Code section applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2000, p. 408, § 2, not codified by the General Assembly, makes subsection (a) applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 637, § 2, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2003."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2004, p. 102, § 2, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 18, § 2/HB 263, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2005, p. 30, § 7(a)/HB 191, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(11) shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2005, p. 157, § 4/HB 282, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(2) shall be applicable to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 27(h)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(6) shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2006, p. 526, § 2/HB 1160, not codified by the General Assembly, provides that this Act shall be applicable

to all taxable years beginning on or after January 1, 2006.

Ga. L. 2007, p. 271, § 7(b)/SB 184, not codified by the General Assembly, provides that the amendment to paragraph (a)(12) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 159, § 10/HB 1014, not codified by the General Assembly, provides that the 2008 amendment to paragraph (b)(10) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 292, § 6(a)/HB 977, not codified by the General Assembly, provides, in part, that the 2008 amendment shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 652, § 6(a)/HB 410, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2012, p. 108, § 2/HB 808, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7(e)/HB 386, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2016, p. 805, § 2/HB 802, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on and after January 1, 2016.

Ga. L. 2018, p. 8, § 3-1(a)/HB 918, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2017."

Ga. L. 2018, p. 8, § 3-1(d)/HB 918, not codified by the General Assembly, provides, in part, that this Act "shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2018. Section 1-7 of this Act shall expire by operation of law on the last moment of December 31, 2025, and revert to the language of paragraph (1) of subsection (a) of Code Section 48-7-27 as it existed on the day immediately preceding the effective date of this Act." This Act was signed by the Governor on March 2, 2018.

Ga. L. 2018, p. 308, § 2/HB 749, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2018, and shall be applicable to all taxable years beginning on or after January 1, 2018."

Ga. L. 2019, p. 195, § 1/HB 287, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Georgia's primary care shortages are well documented, and it is imperative that the training of medical students, phy-

sician assistant students, and advanced practice registered nurse students be secured in this state as these are three key disciplines of the core primary care work force. Georgia invests heavily in the educational programs required to train and produce these students, and the Preceptor Tax Incentive Program is designed to alleviate some of the struggles faced by such programs as they seek to secure sufficient community based training sites for the education of their students; and

"(2) Off shore and out of state medical schools are using Georgia community based clinical faculty and paying them approximately $1,500.00 per rotation. Accordingly, a powerful incentive is required to ensure that Georgia's volunteer community based faculty preceptors are retained to provide training for medical students, physician assistant students, and advanced practice registered nurse students matriculating in Georgia based educational programs."

Ga. L. 2019, p. 195, § 2/HB 287, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Preceptor Tax Incentive Program' or 'PTIP.'"

Ga. L. 2019, p. 195, § 5/HB 287, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2019, and ending on or before December 31, 2023."

Ga. L. 2019, p. 455, § 2/HB 266, not codified by the General Assembly, provides that this Act "shall apply to all taxable years beginning on and after January 1, 2020."

Ga. L. 2019, p. 908, § 5/SB 138, not codified by the General Assembly, provides, in part, that Section 4 of this Act shall apply to taxable years beginning on or after January 1, 2019.

Ga. L. 2021, p. 4, § 1/HB 593, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Tax Relief Act of 2021.'"

Ga. L. 2021, p. 4, § 3/HB 593, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2022."

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

Ga. L. 2022, p. 94, § 2/HB 1064, not codified by the General Assembly, makes paragraph (a)(5.1) applicable to all taxable years beginning on or after January 1, 2022.

Ga. L. 2022, p. 114, § 1-1/HB 1437, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Tax Reduction and Reform Act of 2022.'"

Ga. L. 2022, p. 114, § 4-1/HB 1437, not codified by the General Assembly, revises subsection (a) of Ga. L. 2018, p. 8, § 3-1/HB 918 to read in pertinent part: "(3) Section 1-8 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and such section shall be applicable to all taxable years beginning on or after January 1, 2017; provided, however, that the revisions to Code Section 48-7-27 made by Section 1-8 of this Act shall be subject to the revisions made by Acts approved by the Governor or that became or become law without such approval after March 2, 2018, and became or become applicable to tax years beginning on or after January 1, 2017."; and revises subsection (d) to read: "(d) Section 1-7 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and shall be applicable to all taxable years beginning on January 1, 2018, and ending December 31, 2019; provided, however, that the revisions to Code Section 48-7-27 made by Section 1-7 of this Act shall be subject to the revisions made by Acts approved by the Governor or that became or become law without such approval after March 2, 2018, and became or become applicable to tax years beginning on or after January 1, 2020."

Ga. L. 2022, p. 114, § 5-1/HB 1437, not codified by the General Assembly, provides: "(a) This Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval; provided,

however, that Part II of this Act shall become effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

"(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2022, p. 188, § 1/HB 275, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Giving the Gift of Life Act.'"

Ga. L. 2022, p. 188, § 4/HB 275, not codified by the General Assembly, makes subparagraph (a)(13)(A) of this Code section applicable to taxable years beginning on or after July 1, 2022.

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall be effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

**Administrative rules and regulations.**

Net Taxable Income Individual, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-4-.01 et seq.

**Law reviews.**

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For article, "Issues and Opportunities Under Georgia's Updated Income Tax Provisions," see 25 Ga. St. B. J. 144 (1989).

For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U.L. Rev. 193 (2016).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

For note on 1990 amendment to this Code section, see 7 Ga. St. U.L. Rev. 363 (1990).

For note on 1992 amendment to this Code section, see 9 Ga. St. U.L. Rev. 338 (1992).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 84 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 92, former Code 1933, §§ 92-3107 and 92-3109 are included in the annotations for this Code section.

**Retirement benefits not exempted.** — Subjecting retirement benefits of retired school teachers to state income taxation did not violate the constitutional prohibition against state laws impairing the obligation of contracts since the teachers had no vested right to an irrevocable exemption which was barred under Ga. Const. 1983, Art. VII, Sec. I, Para. I. Parrish v. Employees' Retirement Sys., 260 Ga. 613, 398 S.E.2d 353, 1990 Ga. LEXIS 461 (1990), cert. denied, 500 U.S. 918, 111 S. Ct. 2016, 114 L. Ed. 2d 103, 1991 U.S. LEXIS 2565 (1991).

**Income tax is not a property tax, but is more nearly within category of**

**an excise tax.** Brandon v. State Revenue Comm'n, 54 Ga. App. 62, 186 S.E. 872, 1936 Ga. App. LEXIS 454 (1936), aff'd, 184 Ga. 225, 190 S.E. 660, 1937 Ga. LEXIS 481 (1937) (decided under former Code 1933, § 92-3107).

**Meaning of "income tax" and "income."** — Term "income tax" means a tax on the actual gain or an actual increase in wealth, and does not include a mere unrealized increased in value. "Income" is the gain derived from capital or labor, or both combined. "Income" for any given period of time is the amount of gain so derived during a designated period. Brandon v. State Revenue Comm'n, 54 Ga. App. 62, 186 S.E. 872, 1936 Ga. App. LEXIS 454 (1936), aff'd, 184 Ga. 225, 190 S.E. 660, 1937 Ga. LEXIS 481 (1937) (decided under former Code 1933, § 92-3107).

**Research tax credit.** — Trial court erred in finding invalid a regulation which interpreted a research tax credit codified in a statute; the regulation's requirement that a business enterprise have had a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's intent that research activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc., 270 Ga. App. 615, 607 S.E.2d 207, 2004 Ga. App. LEXIS 1543 (2004), cert. denied, No. S05C0574, 2005 Ga. LEXIS 272 (Ga. Mar. 28, 2005).

**Compromise settlement with Internal Revenue Service as basis for assessing state income tax.** — Commissioner is authorized to use a compromise agreement with the U.S. Internal Revenue Service on the amount of changed income of the taxpayer as the basis for assessment of Georgia income tax, even if it is the sole basis for assessing state tax. Blackmon v. Monroe, 233 Ga. 656, 212 S.E.2d 827, 1975 Ga. LEXIS 1410 (1975).

**Adoption of federal tax procedures not a delegation of state power to federal authorities.** — When the State Revenue Commission (now state revenue commissioner) merely adopted the federal method of calculating net income under the federal statute as the state's method of accomplishing that result, and properly assesses the tax due to the state as part of the amount which the taxpayer paid to the United States, such adoption is not a delegation to the federal authorities of the state's power to tax. Head v. McKenney, 61 Ga. App. 552, 6 S.E.2d 405, 1939 Ga. App. LEXIS 475 (1939) (decided under former Ga. L. 1929, p. 92).

**Taxation of rebates given to partners on their individual purchases.** — When rebates have no connection with the total sales or profits of a partnership or with the interest of a particular partner in the partnership, but are merely a discount to the partners on the partners' own individual purchases and, hence, only such rebates do not constitute profits and are not taxable. Undercofler v. Bessemer Auto Parts, Inc., 221 Ga. 61, 142 S.E.2d 912, 1965 Ga. LEXIS 382 (1965).

**No deduction for losses incurred by shareholder on distribution of dissolved corporation's assets.** — When the taxpayer owns all or a majority of the capital stock of a corporation and the corporation is dissolved, and the correct proportionate share of the assets of the corporation is turned over to the taxpayer owning a majority of the capital stock, such a distribution of the assets is treated as a sale of the stock by the taxpayer stockholder to the corporation, and losses incurred by reason of such transaction are not deductible as losses in computing the net income. State Revenue Comm'n v. Glenn, 61 Ga. App. 567, 6 S.E.2d 384, 1939 Ga. App. LEXIS 477 (1939) (decided under former Code 1933, § 92-3109).

**Adjustment to shareholder in S corporations federal adjusted gross income.** — Former paragraph (d)(2) of O.C.G.A. § 48-7-27 did not permit a

taxpayer, who was a shareholder in an S corporation, to adjust the taxpayer's federal adjusted gross income by subtracting the entire share of the taxpayer's passed-through income from the corporation as the double taxation to be avoided was the payment of income taxes by the corporation at the corporate level and then the payment of income taxes by the taxpayer as an individual on the same income in the same year; the taxpayer should have only subtracted the taxpayer's share of the amount of the corporation's income on which corporate taxes were paid in Georgia. Graham v. Hanna, 297 Ga. App. 542, 677 S.E.2d 686, 2009 Ga. App. LEXIS 401 (2009), cert. denied, No. S09C1403, 2009 Ga. LEXIS 789 (Ga. Sept. 28, 2009).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-3107 and 92-3109 are included in the annotations for this Code section.

**Treatment of employee's unrestricted subsistence allowance.** — Unrestricted subsistence allowance, that is, an allowance which is in no wise limited to expenditures incurred on account of the employee's business, is an allowance to defray the employee's personal living expenses and is, in substance, a form of compensation or remuneration within the scope of the statute and the definition of "wages" in Ga. L. 1960, p. 7 (see now O.C.G.A. § 48-7-100). To the extent that an employee incurs expenses on account of the business of the employer, and the employee is not otherwise reimbursed therefor, so that such expenses are a charge against this subsistence allowance, then the situation is one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7 (see now O.C.G.A. § 48-7-101(f)(4)). 1960-61 Ga. Op. Att'y Gen. 506 (decided under former Code 1933, §§ 92-3107 and 92-3109).

**Amounts paid to state officials for expenses are part of such official's gross income** and are taxable to the extent that those amounts are not used for such official business purposes. 1969 Op. Att'y Gen. No. 69-190 (decided under former Code 1933, § 92-3109).

**Payments by check, tendered by municipal corporation to municipal officers and employees for unused sick leave** are, if the payments are legal, income and subject to taxation. 1971 Op. Att'y Gen. No. U71-16 (decided under former Code 1933, § 92-3107).

**Income from Superior Court Clerk's Retirement Fund is subject to state income tax** except that all but three percent of aggregate contributions of taxpayer to fund is excluded from tax base until entire cost to taxpayer has been recovered tax free. 1962 Ga. Op. Att'y Gen. 519 (decided under former Code 1933, § 92-3107).

**Applicant for homestead exemption for elderly must include social security benefits in computations.** — Social security benefits must be included in determining whether a person over 65 and that person's spouse have met the income requirements for the increased homestead exemption. 1969 Op. Att'y Gen. No. 69-112 (decided under former Code 1933, § 92-3107).

## RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 476.

**C.J.S.**

85 C.J.S., Taxation, § 1828 et seq.

**ALR.**

Commissions as executor, administrator, guardian, etc., as income subject to income tax, 18 A.L.R. 414.

Income tax on profit upon sale by execu-

tor or administrator at advance over cost to decedent, 33 A.L.R. 813.

Gains from unlawful business or transactions as subject of income tax, 43 A.L.R. 799; 51 A.L.R. 1026; 166 A.L.R. 891.

Nature of interest of special partner for purpose of income tax, 45 A.L.R. 1381.

Gains from unlawful business or transactions as subject of income tax, 51 A.L.R. 1026; 166 A.L.R. 891.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 57 A.L.R. 899; 65 A.L.R. 878.

Income tax in respect of amounts received by stockholder upon liquidation of corporation, 65 A.L.R. 148.

Computation for purposes of income tax of gain or loss from sale of stock rights, 70 A.L.R. 1305.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation for purposes of property or income taxes, 71 A.L.R. 971.

Computation of income tax of stockholder in event of reorganization, merger, or consolidation of corporations, 78 A.L.R. 677.

Interest deductible in computing income tax, 80 A.L.R. 214; 154 A.L.R. 934.

Military service as basis of discrimination in statutes or ordinances relating to taxation or licenses, 83 A.L.R. 1231.

State income tax on resident in respect of income earned outside the state, 87 A.L.R. 380.

Computation of losses or profits on sale of securities for purposes of income tax, 90 A.L.R. 732; 108 A.L.R. 1261; 149 A.L.R. 988.

Liability for income tax in respect of amount of tax paid by another, 91 A.L.R. 1270.

Income tax in respect of compensation for services rendered under contract to governmental or political body by one not an officer or employee, 93 A.L.R. 190.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of the taxable year, 93 A.L.R. 1199; 126 A.L.R. 455.

Income as "property" within constitutional limitation on taxation, 97 A.L.R. 1488.

Income tax as payable in respect of difference between cost to donor of securities or other property and value at time of gift, 99 A.L.R. 468.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards respective rights of life beneficiary and remaindermen, 99 A.L.R. 518.

Income tax: deductibility of loss incurred as director, officer, or stockholder of corporation, 99 A.L.R. 566.

Income tax: purchased annuities, 99 A.L.R. 624.

Income tax in respect of exchange of properties, 102 A.L.R. 6.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporations, 102 A.L.R. 77; 143 A.L.R. 147.

Method or formula for determination for income tax purposes of value of corporate stock absent sufficient basis in transactions of purchase and sale, 103 A.L.R. 955.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends), 105 A.L.R. 761; 130 A.L.R. 408; 143 A.L.R. 230; 144 A.L.R. 1337; 167 A.L.R. 554.

Income tax in respect of accrued interest on purchase of mortgaged property by mortgagee, 108 A.L.R. 441.

Deductibility in computing state income tax of amount paid or payable in respect of succession, inheritance, or estate tax, 108 A.L.R. 1401.

Income tax in respect of salaries of public officers and employees, 108 A.L.R. 1439; 114 A.L.R. 1190; 120 A.L.R. 1477; 122 A.L.R. 1393; 125 A.L.R. 1421.

Payment to one performing services as compensation subject to income tax or gift exempt therefrom, 110 A.L.R. 285.

Construction and application of statutory provisions allowing deduction, in computing income tax of decedent's estate or of trust, of amounts distributable or distributed to legatees, heirs or beneficiaries, 117 A.L.R. 372; 142 A.L.R. 1109.

Applicability, construction, and effect of provision of income tax act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent, 119 A.L.R. 415.

Construction and application of provision of income tax statute regarding exclu-

sion from gross income of proceeds of life insurance received on death of insured, 119 A.L.R. 1195; 133 A.L.R. 413; 170 A.L.R. 315.

When dividends on corporate stock become taxable as income to a taxpayer making his return on a cash basis, 120 A.L.R. 1280; 143 A.L.R. 596; 158 A.L.R. 1432; 167 A.L.R. 303.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income, 121 A.L.R. 697; 135 A.L.R. 1430.

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Income tax in respect of amount received by, or credited or accrued to, taxpayer who has returned, or may be required to return, it, or to cancel the credit which it represents, 154 A.L.R. 1276.

Income tax: deductibility of expenses of one seeking public office or public or private employment, 155 A.L.R. 128.

When dividends on corporate stock become taxable as income, 158 A.L.R. 1432; 167 A.L.R. 303.

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Character for tax purposes of arrangement whereby one obtains an annuity contract having a surrender value, or obtains at the same time a life insurance policy and an annuity or endowment contract, 159 A.L.R. 1336.

Year as of which an assignment, in whole or in part, of unsettled claim against a third person becomes a realized gain for purposes of income tax of assignee, 162 A.L.R. 318.

Right to deduct from taxable income as business expense share of profits of business which taxpayer has agreed to pay to another for property, 162 A.L.R. 836.

Income tax of owner as affected by disposition of mortgaged premises, 162 A.L.R. 907.

Right of owner of all shares of corporation or association taxable as corporation to have its income taxed as his personal income, 162 A.L.R. 996.

Gain or loss on sale of business as computable on basis of sale of single piece of property or of separate fragments or ingredients, 162 A.L.R. 1041.

Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 166 A.L.R. 516; 42 A.L.R.2d 797.

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Gains from unlawful business or transaction as subject of income tax, 166 A.L.R. 891.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 166 A.L.R. 1308.

When dividends on corporate stock become taxable as income, 167 A.L.R. 303.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Construction and application of provision of income tax statute regarding exclusion from gross income of proceeds of life insurance received on death of insured, 170 A.L.R. 315.

Interest paid to assignee or donee of obligation, for period antedating assignment or transfer, as taxable income of assignor or donor, 174 A.L.R. 619.

Income tax: recognition of gain or loss on receipt of public refunding bonds for old bonds, 1 A.L.R.2d 415.

Employee's acquisition of employer's commodities at discount or without cost as within sales or gross income tax statute, 1 A.L.R.2d 1020.

Income tax treatment of payment to spouse for relinquishment of inchoate marital rights in property of other spouse, 1 A.L.R.2d 1037.

Construction of provisions of Internal Revenue Code relating to alimony or maintenance payments, 4 A.L.R.2d 252.

Giving negotiable paper for debt as payment for purposes of federal income tax laws, 4 A.L.R.2d 1223.

Scope and application of term "other obligations" in federal statute exempting stocks, bonds, treasury notes and other obligations from taxation by or under state or municipal or local authority, 9 A.L.R.2d 521.

What constitute amounts received under workmen's compensation acts within exemption provisions of federal income tax law, 16 A.L.R.2d 1334.

What constitutes transaction entered into for profit for purposes of income tax deduction, 39 A.L.R.2d 878.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 A.L.R.2d 797.

Income tax consequences to shareholder of dividend in kind, 56 A.L.R.2d 474.

Tips as wages for purposes of Federal Labor Standards Act and state wage laws, 65 A.L.R.2d 974.

Payment of premiums by corporation on policy on life of stockholder as constituting taxable income to the insured, 73 A.L.R.2d 708.

Modern status of rules governing allocation of stock dividends or splits between principal and interest, 81 A.L.R.3d 876.

Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 A.L.R.5th 509.

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What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

Construction and Application of 18 U.S.C.A. § 209, Restricting Salary of Government Officials and Employees as Payable Only By United States, 23 A.L.R. Fed. 3d 4.

Construction and Application of 26 U.S.C.A. § 105(a), Respecting Determination Whether Taxpayer's Disability Insurance Payments Constitute Gross Income, 25 A.L.R. Fed. 3d 11.

**48-7-27. (Effective January 1, 2025.) Computation of taxable net income.**

(a) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) At the taxpayer's election, either:

(A) The sum of all itemized nonbusiness deductions used in computing such taxpayer's federal taxable income; or

(B) A standard deduction in an amount as follows:

(i) In the case of a married couple filing a joint return, $24,000.00; or

(ii) In the case of a single taxpayer, head of household, or married taxpayer filing a separate return, $12,000.00;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection (b) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual's federal adjusted gross income because the individual has taken a federal jobs tax credit which requires, as a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, for taxable years beginning on or after January 1, 1989, no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed

an exclusion amount of $8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of $10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of $11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of $12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of $13,000.00;

(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of $13,500.00 per year received from any source;

(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of $14,000.00;

(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of $14,500.00;

(ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of $15,000.00;

(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of $25,000.00;

(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of $30,000.00;

(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of $35,000.00; and

(xiii) For taxable years beginning on or after January 1, 2012, retirement income from any source not to exceed an

exclusion amount of $35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of $65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

(iii) Is 65 years of age or older during any part of the year.

(E)(i) For the purposes of this paragraph, retirement income shall include but not be limited to income from military retirement, interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than $5,000.00 of an individual's earned income. Earned income in excess of $5,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this division.

(ii) Any income received by a surviving family member that is based on the service record of a deceased veteran shall be excluded from Georgia taxable net income without regard to the age of the surviving family member.

(F) The commissioner shall by regulation require proof of the

eligibility of the taxpayer for the exclusions allowed by this paragraph.

(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;

(5.1)(A) Up to $17,500.00 of income received by an individual who is less than 62 years of age paid to such individual as retirement benefits from military service in the armed forces of the United States or the reserve components thereof and an additional amount of up to $17,500.00 of such income, provided that he or she has Georgia earned income otherwise included in his or her Georgia taxable net income in an amount that exceeds $17,500.00.

(B) In the case of a married couple filing jointly, each spouse who is otherwise qualified for an exclusion allowed by this paragraph shall be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection;

(6) A portion of the qualified payments to classified subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;

(9) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such

taxpayer and to establish the same basis for federal and state income tax purposes;

(10) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

(11) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding $2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed $2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed $100,000.00 for a joint return or $50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by $400.00 for each $1,000.00 of federal adjusted gross income over $100,000.00 for a joint return or $50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such

taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1) For taxable years beginning on or after January 1, 2020:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding $4,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $4,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $8,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(11.2) For taxable years beginning on or after January 1, 2019, and ending on or before December 31, 2023, income received as payments from a federal disaster relief or assistance grant program administered by this state or its instrumentalities or the United States Department of Agriculture, if such federal grant program was established specifically to address agricultural losses suffered due to Hurricane Michael which was a weather event declared to be a major disaster in this state by the President of the United States during the 2018 calendar year, to the extent such income is included in federal adjusted gross income or federal taxable income;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the borders of the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders;

(12.1)(A) Disability income from the United States Department of Veterans Affairs received by a disabled veteran who is a citizen and resident of Georgia.

(B) As used in this paragraph, the term "disabled veteran" means any wartime veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being at least 90 percent totally and permanently disabled and entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Loss of sight in one or both eyes; or

(iv) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(12.2) Payments received by a firefighter pursuant to paragraph (2) of subsection (b) of Code Section 25-3-23, to any extent such amounts are included in the taxpayer's federal adjusted gross income and are not otherwise exempt under any other provision of this Code section;

(12.3) An amount equal to 100 percent of any premium paid by the individual taxpayer during the taxable year for coverage pursuant to paragraph (2) of subsection (b) of Code Section 25-3-23, to any extent such deduction has not been included in the taxpayer's federal adjusted gross income and such amount is not otherwise deductible under any other provision of this Code section;

(12.4)(A) An amount equal to 100 percent of the payments made to and received by a disabled first responder pursuant to Code Section 45-9-85, provided that and to the extent such amounts are included in the taxpayer's federal adjusted gross income and are not otherwise exempt from the tax imposed by this article under any other provision of law.

(B) As used in this paragraph, the term "disabled first responder" means a law enforcement officer, fireman, publicly employed emergency medical technician, or a surviving spouse of

such an individual, receiving payments pursuant to Code Section 45-9-85 due to total permanent disability, partial permanent disability, organic brain damage, or death occurring in the line of duty;

(12.5) Payments received by a first responder pursuant to subsection (b) of Code Section 45-25-3, to any extent such amounts are included in the taxpayer's federal adjusted gross income and are not otherwise exempt under any other provision of this Code section;

(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of $25,000.00 incurred in accordance with the "National Organ Procurement Act."

(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person's liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;

(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;

(14) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

(15) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

(b)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal

income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any amount deducted pursuant to Section 164 of the Internal Revenue Code in determining federal taxable income that exceeds the following:

(A) For a single taxpayer, a taxpayer filing as head-of-household, or a married taxpayer filing jointly, $10,000.00; or

(B) For a married taxpayer filing separately, $5,000.00.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

(6) Reserved.

(7) Except as otherwise provided in paragraph (4) of subsection (a) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in

this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

(8) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

(9) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection (a) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

(10.1)(A) The amount of any qualified withdrawals from an ABLE account established pursuant to a Georgia ABLE program or any Qualified ABLE Program, as such programs are defined under Chapter 9 of Title 30, shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such an ABLE account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the designated beneficiary's taxable net income in the year of withdrawal.

(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(12) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(13) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(14) Georgia net operating losses shall be treated in the same manner as provided in paragraph (10.1) of subsection (b) of Code Section 48-7-21 but shall be based on the income as computed pursuant to this Code section. Any limitations included in the Internal Revenue Code of 1986 on the amount of net operating loss that can be used in a taxable year shall be applied for purposes of this Code section; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income.

(15) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53.

(16) Georgia taxable net income shall be adjusted as provided in subparagraph (b)(7)(C) of Code Section 48-7-21 and subsection (b) of Code Section 48-7-23.

(c) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(d)(1)(A) As used in this paragraph, the term "individual" shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter "S" corporations may make an adjustment to federal adjusted gross income for Subchapter "S" corporation income where another state does not recognize a Subchapter "S" corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter "S" corporation, partnership, or limited liability company. In multitiered situations, the adjust-

ment for such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter "S" corporation shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for such Subchapter "S" corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter "S" corporation is first required to file a Georgia income tax return. For a Subchapter "S" corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter "S" corporation in that year. Shareholders of a federal Subchapter "S" corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation. The provisions of this paragraph shall not apply to an electing Subchapter "S" corporation as defined in paragraph (7) of subsection (b) of Code Section 48-7-21.

**History.**

Code 1933, § 92-3107, enacted by Ga. L. 1971, p. 605, § 4; Ga. L. 1975, p. 843, § 1; Ga. L. 1978, p. 1456, § 1; Ga. L. 1979, p. 888, § 2; Code 1933, § 91A-3607, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 67; Ga. L. 1979, p. 888, § 4; Ga. L. 1980, p. 10, §§ 17, 18; Ga. L. 1981, p. 1857, §§ 35, 36; Ga. L. 1981, p. 1903, §§ 3, 4; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1644, § 2; Ga. L. 1986, p. 749, § 1; Ga. L. 1986, p. 1480, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 475, § 2; Ga. L. 1989, p. 1112, §§ 1-3; Ga. L. 1989, Ex. Sess., p. 5, § 1; Ga. L. 1990, p. 1369, § 1; Ga. L. 1992, p. 1296, § 1; Ga. L. 1992, p. 2977, § 1; Ga. L. 1994, p. 381, § 2; Ga. L. 1998, p. 1, § 2; Ga. L. 1998, p. 1515, § 1; Ga. L. 1998, p. 1516, § 1; Ga. L. 1999, p. 13, § 2; Ga. L. 2000, p. 408, § 1; Ga. L. 2001, p. 76, §§ 2, 3; Ga. L. 2002, p. 372, §§ 2, 3; Ga. L. 2002, p. 1149, § 1; Ga. L. 2003, p. 637, § 1; Ga. L. 2003, p. 665, §§ 4, 5; Ga. L. 2004, p. 102, § 1; Ga. L. 2005, p. 18, § 1/HB 263; Ga. L. 2005, p. 30, § 1/HB 191; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 157, § 2/HB 282; Ga. L. 2005, p. 159, §§ 13, 14/HB 488; Ga. L. 2005, p. 529, § 1/HB 556; Ga. L. 2006, p. 526, § 1/HB 1160; Ga. L. 2007, p. 112, § 2/HB 225; Ga. L. 2007, p. 271, §§ 3, 4/SB 184; Ga. L. 2008, p. 159, §§ 7, 8/HB 1014; Ga. L. 2008, p. 292, § 4/HB 977; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2008, p. 898, §§ 6, 7/HB 1151; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 4/HB 410; Ga. L. 2009, p. 796, § 2/HB 379; Ga. L. 2010, p. 9, § 4-1/HB 1055; Ga. L. 2012, p. 108, § 1/HB 808; Ga. L. 2012, p. 257, § 2-2/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 83, § 2-1/SB 391; Ga. L. 2016, p. 588, § 2/HB 768; Ga. L. 2016, p. 805, § 1/HB 802; Ga. L. 2017, p. 336, § 5/HB 146; Ga. L. 2018, p. 8, §§ 1-7, 1-8/HB 918; Ga. L. 2018, p. 308, § 1/HB 749; Ga. L. 2018, p. 319, § 2/HB 849; Ga. L. 2019, p. 195, § 3/HB 287; Ga. L. 2019, p. 455, § 1/HB 266; Ga. L. 2019, p. 908, § 4/SB 138; Ga. L. 2020, p. 903, § 1-1/HB 105; Ga. L. 2021, p. 4, § 2/HB 593; Ga. L. 2021, p. 277, § 4/HB 149; Ga. L. 2022, p. 94, § 1/HB 1064; Ga. L. 2022, p.

114, §§ 2-3, 2-4/HB 1437; Ga. L. 2022, p. 188, § 3/HB 275; Ga. L. 2023, p. 43, § 2/HB 128, effective January 1, 2024; Ga. L. 2023, p. 335, § 2-4/SB 56, effective January 1, 2024; Ga. L. 2024, p. 522, § 3/HB 451, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(27)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-27 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, added paragraph (a)(12.5). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraph (a)(12.4)(B).

**Editor's notes.**

Ga. L. 2024, p. 522, § 1/HB 451, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Ashley Wilson Act.'"

Ga. L. 2024, p. 522, § 4/HB 451, not codified by the General Assembly, makes paragraph (a)(12.5) of this Code section applicable to taxable years beginning on or after January 1, 2024.

## 48-7-27.1. Tax credits for taxpayers electing certain itemized nonbusiness deductions.

(a) As used in this Code section, the term "eligible itemizer" means any resident taxpayer who files an individual income tax return for a taxable year and makes the election under subparagraph (a)(1)(A) of Code Section 48-7-27 to deduct the itemized nonbusiness deductions used in computing such taxpayer's federal taxable income.

(b) For taxable years beginning on or after January 1, 2024, each eligible itemizer shall be entitled to a credit in the amount of $300.00 per taxpayer against the tax imposed by Code Section 48-7-20.

(c) The tax credit claimed allowed by this Code section shall be deducted from such taxpayer's individual income tax liability, if any, for the tax year in which it is properly claimed; provided, however, that in no event shall:

(1) The total amount of the tax credit under this Code section for a taxable year exceed such taxpayer's income tax liability; or

(2) Such credit amount be allowed to be carried forward to the taxpayer's succeeding years' tax liability or applied against prior years' tax liability.

**History.**

Code 1981, § 48-7-27.1, enacted by Ga. L. 2023, p. 335, § 2-5/SB 56, effective January 1, 2024.

**Effective date.**

This Code section became effective January 1, 2024. See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall be effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior

taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

## 48-7-28. Reciprocity.

A resident individual who has an established business in another state, has investment in property having a taxable situs in another state, or engages in employment in another state may deduct from the tax due upon the entire net income of the resident individual the tax paid upon the net income of the business, investment, or employment in another state when the business, investment, or employment is in a state that levies a tax upon net income. In no case shall the credit permitted under this Code section exceed the tax which would be payable to this state upon a like amount of taxable income.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 13; Code 1933, § 92-3111; Ga. L. 1957, p. 397, § 4; Ga. L. 1962, p. 703, § 2; Ga. L. 1963, p. 16, § 1; Code 1933, § 91A-3608, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

### JUDICIAL DECISIONS

**Scope of term "established business."** — Term "established business" is broad enough to cover a business conducted or operated by the individual alone or a business operated by the individual and partners. Head v. Maxwell, 60 Ga. App. 488, 4 S.E.2d 45, 1939 Ga. App. LEXIS 67 (1939).

### RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 100 et seq.

**ALR.**

Income tax: constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 134 A.L.R. 1433; 12 A.L.R.2d 359.

What constitutes doing business, busi-

ness done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Income tax: constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 12 A.L.R.2d 359.

## 48-7-28.1. Tax repayments and benefits.

(a) If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this chapter in a prior year and a tax benefit would be allowed under similar circumstances under Section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Georgia income tax return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to the exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year.

(b) No credit will be allowed unless Georgia income tax was actually paid in the prior year or if the taxpayer was not subject to Georgia income tax.

**History.**

Code 1981, § 48-7-28.1, enacted by Ga. L. 1997, p. 525, § 1.

**Editor's notes.**

Ga. L. 1997, p. 525, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1997.

## 48-7-28.2. Employer social security credits.

(a) As used in this Code section, the term "employer social security credit" means the employer social security credit defined in Section 45B(a) of the Internal Revenue Code of 1986, as amended.

(b) If an employer elects to take an employer social security credit pursuant to Section 38 of the Internal Revenue Code of 1986, as amended, the employer, in calculating Georgia taxable net income, shall be allowed a deduction equal to the employer social security credit.

**History.**

Code 1981, § 48-7-28.2, enacted by Ga. L. 1998, p. 580, § 1.

**Editor's notes.**

Ga. L. 1998, p. 580, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

**U.S. Code.**

Sections 38 and 45B of the Internal Revenue Code of 1986, referred to in this Code section, are codified as 26 U.S.C. §§ 38 and 45B, respectively.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

**48-7-28.3. Expenses from transactions with related members.**

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

(1) "Comprehensive income tax treaty" means a convention or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation or the withholding of tax on interest, dividends, and royalties for the prevention of double taxation of the respective nations' residents and the sharing of information.

(2) "Corporation" means:

(A) A corporation incorporated under the laws of this state or incorporated or organized under the laws of any other state, territory, or nation; or

(B) A limited liability company treated as a corporation for federal income tax purposes or any other person treated as a corporation for federal income tax purposes. A limited liability company which is disregarded as a separate entity for income tax purposes shall also be disregarded as a separate entity for purposes of this Code section.

(3) "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State.

(4) "Intangible expenses and costs" means expenses, losses, and costs directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property, to the extent such amounts are allowed as deductions or costs in determining taxable income before net operating loss deduction and special deductions for the taxable year under the Internal Revenue Code of 1986. The term includes but is not limited to:

(A) Royalty, patent, technical, and copyright fees;

(B) Licensing fees; and

(C) Other similar expenses and costs.

(5) "Intangible property" includes but is not limited to patents, patent applications, trade names, trademarks, service marks, copyrights, mask words, trade secrets, and similar types of intangible assets.

(6) "Interest expenses and costs" includes but is not limited to amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code of 1986 for purposes of determining

taxable income under the Internal Revenue Code of 1986 to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property.

(7) "Related person" means:

(A) A stockholder who is an individual or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code of 1986 if the stockholder and the members of the stockholder's family own, directly or indirectly, beneficially or constructively, in the aggregate at least 50 percent of the value of the taxpayer's outstanding stock;

(B) A stockholder, or a stockholder's partnerships, estate, trusts, or corporations, if the stockholder and the stockholder's partnerships, estate, trusts, and corporations own, directly or indirectly, beneficially or constructively, in the aggregate at least 50 percent of the value of the taxpayer's outstanding stock; or

(C) A corporation, or a person related to the corporation in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code of 1986, if the taxpayer owns, directly or indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock.

(D) The attribution rules of Section 318 of the Internal Revenue Code of 1986 apply for purposes of determining whether the ownership requirements in subparagraphs (A) through (C) of this paragraph have been met.

(E) A limited liability company treated as a partnership for federal income tax purposes shall be considered a partnership for purposes of this paragraph and paragraph (8) of this subsection.

(8) "Related member" means a person, with respect to the taxpayer during all or any portion of the tax year:

(A) That is a related person;

(B) That is a component member as defined in Section 1563(b) of the Internal Revenue Code of 1986;

(C) To or from whom there would be required an attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code of 1986; or

(D) That, notwithstanding its form of organization, bears the

same relationship to the taxpayer as a person described in subparagraphs (A) through (C) of this paragraph.

(9) "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(b) For purposes of computing its Georgia taxable net income under Code Sections 48-7-21 and 48-7-27, a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members. Such expenses and costs shall be added before the income is apportioned or allocated as provided by Code Section 48-7-31.

(c) The commissioner shall have the authority to reverse in whole or in part the adjustments required in subsection (b) of this Code section when the taxpayer and the commissioner agree in writing to the application or use of an alternative method of apportionment under subparagraph (d)(2)(C) of Code Section 48-7-31, Code Section 48-7-35, or Code Section 48-7-31.1. Nothing in this Code section shall be construed to limit or negate the commissioner's authority otherwise to enter into agreements and compromises otherwise allowed by law.

(d)(1) For purposes of this subsection, the term:

(A) "Allocated or apportioned, or both" does not mean the amount of income that is subject to allocation or apportionment, or both. Rather it means the amount that is arrived at after applying the allocation and apportionment rules of a state as defined in subparagraph (B) of this paragraph. A tax or the portion of a tax, which is or would be imposed regardless of the amount of the income, shall not be considered to be a tax on or measured by the income of the related member.

(B) "State" means a state in the United States of America, including the District of Columbia, but does not include those states under whose laws the taxpayer files with the related member, or the related member files with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax on, or measured by, income and where such combined income tax

report or return, consolidated income tax report or return, or other report or return results in the elimination of the tax effects from transactions directly or indirectly between the taxpayer and the related member.

(2) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding interest expenses and costs and intangible expenses and costs:

(A) Are received as income in an arm's length transaction by the related member; and

(B) Such income is allocated or apportioned, or both, to and taxed by Georgia or another state that imposes a tax on or measured by the income of the related member.

(3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return, with respect to the related member, the name of the related member, the federal identification number of the related member, the name of each state, the amount of the interest expenses and costs and intangible expenses and costs allocated or apportioned to and taxed by each state for such related member, and such other information as the commissioner may prescribe.

(e)(1) The adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, if and to the extent:

(A) The interest expenses and costs and intangible expenses and costs are paid, accrued, or incurred to a related member domiciled in a foreign nation which has in force a comprehensive income tax treaty with the United States;

(B) The transaction giving rise to the interest expenses and costs and intangible expenses and costs has a valid business purpose; and

(C) The amounts of such interest expenses and costs and intangible expenses and costs were determined at arm's length rates.

(2) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return:

(A) The name and federal identification number of the related member;

(B) The amount of the interest expenses and costs and intangible expenses and costs;

(C) The country of domicile of the related member; and

(D) Such other information as the commissioner may prescribe.

(f) The adjustment required in subsection (b) of this Code section shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence that meets both of the following:

(1) The related member during the same taxable year directly or indirectly paid, accrued, or incurred such portion to a person that is not a related member; and

(2) The transaction giving rise to the interest expenses and costs and intangible expenses and costs has a valid business purpose.

(g) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net income more than once any amount of interest expenses and costs and intangible expenses and costs that the taxpayer pays, accrues, or incurs to a related member.

(h) Nothing in this Code section shall be construed to limit or negate the commissioner's authority to make adjustments under Code Section 48-7-58.

(i) The adjustment required by this Code section shall apply to a corporation that files a separate return with Georgia and to the separate taxable income computation of each member of a Georgia consolidated return.

(j) In addition to other penalties imposed by this title, the penalty for failure to make the adjustment required by this Code section shall be 10 percent of the additional tax that results because of this Code section. The commissioner may waive this penalty pursuant to the provisions of Code Section 48-2-43.

(k) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section.

**History.**

Code 1981, § 48-7-28.3, enacted by Ga. L. 2004, p. 30, § 3.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2013, "subparagraph (d)(2)(C)" was substituted for "subparagraph (d)(2)(E)" in subsection (c).

**Editor's notes.**

Ga. L. 2004, p. 30, § 7(a), not codified by the General Assembly, provides that this Code section applies to all taxable years beginning on or after January 1, 2006.

**48-7-28.4. Adjustments to taxes; disallowing expenses paid to certain real estate investment trusts; procedures, conditions, and limitations.**

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

(1) "Association taxable as a corporation" does not include:

(A) A real estate investment trust other than a captive real estate investment trust;

(B) Any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a captive real estate investment trust;

(C) Any Listed Australian Property Trust, meaning an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of such trust; or

(D) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(i) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States government securities;

(ii) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(iii) The entity distributes at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(iv) Not more than 10 percent of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(v) The entity is organized in a country which has a tax treaty with the United States.

(2) "Captive real estate investment trust" means any real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than 50 percent of the voting power or value of the shares or beneficial interests of which are owned or controlled, directly or indirectly or constructively, by a single entity that is:

(A) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

(B) Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended.

(3) "Dividends paid deduction" means the deduction for dividends paid which is allowed pursuant to Sections 561 through 565 and Sections 856 through 859 of the Internal Revenue Code of 1986, as amended.

(4) "Real estate investment trust" means an entity that has elected such status for federal income tax purposes and meets the requirements of Section 856 of the Internal Revenue Code of 1986, as amended.

(5) "Related member" means the same as is defined in Code Section 48-7-28.3.

(b) For purposes of computing Georgia taxable net income under Code Sections 48-7-21 and 48-7-27, a taxpayer shall add back all expenses and costs directly or indirectly paid, accrued, or incurred to a captive real estate investment trust. Such expenses and costs shall be added back before the income is apportioned or allocated as provided by Code Section 48-7-31.

(c) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding expenses and costs received as income by the captive real estate investment trust are reduced by expenses paid, accrued, or incurred to persons that are not related members, and such expenses shall be allowed in computing the captive real estate investment trust's federal taxable income.

(d) The commissioner shall have the authority to reverse in whole or in part the adjustments required in subsection (b) of this Code section when the taxpayer and the commissioner agree in writing to the application or use of an alternative method of apportionment under subparagraph (d)(2)(C) of Code Section 48-7-31, Code Section 48-7-35,

or Code Section 48-7-31.1. Nothing in this Code section shall be construed to limit or negate the commissioner's authority otherwise to enter into agreements and compromises otherwise allowed by law.

(e)(1) For purposes of this subsection, the term:

(A) "Allocated or apportioned, or both" means the amount of income that is arrived at after applying the allocation and apportionment rules of a state. A tax or the portion of a tax, which is or would be imposed regardless of the amount of the income, shall not be considered to be a tax on or measured by the income of the captive real estate investment trust. The term shall not mean the amount of income that is subject to allocation or apportionment, or both.

(B) "State" means a state in the United States of America, including the District of Columbia, but does not include those states under whose laws the taxpayer files with the captive real estate investment trust, or the captive real estate investment trust files with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax on, or measured by, income and where such combined income tax report or return, consolidated income tax report or return, or other report or return results in the elimination of the tax effects from transactions directly or indirectly between the taxpayer and the captive real estate investment trust or between the captive real estate investment trust and another related member.

(2) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding expenses and costs are received as income in an arm's length transaction by the captive real estate investment trust and to the extent such income is allocated or apportioned, or both, to and taxed by Georgia or another state that imposes a tax on or measured by the income of the captive real estate investment trust. For purposes of this paragraph, the corresponding expenses and costs shall not be considered to have been received as income by the captive real estate investment trust to the extent such income is reduced, in computing the income of the captive real estate investment trust in Georgia or another state, by the dividends paid deduction or by expenses paid, accrued, or incurred to persons that are not related members, or both.

(3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return, with respect to the captive real estate investment trust, the name, the federal identification number,

the name of each state, the amount of the expenses and costs allocated or apportioned to and taxed by each state, and such other information as the commissioner may prescribe.

(f) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net income more than once any amount of expenses and costs that the taxpayer pays, accrues, or incurs to a captive real estate investment trust.

(g) Nothing in this Code section shall be construed to limit or negate the commissioner's authority to make adjustments under Code Section 48-7-58.

(h) Except as otherwise provided in this Code section, a real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the Internal Revenue Code of 1986, as amended, by reason of Section 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this Code section.

(i) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust. For purposes of this subsection, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of Section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as a real estate investment trust pursuant to Section 856(c)(1) of the Internal Revenue Code of 1986, as amended.

(j) For purposes of this Code section, the constructive ownership rules of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply in determining the ownership of stock, assets, or net profits of any person.

(k) The adjustment required by this Code section shall apply to a corporation that files a separate return with Georgia and to the separate taxable income computation of each member of a Georgia consolidated return.

(l) In addition to other penalties imposed by this title, the penalty for failure to make the adjustment required by this Code section shall be 10 percent of the additional tax that results because of this Code section. The commissioner may waive this penalty pursuant to the provisions of Code Section 48-2-43.

(m) The commissioner is authorized to prescribe forms and promul-

gate rules and regulations deemed necessary in order to effectuate this Code section.

**History.**

Code 1981, § 48-7-28.4, enacted by Ga. L. 2009, p. 796, § 3/HB 379; Ga. L. 2013, p. 141, § 48/HB 79.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following "as amended" at the end of subsection (i).

**Editor's notes.**

Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

**Administrative rules and regulations.**

Captive Real Estate Investment Trust Expenses and Costs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Substantive Regulations, Rule 560-7-3-.04.

## 48-7-29. (Reserved effective December 31, 2029.) Tax credits for rural physicians.

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

(1) "Rural county" means a county in this state that has a population of less than 50,000 according to the United States decennial census of 2020 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(2) "Rural hospital" means an acute-care hospital located in a rural county that contains fewer than 100 beds.

(3) "Rural physician" means a physician licensed to practice medicine in this state, who practices in a rural county and resides in a rural county or a county contiguous to the rural county in which such physician practices and primarily admits patients to a rural hospital and practices in the fields of family practice, obstetrics and gynecology, pediatrics, internal medicine, or general surgery.

(b)(1) A person qualifying as a rural physician on or before May 15, 2024, shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount not to exceed $5,000.00. The tax credit may be claimed for not more than five years, provided that the physician continues to qualify as a rural physician. In no event shall the amount of the tax credit exceed the taxpayer's income tax liability, and any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) No physician who on July 1, 1995, is currently practicing in a rural county shall be eligible to receive the credit provided for in

paragraph (1) of this subsection. No credit shall be allowed for a physician who has previously practiced in a rural county, unless, after July 1, 1995, that physician returns to practice in a rural county after having practiced in a nonrural county for at least three years.

(c) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

(d) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29, enacted by Ga. L. 1995, p. 960, § 1; Ga. L. 2002, p. 1478, § 1; Ga. L. 2024, p. 72, § 1/HB 82, effective May 15, 2024.

**Amendments.**

**The 2024 amendment,** effective May 15, 2024, substituted the current provisions of paragraph (a)(1) for the former provisions, which read: "'Rural county' means a county in this state that has 65 persons per square mile or fewer according to the United States decennial census of 1990 or any future such census"; inserted "on or before May 15, 2024," in the first sentence in paragraph (b)(1); and added subsection (d). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed former Code Section 48-7-29. The former Code section was based on Ga. L. 1977, p. 772, § 1; Ga. L. 1978, p. 309, § 2; and Ga. L. 1979, p. 5, § 68, and related to child care credit and credit for household and dependent care expenses.

Ga. L. 1995, p. 960, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 2002, p. 1478, § 2, not codified by the General Assembly, provides that the amendments to paragraphs (a)(2) and (a)(3) are applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2024, p. 72, § 3/HB 82, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2024.

**Administrative rules and regulations.**

Rural Physician Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.20.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-7-29.1. Tax credits for retrofitting certain single-family homes with accessibility features.

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

(1) "Accessibility features" means:

(A) One no-step entrance allowing access into the residence;

(B) Interior passage doors providing a 32 inch wide clear opening;

(C) Reinforcements in bathroom walls allowing later installa-

tion of grab bars around the toilet, tub, and shower, where such facilities are provided; and

(D) Light switches and outlets placed in accessible locations.

(2) "Taxpayer" means a permanently disabled person who has been issued a permanent permit under subsection (c) of Code Section 40-2-74.1 or a person who has been issued a special permanent permit under subsection (e) of Code Section 40-2-74.1.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 as follows:

(1) In the amount of $500.00 with respect to the purchase during that taxable year of a new, single-family home containing all of the accessibility features defined under subsection (a) of this Code section; or

(2) For qualifying expenditures made to retrofit an existing, single-family home with one or more accessibility features as defined under subsection (a) of this Code section, a credit shall be allowed with respect to each such accessibility feature in the amount of $125.00 or the actual cost of such accessibility feature, whichever is lower, provided that the aggregate amount of such credit under this paragraph for such accessibility features shall not exceed $500.00.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed $500.00 per residence or the taxpayer's income tax liability, whichever is less. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-29.1, enacted by Ga. L. 1998, p. 599, § 1.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2013, "Code Section 40-2-74.1" was substituted for "Code Section 40-6-222" twice in paragraph (a)(2).

**Editor's notes.**

Ga. L. 1987, p. 191, § 2 repealed former Code Section 48-7-29.1, relating to work place modification credit, effective March 11, 1987.

Ga. L. 1998, p. 599, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

**Administrative rules and regulations.**

Disabled Person Home Purchase or Retrofit Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.44.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-7-29.2. Tax credits for qualified caregiving expenses.

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

(1) "Qualified caregiving expenses" means payments by the taxpayer for home health agency services, personal care services, personal care attendant services, homemaker services, adult day care, respite care, or healthcare equipment and supplies which equipment and supplies have been determined to be medically necessary by a physician which services, care, or equipment and supplies are:

(A) Provided to the qualifying family member; and

(B) Purchased or obtained from an organization or individual not related to the taxpayer or the qualifying family member.

(2) "Qualifying family member" means the taxpayer or an individual who is related to the taxpayer by blood, marriage, or adoption and who:

(A) Is at least 62 years of age; or

(B) Has been determined to be disabled by the Social Security Administration.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for qualified caregiving expenses in an amount not to exceed 10 percent of the total amount expended for qualified caregiving expenses. No taxpayer shall be entitled to such credit with respect to the same qualified caregiving expenses claimed by another taxpayer.

(c) In no event shall the amount of the tax credit exceed $150.00 or the taxpayer's income tax liability, whichever is less. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) No credit shall be allowed under this Code section with respect to any qualifying caregiving expenses either deducted or subtracted by the taxpayer in arriving at Georgia taxable net income or with respect to any qualified caregiving expenses for which amounts were excluded from Georgia taxable net income.

(e) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-29.2, enacted by Ga. L. 1998, p. 927, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2024, p. 1052, § 5(28)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in paragraph (a)(1).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1998, Code Section 48-7-29.1 as enacted by Ga. L. 1998, p. 927, § 1, was redesignated as Code Section 48-7-29.2.

**Editor's notes.**

Ga. L. 1987, p. 191, § 2 repealed former Code Section 48-7-29.2, relating to solar energy credit, effective March 11, 1987.

Ga. L. 1998, p. 927, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

**Administrative rules and regulations.**

Qualified Caregiving Expense Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.43.

## 48-7-29.3. [Repealed] Tax credits for federal qualified transportation fringe benefits.

**History.**

Ga. L. 1999, p. 651, § 1; Ga. L. 2000, p. 1294, § 1; Ga. L. 2018, p. 113, § 2/SB 328; repealed by Ga. L. 2018, p. 113, § 3/SB 328, effective December 31, 2018.

## 48-7-29.4. (Effective until January 1, 2025.) Tax credits for disaster assistance funds received.

(a) A taxpayer who receives disaster assistance during a taxable year from the Georgia Emergency Management and Homeland Security Agency or the Federal Emergency Management Agency shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount equal to $500.00 or the actual amount of such disaster assistance, whichever is less. The commissioner may require adequate supporting documentation showing that the taxpayer received such assistance.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.4, enacted by Ga. L. 2000, p. 410, § 1; Ga. L. 2016, p. 91, § 21/SB 416.

**Delayed effective date.**

Code Section 48-7-29.4 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Cross references.**

Emergency management, § 38-3-1 et seq.

**Code Commission notes.**

Ga. L. 2000, p. 410, § 1; Ga. L. 2000, p.

451, § 1; Ga. L. 2000, p. 845, § 1; and Ga. L. 2000, p. 1445, § 2 each enacted a Code Section 48-7-29.4. Pursuant to Code Section 28-9-5, in 2000, the Code section enacted by Ga. L. 2000, p. 451, § 1 was redesignated as Code Section 48-7-29.5, the Code section enacted by Ga. L. 2000, p. 845, § 1 was redesignated as Code Section 48-7-29.6, and the Code section enacted by Ga. L. 2000, p. 1445, § 2 was redesignated as Code Section 48-7-29.7.

**Editor's notes.**

Ga. L. 2000, p. 410, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2000.

## 48-7-29.4. (Effective January 1, 2025.) Tax credits for disaster assistance funds received.

(a) A taxpayer who receives disaster assistance during a taxable year from the Georgia Emergency Management and Homeland Security Agency or the Federal Emergency Management Agency shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount equal to $500.00 or the actual amount of such disaster assistance, whichever is less. The commissioner may require adequate supporting documentation showing that the taxpayer received such assistance.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against no more than three succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.4, enacted by Ga. L. 2000, p. 410, § 1; Ga. L. 2016, p. 91, § 21/SB 416; Ga. L. 2024, p. 794, § 1-1/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.4 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, inserted "no more than three" in subsection (b). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.5. [Repealed] Tax credits for private driver education courses of minors; required documentation; rules and regulations.

**History.**

Ga. L. 2000, p. 451, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 334, § 29-4/HB 501; Ga. L. 2008, p. 898, § 8/HB 1151; Ga.

L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 113, § 3/SB 328; repealed by Ga. L. 2018, p. 113, § 3/SB 328, effective December 31, 2018.

### 48-7-29.6. Tax credits for qualified low-income buildings.

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

(1) "Federal housing tax credit" means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(2) "Median income" means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(3) "Project" means a housing project that has restricted rents that do not exceed 30 percent of median income for at least 40 percent of its units occupied by persons or families having incomes of 60 percent or less of the median income, or at least 20 percent of the units occupied by persons or families having incomes of 50 percent or less of the median income.

(4) "Qualified basis" means that portion of the tax basis of a qualified Georgia project eligible for the federal housing tax credit, as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended.

(5) "Qualified Georgia project" means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in Georgia.

(b)(1) A state tax credit against the tax imposed by this article, to be termed the Georgia housing tax credit, shall be allowed with respect to each qualified Georgia project placed in service after January 1, 2001. The amount of such credit shall, when combined with the total amount of credits authorized under Code Section 33-1-18, in no event exceed an amount equal to the federal housing tax credit allowed with respect to such qualified Georgia project.

(2)(A) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured as a result of a reduction in the qualified basis of such project, the taxpayer claiming any state tax credit with respect to such project shall also be required to recapture a portion of any state tax credit authorized by this Code section. The state recapture amount shall be equal to the proportion of the state tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture. The tax credit under this Code section shall not be subject to

recapture if such recapture is due solely to the sale or transfer of any direct or indirect interest in such qualified Georgia project.

(B) In the event that recapture of any Georgia housing tax credit is required, any amended return submitted to the commissioner as provided in this Code section shall include the proportion of the state tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of tax credit previously allocated to such taxpayer.

(3) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(4) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(c) The commissioner and the state department designated by the Governor as the state housing credit agency for purposes of Section 42(h) of the Internal Revenue Code of 1986, as amended, shall each be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-29.6, enacted by Ga. L. 2000, p. 845, § 1; Ga. L. 2001, p. 1098, § 2; Ga. L. 2001, p. 1181, § 1.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-29.4, was redesignated as Code Section 48-7-29.6.

**Editor's notes.**

Ga. L. 2000, p. 845, § 2, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 1181, § 3, effective January 1, 2002, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2002.

**JUDICIAL DECISIONS**

**Valuation of tax credits.** — Low income housing tax credits awarded to taxpayers who owned low income housing properties did not constitute actual income for purposes of determining the value of the property under the income method, O.C.G.A. § 48-5-2(3)(B)(vii)(II), and neither (3)(B)(vii)(I) or (3)(B)(vii)(II) violated the taxation uniformity provision under Ga. Const. 1983, Art. VII, Sec. I, Para. III(a). Heron Lake II Apartments, LP v. Lowndes County Bd. of Tax Assessors, 306 Ga. 816, 833 S.E.2d 528, 2019 Ga. LEXIS 627 (2019).

### 48-7-29.7. (Effective until January 1, 2025.) Tax credits for depository financial institutions.

(a) There shall be a dollar-for-dollar credit against the state income tax liability of depository financial institutions which shall be equal to the amount of taxes, if any, paid by such taxpayers pursuant to Code Section 48-6-93 and Code Section 48-6-95. If the liability of any such institutions under the taxes authorized by Code Section 48-6-93 and Code Section 48-6-95 exceeds the income tax liability of such institution for any year, the amount of any unused credit under this Code section may be credited over a period of five years from the tax year in which the unused credit arose. If the assets of an institution are acquired by another institution in a transaction described in Section 381(a) of the Internal Revenue Code of 1986, the acquiring institution shall succeed to and take into account any unused credit of the distributor or transferor institution. If a depository financial institution has elected Subchapter "S" status pursuant to the conditions specified in subparagraph (b)(7)(B) of Code Section 48-7-21, the credits authorized by this subsection may be passed through on a pro rata basis to the institution's shareholders. If the amount of any such pro rata credit exceeds a shareholder's individual income tax liability, then such unused credit may be credited over a period of five years from the tax year in which the unused credit arose. No such credit shall be allowed the taxpayer against prior years' tax liability.

(b) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.7, enacted by Ga. L. 2000, p. 1445, § 2.

**Delayed effective date.**

Code Section 48-7-29.7 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-29.4, was redesignated as Code Section 48-7-29.7.

**Editor's notes.**

Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

### 48-7-29.7. (Effective January 1, 2025.) Tax credits for depository financial institutions.

(a) There shall be a dollar-for-dollar credit against the state income tax liability of depository financial institutions which shall be equal to the amount of taxes, if any, paid by such taxpayers pursuant to Code Sections 48-6-93 and 48-6-95. If the liability of any such institutions under the taxes authorized by Code Sections 48-6-93 and 48-6-95 exceeds the income tax liability of such institution for any year, the

amount of any unused credit under this Code section may be credited over a period of five years from the tax year in which the unused credit arose. If the assets of an institution are acquired by another institution in a transaction described in Section 381(a) of the Internal Revenue Code of 1986, the acquiring institution shall succeed to and take into account any unused credit of the distributor or transferor institution. If a depository financial institution has elected Subchapter 'S' status pursuant to the conditions specified in subparagraph (b)(7)(B) of Code Section 48-7-21, the credits authorized by this subsection may be passed through on a pro rata basis to the institution's shareholders. If the amount of any such pro rata credit exceeds a shareholder's individual income tax liability, then such unused credit may be credited over a period of three years from the tax year in which the unused credit arose. No such credit shall be allowed the taxpayer against prior years' tax liability.

(b) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.7, enacted by Ga. L. 2000, p. 1445, § 2; Ga. L. 2024, p. 794, § 1-2/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.7 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, in subsection (a), substituted "Code Sections 48-6-93 and 48-6-95" for "Code Section 48-6-93 and Code Section 48-6-95" in the first and second sentences, and substituted "three years" for "five years" near the middle of the fifth sentence. See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.8. (Reserved effective December 31, 2029.) Tax credits for the rehabilitation of historic structures.

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

(1) "Certified rehabilitation" means repairs or alterations to a certified structure which are certified by the Department of Community Affairs as meeting the United States Secretary of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation as provided by the Department of Community Affairs.

(2) "Certified structure" means a historic building or structure that is located within a national historic district, individually listed on the National Register of Historic Places, individually listed in the Georgia Register of Historic Places, or is certified by the Department of Community Affairs as contributing to the historic significance of a

Georgia Register Historic District; provided, however, that on and after January 1, 2026, such term, as it relates to historic homes, means a historic building or structure that is certified by the Department of Community Affairs as contributing to the historic significance of a listed National Register Historic District, individually listed on the National Register of Historic Places, is certified by the Department of Community Affairs as contributing to the historic significance of a listed Georgia Register Historic District, individually listed in the Georgia Register of Historic Places, or designated as a historic property or contributing to a district under local law and certified by the Department of Community Affairs as meeting National Register criteria.

(3) "Historic home" means a certified structure which, or any portion of which is or will, within a reasonable period, be owned and used as the principal residence of the person claiming the tax credit allowed under this Code section. Historic home shall include any structure or group of structures that constitute a multifamily or multipurpose structure, including a cooperative or condominium. If only a portion of a building is used as such person's principal residence, only those qualified rehabilitation expenditures that are properly allocable to such portion shall be deemed to be made to a historic home.

(4) "Qualified rehabilitation expenditure" means any qualified rehabilitation expenditure as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount properly chargeable to a capital account expended in the substantial rehabilitation of a structure that by the end of the taxable year in which the certified rehabilitation is completed is a certified structure. This term does not include the cost of acquisition of the certified structure, the cost attributable to enlargement or additions to an existing building, site preparation, or personal property.

(5) "Substantial rehabilitation" means rehabilitation of a certified structure for which the qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the exterior during the 24 month period selected by the taxpayer ending with or within the taxable year, exceed:

(A) For a historic home, the lesser of $25,000.00 or 50 percent of the adjusted basis of the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the case of a historic home located in a target area, $5,000.00; or

(B) For any other certified structure, the greater of $5,000.00 or the adjusted basis of the property.

(6) "Target area" means a qualified census tract under Section 42 of the Internal Revenue Code of 1986, found in the United States

Department of Housing and Urban Development document number N-94-3821; FR-3796-N-01.

(b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter in the year that the certified rehabilitation is placed in service, which may be up to two years after the end of the taxable year for which the credit was originally reserved:

(1) In the case of a historic home, equal to 25 percent of qualified rehabilitation expenditures, except that, in the case of a historic home located within a target area, an additional credit equal to 5 percent of qualified rehabilitation expenditures shall be allowed; and

(2) In the case of any other certified structure, equal to 25 percent of qualified rehabilitation expenditures.

Qualified rehabilitation expenditures may only be counted once in determining the amount of the tax credit available, and more than one entity may not claim a credit for the same qualified rehabilitation expenditures.

(c)(1) In no event shall credits for a historic home exceed $100,000.00 in any 120 month period.

(2) The maximum credit for any other individual certified structure shall be $5 million for any taxable year, except in the case that the project creates 200 or more full-time, permanent jobs or $5 million in annual payroll within two years of the placed in service date, in which case the project is eligible for credits up to $10 million for an individual certified structure. In no event shall more than one application for any individual certified structure under this paragraph be approved in any 120 month period.

(3)(A) In no event shall credits issued under this Code section for historic homes exceed $5 million in aggregate per year.

(B) In no event shall credits issued under this Code section for certified structures other than historic homes exceed $30 million in aggregate per year.

(C) On and after January 1, 2030, in no event shall credits be issued under this Code section.

(d)(1) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of this Code section shall submit an application to the commissioner for preapproval of such tax credit. Such application shall include a precertification from the Department of Community Affairs certifying that the improvements to the certified structure are to be consistent with the Department of Community Affairs Standards for Rehabilitation. The Department shall have the authority to require electronic submission of such application in the manner

specified by the department. The commissioner shall preapprove the tax credits within 30 days based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants. Applications submitted after the annual limitations provided for in paragraph (3) of subsection (c) of this Code section have been met shall be given priority the following year.

(2) In order to be eligible to receive the credit authorized under subsection (b) of this Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the completed certification of the Department of Community Affairs verifying that the improvements to the certified structure are consistent with the Department of Community Affairs Standards for Rehabilitation.

(e)(1) If the credit allowed under paragraph (1) of subsection (b) of this Code section in any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the excess as a credit for succeeding years until the earlier of:

(A) The full amount of the excess is used; or

(B) The expiration of the tenth taxable year after the taxable year in which the certified rehabilitation has been completed.

(2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of subsection (b) of this Code section and previously claimed but not used by such taxpayer against its income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all or part of the tax credit that may be claimed for such costs and expenses to one or more entities, but no further sale or assignment of any credit previously sold or assigned pursuant to this subparagraph shall be allowed. All such transfers shall be subject to the maximum total limits provided by subsection (c) of this Code section;

(B) A taxpayer who sells or assigns a credit under this Code section and the entity to which the credit is sold or assigned shall jointly submit written notice of the sale or assignment to the department not later than 30 days after the date of the sale or assignment. The notice must include:

(i) The date of the sale or assignment;

(ii) The amount of the credit sold or assigned;

(iii) The names and federal tax identification numbers of the entity that sold or assigned the credit or part of the credit and the entity to which the credit or part of the credit was sold or assigned; and

(iv) The amount of the credit owned by the selling or assigning entity before the sale or assignment and the amount the selling or assigning entity retained, if any, after the sale or assignment;

(C) The sale or assignment of a credit in accordance with this Code section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed. After an entity claims a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit;

(D) Notwithstanding the requirements of this subsection, a credit earned or purchased by, or assigned to, a partnership, limited liability company, Subchapter "S" corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity and claimed under this Code section in accordance with the provisions of any agreement among the partners, members, or shareholders of that entity and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified structure, provided that the entity or person that claims the credit must be subject to Georgia tax; and

(E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall be responsible in the event of a recapture, reduction, disallowance, or other failure related to such credit.

(3) No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, a 60 month period may be substituted for the 24 month period provided for in paragraph (5) of subsection (a) of this Code section.

(g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event a tax credit under this Code section has been claimed and allowed the taxpayer, upon the sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the remaining unused amount of such credit to the purchaser of such certified structure. If a historic home for which a certified rehabili-

tation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or transferee at the time of sale or transfer.

(2) Such purchaser shall be subject to the limitations of subsection (e) of this Code section. Such purchaser shall file with such purchaser's tax return a copy of the approval of the rehabilitation by the Department of Community Affairs as provided in subsection (d) of this Code section and a copy of the form evidencing the transfer of the tax credit.

(3) Such purchaser shall be entitled to rely in good faith on the information contained in and used in connection with obtaining the approval of the credit including, without limitation, the amount of qualified rehabilitation expenditures.

(h)(1) If an owner other than a nonprofit corporation sells a historic home within three years of receiving the credit, the seller shall recapture the credit to the Department of Revenue as follows:

(A) If the property is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit of the sale;

(B) If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

(C) If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

(2) The recapture provisions of this subsection shall not apply to a sale resulting from the death of the owner.

(i)(1) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection (b) of this Code section and leases such certified structure, the department shall aggregate all total sales tax receipts from the certified structure.

(2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section shall report to the department the average full-time employees employed at the certified structure. A full-time employee for the purposes of this Code section shall mean a person who works a job that requires 30 or more hours per week. Such reports must be submitted to the department for five calendar years following the year in which the credit is claimed by the taxpayer.

(3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection (b) of this Code section and leases such

certified structure, the department shall aggregate all total full-time employees at the certified structure.

(j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall furnish a report to the chairperson of the House Committee on Ways and Means and the chairperson of the Senate Finance Committee by June 30 of each year. Such report shall contain the total sales tax collected in the prior calendar year and the average number of full-time employees at the certified structure and the total value of credits claimed for each taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section.

(k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of any other tax credit with respect to the project.

(l) The Department of Community Affairs and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.

(m) The Department of Community Affairs shall report, on an annual basis, on the overall economic activity, usage, and impact to the state from the rehabilitation of eligible properties for which credits provided by this Code section have been allowed.

(n) This Code section shall stand repealed and reserved by operation of law on December 31, 2029.

**History.**

Code 1981, § 48-7-29.8, enacted by Ga. L. 2002, p. 954, § 1; Ga. L. 2008, p. 1179, §§ 1, 2/HB 851; Ga. L. 2015, p. 1340, § 1/HB 308; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2019, p. 661, § 1-1/HB 224; Ga. L. 2020, p. 38, § 9/SB 473; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2021, p. 289, § 6-1/SB 6; Ga. L. 2022, p. 517, § 1/HB 469; Ga. L. 2024, p. 14, § 1/SB 496, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective July 1, 2022, redesignated former subparagraph (c)(3)(C) as subparagraph (c)(3)(E), added subparagraphs (c)(3)(C) and (c)(3)(D), substituted "January 1, 2028" for "January 1, 2023" in subparagraph (c)(3)(E); rewrote the last sentence in paragraph (d)(1), which read: "For applications on projects submitted over the annual $25 million limitation, those applications shall be given priority the following year."; and, in subsection (n), substituted "December 31, 2027" for "December 31, 2022".

**The 2024 amendment,** effective July 1, 2024, added the proviso at the end of paragraph (a)(2); deleted former subparagraphs (c)(3)(A) and (c)(3)(B); redesignated former subparagraphs (c)(3)(C) through (c)(3)(E) as present subparagraphs (c)(3)(A) through (c)(3)(C); in subparagraph (c)(3)(A), deleted "For calendar years 2023 and 2024," from the beginning, and deleted the former second sentence, which read: "On and after January 1, 2025, no credits shall be issued under this Code section for historic homes."; deleted "For calendar years 2023 through 2027," from the beginning of subparagraph (c)(3)(B); substituted "January 1, 2030" for "January 1, 2028" in subparagraph

(c)(3)(C); and substituted "December 31, 2029" for "December 31, 2027" at the end of subsection (n).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2015, "the" was inserted preceding "House Committee" in subsection (j).

**Editor's notes.**

Ga. L. 2002, p. 954, § 5, not codified by the General Assembly, provides that this Code section is applicable to taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 1179, § 3/HB 851, not codified by the General Assembly, provides that the 2008 amendment to this Code section shall apply to all taxable years beginning on or after January 1, 2009.

Ga. L. 2015, p. 1340, § 2/HB 308, not codified by the General Assembly, provides that: "The amendments enacted in this Act shall take effect on January 1, 2016, and shall be applicable to certified rehabilitations completed on or after January 1, 2017, and shall stand repealed on December 31, 2021, unless otherwise modified by the General Assembly. In the event the amendments provided for in this Act are repealed, the provisions of Code Section 48-7-29.8 as they existed prior to this Act shall remain in full force and effect." Ga. L. 2021, p. 289, § 6-2/SB 6, repealed Ga. L. 2015, p. 1340, § 2/HB 308, effective July 1, 2021.

**Law reviews.**

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## 48-7-29.9. (Effective until January 1, 2025.) Tax credits for qualified life insurance premiums for active duty National Guard and Air National Guard members.

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

(1) "Active duty" means full-time duty in the United States armed forces, other than active duty for training, for a period of more than 90 consecutive days.

(2) "Active duty for training" means full-time duty in the United States armed forces for a period of more than 90 consecutive days for training purposes performed by members of the National Guard and Air National Guard who are residents of this state.

(3) "Qualified life insurance" means insurance coverage through the Servicemembers' Group Life Insurance Program administered by the United States Department of Veterans Affairs for the maximum benefit amount available under such program for the loss of life of a member of the National Guard or Air National Guard who is a resident of this state while on active duty or active duty for training.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount not to exceed the amount expended for qualified life insurance premiums.

(c) The credit provided under this subsection:

(1) Shall be claimed and allowed in the year in which the majority of such days are served. In the event an equal number of consecutive days are served in two calendar years, then the exclusion shall be

claimed and allowed in the year in which the ninetieth day occurs; and

(2) Shall apply with respect to each taxable year in which such member serves for such qualifying period of time.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.9, enacted by Ga. L. 2005, p. 220, § 2/HB 538; Ga. L. 2009, p. 8, § 48/SB 46.

**Delayed effective date.**

Code Section 48-7-29.9 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2005, in paragraphs (a)(1) and (a)(2), "full-time duty" was substituted for "full time duty."

## 48-7-29.9. (Effective January 1, 2025.) Tax credits for qualified life insurance premiums for active duty National Guard and Air National Guard members.

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

(1) "Active duty" means full-time duty in the United States armed forces, other than active duty for training, for a period of more than 90 consecutive days.

(2) "Active duty for training" means full-time duty in the United States armed forces for a period of more than 90 consecutive days for training purposes performed by members of the National Guard and Air National Guard who are residents of this state.

(3) "Qualified life insurance" means insurance coverage through the Servicemembers' Group Life Insurance Program administered by the United States Department of Veterans Affairs for the maximum benefit amount available under such program for the loss of life of a member of the National Guard or Air National Guard who is a resident of this state while on active duty or active duty for training.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount not to exceed the amount expended for qualified life insurance premiums.

(c) The credit provided under this subsection:

(1) Shall be claimed and allowed in the year in which the majority of such days are served. In the event an equal number of consecutive days are served in two calendar years, then the exclusion shall be claimed and allowed in the year in which the ninetieth day occurs; and

(2) Shall apply with respect to each taxable year in which such member serves for such qualifying period of time.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against no more than three succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.9, enacted by Ga. L. 2005, p. 220, § 2/HB 538; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2024, p. 794, § 1-3/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.9 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, inserted "no more than three" in the second sentence in subsection (d). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.10. Tax credits for qualified child and dependent care expenses.

(a) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for qualified child and dependent care expenses. Such credit shall be determined by applying a percentage to the amount of the credit provided for in Section 21 of the Internal Revenue Code which is claimed and allowed pursuant to the Internal Revenue Code. Such percentage shall be:

(1) Ten percent for all taxable years beginning on or after January 1, 2006, and prior to January 1, 2007;

(2) Twenty percent for all taxable years beginning on or after January 1, 2007, and prior to January 1, 2008; and

(3) Thirty percent for all taxable years beginning on or after January 1, 2008.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-29.10, enacted by Ga. L. 2006, p. 64, § 1/HB 1080.
**Editor's notes.**
Ga. L. 2006, p. 64, § 2/HB 1080, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2006.

### 48-7-29.11. Tax credits for eligible teleworking expenses.

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

(1) "Eligible telework expenses" means expenses incurred during the calendar year pursuant to a telework agreement, up to a limit of $1,200.00 for each participating employee, to enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses shall include, but not be limited to, expenses paid or incurred to purchase computers, computer related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed internet connectivity equipment, computer security software and devices, and all related delivery, installation, and maintenance fees. Such expenses shall not include replacement costs for computers, computer related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site. Such expenses shall not include expenses for which a credit is claimed under any other provision of this article. Such expenses may be incurred only once per employee. Such expenses may be incurred directly by the employer on behalf of the participating employee or directly by the participating employee and subsequently reimbursed by the employer.

(2) "Employer" means any employer upon whom an income tax is imposed by this article.

(3) "Participating employee" means an employee who has entered into a telework agreement with his or her employer on or after July 1, 2007. This term shall not include an individual who is self-

employed or an individual who ordinarily spends a majority of his or her workday at a location other than the employer's principal place of business.

(4) "Telework" means to perform normal and regular work functions on a workday that ordinarily would be performed at the employer's principal place of business at a different location, thereby eliminating or substantially reducing the physical commute to and from that employer's principal place of business. This term shall not include home based businesses, extensions of the workday, or work performed on a weekend or holiday.

(5) "Telework agreement" means an agreement signed by the employer and the participating employee, on or after July 1, 2007, that defines the terms of a telework arrangement, including the number of days per year the participating employee will telework, as provided in subsection (b) of this Code section in order to qualify for the credit, and any restrictions on the place from which the participating employee will telework.

(6) "Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program which would qualify the employer for the credit provided in subsection (b) of this Code section, including but not limited to a workforce profile, a telework program business case and plan, a detailed accounting of the purpose, goals, and operating procedures of the telework program, methodologies for measuring telework program activities and success, and a deployment schedule for increasing telework activity.

(b) For taxable years beginning or ending on or after January 1, 2008, and prior to January 1, 2012, an employer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for a percentage of eligible telework expenses incurred in the corresponding calendar year. The amount of such credit shall be calculated as follows:

(1) The credit shall be equal to 100 percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month if the employer's principal place of business is located in an area designated by the United States Environmental Protection Agency as a nonattainment area under the federal Clean Air Act, 42 U.S.C. Section 7401 et seq.;

(2) The credit shall be equal to 75 percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month; or

(3) The credit shall be equal to 25 percent of the eligible telework

expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least five days per month.

(c)(1) In addition to the credit provided by subsection (b) of this Code section, an employer conducting a telework assessment on or after July 1, 2007, shall be allowed a credit in the calendar year of implementation of the employer's formal telework program against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for 100 percent of the cost, up to a maximum credit of $20,000.00 per employer, of preparing the assessment. Such costs shall not be eligible for such credit if they are otherwise the subject of a deduction from income claimed by the employer in any tax year. Costs incurred on or after July 1, 2007, and before January 1, 2008, shall be treated as being incurred on January 1, 2008, for purposes of this Code section. The credit provided by this subsection is intended to include program planning expenses, including direct program development and training costs, raw labor costs, and professional consulting fees; the credit shall not include expenses for which a credit is claimed under any other provision of this article. This credit shall be allowed only once per employer.

(2) All telework assessments eligible for a state income tax credit under this subsection shall meet standards for eligibility promulgated by the commissioner.

(d) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the employer's income tax liability. No unused tax credit shall be allowed to be carried forward to apply to the employer's succeeding years' tax liability. No such tax credit shall be allowed the employer against prior years' tax liability.

(e)(1) An employer seeking to claim a tax credit provided for under subsections (b) and (c) of this Code section must submit an application to the commissioner for tentative approval of the tax credit provided for in subsections (b) and (c) of this Code section between September 1 and October 31 of the year preceding the calendar year for which the tax credit is to be earned. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the employer after the application is approved by the commissioner. Such applications must certify that the employer would not have incurred the eligible telework expenses mentioned therein but for the availability of the tax credit. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection.

In no event shall the aggregate amount of tax credits approved by the commissioner for all qualified employers under this Code section in a calendar year exceed:

(A) For credits earned in calendar year 2008, $2 million;

(B) For credits earned in calendar year 2009, $2 million;

(C) For credits earned in calendar year 2010, $2.5 million; and

(D) For credits earned in calendar year 2011, $2.5 million.

(3) The department shall notify each employer of the tax credits tentatively approved and allocated to such employer by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the employers who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the employer may make purchases approved for the tax credit at any time during the calendar year following the approval of the application. The employer may then apply the amount of the approved tax credit to its tax liability for the tax year or years for which the approved application applies. In the event the employer has a tax year other than a calendar year and the calendar year expenses are incurred in more than one taxable year, the credit shall be applied to each taxable year based upon when the expenses were incurred.

(f) Notwithstanding the provisions of Code Sections 48-2-15, 48-7-60, and 48-7-61, the commissioner shall make available a public report disclosing the employer names and amounts of credit claimed under this Code section as follows:

(1) On or before December 31, 2010, for credits allowed in calendar year 2008;

(2) On or before December 31, 2011, for credits allowed in calendar year 2009;

(3) On or before December 31, 2012, for credits allowed in calendar year 2010; and

(4) On or before December 31, 2013, for credits allowed in calendar year 2011.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-29.11, enacted by Ga. L. 2006, p. 242, § 1/HB 194; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 999, §§ 1, 2, 3/HB 186; Ga. L. 2024, p. 1052, § 5(29)/SB 448, effective July 1, 2024.

**Amendments.**
**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (a)(1).

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2006, Code Section 48-7-29.10, as enacted by Ga. L. 2006, p. 242, § 1/HB 194, was redesignated as Code Section 48-7-29.11; and "July 1, 2007" was substituted for "the effective date of this Code section" in paragraphs (a)(3) and (a)(5) and twice in paragraph (c)(1).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 426 et seq.

## 48-7-29.12. (Effective until January 1, 2025.) Tax credits for donation of real property for conservation purposes.

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

(1) "Conservation easement" means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which are consistent with at least two conservation purposes.

(2) "Conservation purpose" means any of the following:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitat consistent with state wildlife conservation policies;

(C) Protection of outdoor recreation consistent with state outdoor recreation policies;

(D) Protection of prime agricultural or forestry lands; and

(E) Protection of cultural sites, heritage corridors, or archeological and historic resources.

(3) "Donated property" means the real property of which a qualified donation is made pursuant to this Code section.

(4) "Eligible donor" means any person who owns an interest in a qualified donation.

(5) "Fair market value" means the value of the donated property as determined pursuant to subsections (c.1) and (c.2) of this Code section.

(6) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of 100 percent of all right, title, and interest in the entire parcel of donated real property, and the donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization for use in a manner consistent with at least two conservation purposes. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of a conservation easement. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

(7) "Related person" has the meaning provided by Code Section 48-7-28.3.

(8) "Substantial valuation misstatement" means a valuation such that the claimed value of any property on the appraisal as submitted to the State Properties Commission is 150 percent or more of the amount determined to be the correct amount of such valuation pursuant to subsections (c.1) and (c.2) of this Code section.

(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or 48-7-21 for each qualified donation under this Code section.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined

under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of the State Property Commission's determination and a copy of a certification issued by the Department of Natural Resources that the donated property is suitable for conservation purposes and meets the following additional requirements, where applicable:

(1) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;

(2) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of such donation is prohibited on such property;

(3) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;

(4) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;

(5) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;

(6) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

(7) Mining on the property is prohibited; and

(8) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council is prohibited.

(c.1) For each application for certification, the Department of Natural Resources shall require submission of an appraisal of the qualified donation by the taxpayer along with a nonrefundable $5,000.00 application fee; provided, however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant. The appraisal required by this subsection shall be a full narrative appraisal and include:

(1) A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

(2) An affidavit signed by the appraiser which includes a statement specifying:

(A) The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

(B) Whether a subdivision analysis was used in the appraisal;

(C) Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and

(D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

Appraisals received by the Department of Natural Resources shall be forwarded to the State Properties Commission for review. The State Properties Commission shall approve the appraisal amount submitted or recommend a lower amount based on its review and inform the Department of Natural Resources of its determination. The State Properties Commission shall be authorized to promulgate any rules and regulations necessary to administer the provisions of this subsection. Any appraisal deemed to contain a substantial valuation misstatement shall be submitted to the Georgia Real Estate Commission for further investigation and disciplinary action. Upon receipt of the State Properties Commission's determination, the Department of Natural Resources may proceed with the certification process.

(c.2) The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer subsections (c) and (c.1) of this Code section. A final determination by the Department of Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax

liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed $250,000.00 with respect to tax liability determined under Code Section 48-7-20 or $500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the five years prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(3)(A) Beginning on January 1, 2016, and ending on December 31, 2021, the aggregate amount of tax credits allowed under this Code section shall not exceed $30 million per calendar year. For the period beginning on June 1, 2022, and ending on December 31, 2026, the aggregate amount of tax credits allowed under this Code section shall not exceed $4 million per calendar year. The Department of Natural Resources shall accept no new applications for the tax credits allowed under this Code section after December 31, 2026.

(B) Prior to any renewal of the exemption for donations of real property beyond the date authorized by subparagraph (A) of this paragraph, the Department of Natural Resources shall provide a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee on the activity of the program occurring during the preceding years. The report shall include, but not be limited to:

(i) The number of applications and the total number of acres donated;

(ii) The value of the qualified donations accepted into the program and which two of the five conservation purposes contained in paragraph (2) of subsection (a) of this Code section were the basis for the qualification of the property;

(iii) The aggregate amount of income tax credits granted pursuant to this Code section; and

(iv) A listing of the direct and indirect benefits to the state due to the donation of land for conservation purposes.

(d.1) Any tax credits under this Code section earned by a taxpayer in the taxable years beginning on or after January 1, 2013, and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(4) Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(5) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on such appraisal as submitted to the State Properties Commission results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this

subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in paragraph (1) of this subsection; or

(ii) Ten thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in paragraph (1) of this subsection for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297, § 3/HB 346; Ga. L. 2012, p. 257, § 3-1/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 370, § 3/HB 464; Ga. L. 2016, p. 585, § 1/HB 1014; Ga. L. 2022, p. 741, § 2/HB 586.

**Delayed effective date.**

Code Section 48-7-29.12 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2022 amendment,** effective May 10, 2022, in subparagraph (d)(3)(A), inserted "and ending on December 31, 2021,", added the second sentence, and substituted "December 31, 2026" for "December 31, 2021" at the end.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2006, Code Section 48-7-29.10, as enacted

by Ga. L. 2006, p. 351, § 1/HB 1107, was redesignated as Code Section 48-7-29.12.

**Editor's notes.**

Ga. L. 2006, p. 351, § 2/HB 1107, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2008, p. 101, § 2/HB 1274, not codified by the General Assembly, provides, in part, that the 2008 amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2011, p. 297, § 5(d)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall become effective on January 1, 2012, and shall apply to all taxable years beginning on or after January 1, 2012.

Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

**Law reviews.**

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, §§ 426, 429, 434.

## 48-7-29.12. (Effective January 1, 2025.) Tax credits for donation of real property for conservation purposes.

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

(1) "Conservation easement" means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which are consistent with at least two conservation purposes.

(2) "Conservation purpose" means any of the following:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitat consistent with state wildlife conservation policies;

(C) Protection of outdoor recreation consistent with state outdoor recreation policies;

(D) Protection of prime agricultural or forestry lands; and

(E) Protection of cultural sites, heritage corridors, or archeological and historic resources.

(3) "Donated property" means the real property of which a qualified donation is made pursuant to this Code section.

(4) "Eligible donor" means any person who owns an interest in a qualified donation.

(5) "Fair market value" means the value of the donated property as determined pursuant to subsections (c.1) and (c.2) of this Code section.

(6) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of 100 percent of all right, title, and interest in the entire parcel of donated real property, and the donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization for use in a manner consistent with at least two conservation purposes. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of a conservation easement. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

(7) "Related person" has the meaning provided by Code Section 48-7-28.3.

(8) "Substantial valuation misstatement" means a valuation such that the claimed value of any property on the appraisal as submitted to the State Properties Commission is 150 percent or more of the amount determined to be the correct amount of such valuation pursuant to subsections (c.1) and (c.2) of this Code section.

(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or 48-7-21 for each qualified donation under this Code section.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be

limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of the State Property Commission's determination and a copy of a certification issued by the Department of Natural Resources that the donated property is suitable for conservation purposes and meets the following additional requirements, where applicable:

(1) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;

(2) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of such donation is prohibited on such property;

(3) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;

(4) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;

(5) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;

(6) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

(7) Mining on the property is prohibited; and

(8) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council is prohibited.

(c.1) For each application for certification, the Department of Natural Resources shall require submission of an appraisal of the qualified donation by the taxpayer along with a nonrefundable $5,000.00 application fee; provided, however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant. The appraisal required by this subsection shall be a full narrative appraisal and include:

(1) A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

(2) An affidavit signed by the appraiser which includes a statement specifying:

(A) The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

(B) Whether a subdivision analysis was used in the appraisal;

(C) Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and

(D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

Appraisals received by the Department of Natural Resources shall be forwarded to the State Properties Commission for review. The State Properties Commission shall approve the appraisal amount submitted or recommend a lower amount based on its review and inform the Department of Natural Resources of its determination. The State Properties Commission shall be authorized to promulgate any rules and regulations necessary to administer the provisions of this subsection. Any appraisal deemed to contain a substantial valuation misstatement shall be submitted to the Georgia Real Estate Commission for further investigation and disciplinary action. Upon receipt of the State Properties Commission's determination, the Department of Natural Resources may proceed with the certification process.

(c.2) The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer subsections (c) and (c.1) of this Code section. A final determination by the Department of Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed $250,000.00 with respect to tax liability determined under Code Section 48-7-20 or $500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the five years prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(3)(A) Beginning on January 1, 2016, and ending on December 31, 2021, the aggregate amount of tax credits allowed under this Code section shall not exceed $30 million per calendar year. For the period beginning on June 1, 2022, and ending on December 31, 2026, the aggregate amount of tax credits allowed under this Code section shall not exceed $4 million per calendar year. The Department of Natural Resources shall accept no new applications for the tax credits allowed under this Code section after December 31, 2026.

(B) Prior to any renewal of the exemption for donations of real property beyond the date authorized by subparagraph (A) of this paragraph, the Department of Natural Resources shall provide a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee on the activity of the program occurring during the preceding years. The report shall include, but not be limited to:

(i) The number of applications and the total number of acres donated;

(ii) The value of the qualified donations accepted into the program and which two of the five conservation purposes contained in paragraph (2) of subsection (a) of this Code section were the basis for the qualification of the property;

(iii) The aggregate amount of income tax credits granted pursuant to this Code section; and

(iv) A listing of the direct and indirect benefits to the state due to the donation of land for conservation purposes.

(d.1) Any tax credits under this Code section earned by a taxpayer in the taxable years beginning on or after January 1, 2013, and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(4) Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(5) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on such appraisal as submitted to the State Properties Commission results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in paragraph (1) of this subsection; or

(ii) Ten thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in paragraph (1) of this subsection for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.** Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297,

§ 3/HB 346; Ga. L. 2012, p. 257, § 3-1/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 370, § 3/HB 464; Ga. L. 2016, p. 585, § 1/HB 1014; Ga. L. 2022, p. 741, § 2/HB 586; Ga. L. 2024, p. 794, § 1-4/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.12 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five years' tax liability" for "ten years' tax liability" at the end of the third sentence in paragraph (d)(1). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.13. (Effective until January 1, 2025.) Tax credits for qualified health insurance expenses.

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

(1) "Qualified health insurance" means a high deductible health plan as defined by Section 223 of the Internal Revenue Code.

(2) "Qualified health insurance expense" means the expenditure of funds of at least $250.00 annually for health insurance premiums for qualified health insurance.

(3) "Taxpayer" means an employer who employs directly, or who pays compensation to individuals whose compensation is reported on Form 1099, 50 or fewer persons and for whom the taxpayer provides high deductible health plans as defined by Section 223 of the Internal Revenue Code and in which such employees are enrolled.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 or 48-7-21, as applicable, for qualified health insurance expenses in an amount of $250.00 for each employee enrolled for 12 consecutive months in a qualified health insurance plan if such qualified health insurance is made available to all of the employees and compensated individuals of the employer pursuant to the applicable provisions of Section 125 of the Internal Revenue Code.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(e) The credit allowed by this Code section shall apply only with regard to qualified health insurance expenses.

**History.**

Code 1981, § 48-7-29.13, enacted by Ga. L. 2008, p. 292, § 5/HB 977; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 5/HB 410.

**Delayed effective date.**

Code Section 48-7-29.13 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Cross references.**

Georgia Affordable HSA Eligible High Deductible Health Plan, § 33-51-1 et seq.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1/HB 670, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1/HB 1159, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2/HB 1133, was redesignated as Code Section 48-7-29.16.

**Editor's notes.**

Ga. L. 2008, p. 292, § 6(a)/HB 977, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2009, p. 652, § 6(a)/HB 410, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

## 48-7-29.13. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for qualified health insurance expenses.

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

(1) "Qualified health insurance" means a high deductible health plan as defined by Section 223 of the Internal Revenue Code.

(2) "Qualified health insurance expense" means the expenditure of funds of at least $250.00 annually for health insurance premiums for qualified health insurance.

(3) "Taxpayer" means an employer who employs directly, or who pays compensation to individuals whose compensation is reported on Form 1099, 50 or fewer persons and for whom the taxpayer provides high deductible health plans as defined by Section 223 of the Internal Revenue Code and in which such employees are enrolled.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 or 48-7-21, as applicable, for qualified health insurance expenses in an amount of $250.00 for each employee enrolled for 12 consecutive months in a qualified health insurance plan if such qualified health insurance is made available to all of the employees and compensated individuals of the employer pursuant to the applicable provisions of Section 125 of the Internal Revenue Code.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against no more than three succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall be authorized to promulgate any rules

and regulations necessary to implement and administer the provisions of this Code section.

(e) The credit allowed by this Code section shall apply only with regard to qualified health insurance expenses.

(f) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29.13, enacted by Ga. L. 2008, p. 292, § 5/HB 977; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 5/HB 410; Ga. L. 2024, p. 794, §§ 1-5, 2-1/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.13 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, inserted "no more than three" in the second sentence in subsection (c) and added subsection (f). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.14. (Effective until January 1, 2025.) Tax credits for clean energy property.

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

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Business property" means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(3) "Clean energy property" includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) Lighting retrofit projects. "Lighting retrofit project" means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) Energy efficient buildings. "Energy efficient building" means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent;

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment; and

(E) Biomass equipment to convert wood residuals into electricity through gasification and pyrolysis.

(4) "Cost" means:

(A) In the case of clean energy property owned by the taxpayer, cost is the aggregate funds actually invested and expended by a taxpayer to put into service the clean energy property; and

(B) In the case of clean energy property the taxpayer leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) "Installation" means the year in which the clean energy property is put into service and becomes eligible for a tax credit allowed by this Code section.

(6) "Renewable biomass qualified facility" means a renewable biomass qualified facility as defined by the Federal Energy Regulatory Commission which facility meets the open loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue Code.

(7) "Wood residuals" means wood residuals that include land-clearing residue, urban wood residue, and pellets and do not include wood from any United States national forest.

(b) A tax credit under this Code section is subject to the following limits:

(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008, and December 31, 2014; provided, however, that this credit shall be further subject to the following conditions and limitations:

(A) A credit allowed by this Code section shall be taken for the taxable year in which the clean energy property is installed and may be taken against income tax or, if the taxpayer is an insurance company, against gross premium tax; provided, however, that for any credit under this Code section which is allowed for calendar year 2012, 2013, or 2014, the entire credit may not be taken for the year in which the property is placed in service but must be taken in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed;

(B) A taxpayer that claims a credit allowed under this subsection shall not be eligible to claim any other credit under this subsection with respect to the same clean energy property;

(C) A taxpayer may not take the credit allowed in this subsection for clean energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this subsection with respect to the same clean energy property; and

(D) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the installment of the clean energy property occurred. No such credit shall be allowed the taxpayer against prior years' tax liability.

To claim a credit allowed by this paragraph, the taxpayer shall provide any information required by the authority or department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the authority or department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection;

(2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified facility shall be allowed a credit against the tax imposed by this article in an amount not to exceed the actual

amount certified by the State Forestry Commission to the taxpayer. The value of such credit shall be determined on a per tonnage basis. Such certification shall be based upon vouchers provided to the taxpayer by the renewable biomass qualified facility to whom the wood residuals are provided for the purpose of providing bioelectric power to a third party. The State Forestry Commission shall calculate and attribute a dollar value to such wood residuals;

(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

(A) For calendar year 2008, $2.5 million;

(B) For calendar year 2009, $2.5 million;

(C) For calendar year 2010, $2.5 million;

(D) For calendar year 2011, $2.5 million;

(E) For calendar year 2012, $5 million;

(F) For calendar year 2013, $5 million; and

(G) For calendar year 2014, $5 million.

(4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(B) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section in a calendar year exceed the limitations specified in paragraph (3) of this subsection. In the event a taxpayer filed a timely application for such credit but is not allowed all or part of the credit amount such taxpayer would be authorized to receive because the limitations specified in paragraph (3) of this subsection have been reached, the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application. With respect to the credit allocation in subsequent years, taxpayers on the priority waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent years;

(5) The credit allowed by this subsection shall not exceed the following amounts:

(A) For all types of clean energy property placed into service for any purpose other than single-family residential, the credit allowed by this subsection may not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any clean energy property:

(i) A ceiling of $500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating, wind equipment, and biomass equipment as described in subparagraphs (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

(ii) The sum of $100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(iii) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(3)(B) of this Code section, the sum of $100,000.00;

(iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code section, the sum of $0.60 per square foot of the building with a maximum of $100,000.00; and

(v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at $1.80 per square foot of the building, with a maximum of $100,000.00; and

(B) The following ceilings apply to clean energy property placed in service for single-family residential purposes, the lesser of 35 percent of the cost or:

(i) The sum of $2,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar ther-

mal collectors, Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

(ii) The sum of $10,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(A) of this Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of $2,000.00 per installation for Energy Star certified geothermal heat pump systems applies as described in subparagraph (a)(3)(B) of this Code section; and

(6)(A) Where the amount of any credits allowed by this Code section except for the credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer'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 subsection. 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 subsection shall not constitute income to the taxpayer.

(B) In no event shall the total amount of the tax credit under paragraph (2) of subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The authority and department shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section. Specifically, the authority and department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

(d) The authority and the department shall provide an annual report of:

(1) The number of taxpayers that claimed the credits allowed in this Code section;

(2) The cost of business property and clean energy property with respect to which credits were claimed;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of credits allowed.

**History.**

Code 1981, § 48-7-29.14, enacted by Ga. L. 2008, p. 841, § 1/HB 670; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2010, p. 1163, § 3/HB 1069; Ga. L. 2011, p. 297, § 3A/HB 346; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2017, p. 774, § 48/HB 323.

**Delayed effective date.**

Code Section 48-7-29.14 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1/HB 670, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1/HB 1159, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2/HB 1133, was redesignated as Code Section 48-7-29.16.

Pursuant to Code Section 28-9-5, in 2008, "subparagraph (a)(3)(B)" was substituted for "division (a)(3)(B)" in division (b)(5)(A)(iii).

**Editor's notes.**

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2011, p. 297, § 5(c)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

**Administrative rules and regulations.**

Clean Energy Property and Wood Residuals Tax Credits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.48.

**Law reviews.**

For article, "The Greens' Dilemma: Building Tomorrow's Climate Infrastructure Today," see 73 Emory L.J. 1 (2023).

## 48-7-29.14. (Effective January 1, 2025.) Tax credits for clean energy property.

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

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Business property" means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(3) "Clean energy property" includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) Lighting retrofit projects. "Lighting retrofit project" means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) Energy efficient buildings. "Energy efficient building" means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent;

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment; and

(E) Biomass equipment to convert wood residuals into electricity through gasification and pyrolysis.

(4) "Cost" means:

(A) In the case of clean energy property owned by the taxpayer, cost is the aggregate funds actually invested and expended by a taxpayer to put into service the clean energy property; and

(B) In the case of clean energy property the taxpayer leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) "Installation" means the year in which the clean energy property is put into service and becomes eligible for a tax credit allowed by this Code section.

(6) "Renewable biomass qualified facility" means a renewable biomass qualified facility as defined by the Federal Energy Regulatory Commission which facility meets the open loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue Code.

(7) "Wood residuals" means wood residuals that include land-clearing residue, urban wood residue, and pellets and do not include wood from any United States national forest.

(b) A tax credit under this Code section is subject to the following limits:

(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008, and December 31, 2014; provided, however, that this credit shall be further subject to the following conditions and limitations:

(A) A credit allowed by this Code section shall be taken for the taxable year in which the clean energy property is installed and may be taken against income tax or, if the taxpayer is an insurance company, against gross premium tax; provided, however, that for any credit under this Code section which is allowed for calendar year 2012, 2013, or 2014, the entire credit may not be taken for the year in which the property is placed in service but must be taken in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed;

(B) A taxpayer that claims a credit allowed under this subsection shall not be eligible to claim any other credit under this subsection with respect to the same clean energy property;

(C) A taxpayer may not take the credit allowed in this subsection for clean energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this subsection with respect to the same clean energy property; and

(D) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the installment of the clean energy property occurred. No such credit shall be allowed the taxpayer against prior years' tax liability.

To claim a credit allowed by this paragraph, the taxpayer shall provide any information required by the authority or department.

Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the authority or department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection;

(2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified facility shall be allowed a credit against the tax imposed by this article in an amount not to exceed the actual amount certified by the State Forestry Commission to the taxpayer. The value of such credit shall be determined on a per tonnage basis. Such certification shall be based upon vouchers provided to the taxpayer by the renewable biomass qualified facility to whom the wood residuals are provided for the purpose of providing bioelectric power to a third party. The State Forestry Commission shall calculate and attribute a dollar value to such wood residuals;

(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

(A) For calendar year 2008, $2.5 million;

(B) For calendar year 2009, $2.5 million;

(C) For calendar year 2010, $2.5 million;

(D) For calendar year 2011, $2.5 million;

(E) For calendar year 2012, $5 million;

(F) For calendar year 2013, $5 million; and

(G) For calendar year 2014, $5 million.

(4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(B) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section in a calendar year exceed the limitations specified in paragraph (3) of this subsection. In the event a

taxpayer filed a timely application for such credit but is not allowed all or part of the credit amount such taxpayer would be authorized to receive because the limitations specified in paragraph (3) of this subsection have been reached, the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application. With respect to the credit allocation in subsequent years, taxpayers on the priority waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent years;

(5) The credit allowed by this subsection shall not exceed the following amounts:

(A) For all types of clean energy property placed into service for any purpose other than single-family residential, the credit allowed by this subsection may not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any clean energy property:

(i) A ceiling of $500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating, wind equipment, and biomass equipment as described in subparagraphs (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

(ii) The sum of $100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(iii) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(3)(B) of this Code section, the sum of $100,000.00;

(iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code section, the sum of $0.60 per square foot of the building with a maximum of $100,000.00; and

(v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at $1.80 per square foot of the building, with a maximum of $100,000.00; and

(B) The following ceilings apply to clean energy property placed in service for single-family residential purposes, the lesser of 35 percent of the cost or:

(i) The sum of $2,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors, Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

(ii) The sum of $10,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(A) of this Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of $2,000.00 per installation for Energy Star certified geothermal heat pump systems applies as described in subparagraph (a)(3)(B) of this Code section; and

(6)(A) Where the amount of any credits allowed by this Code section except for the credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer'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 subsection. 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 subsection shall not constitute income to the taxpayer.

(B) In no event shall the total amount of the tax credit under paragraph (2) of subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against no more than three succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The authority and department shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section. Specifically, the authority and department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

(d) The authority and the department shall provide an annual report of:

(1) The number of taxpayers that claimed the credits allowed in this Code section;

(2) The cost of business property and clean energy property with respect to which credits were claimed;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of credits allowed.

**History.**

Code 1981, § 48-7-29.14, enacted by Ga. L. 2008, p. 841, § 1/HB 670; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2010, p. 1163, § 3/HB 1069; Ga. L. 2011, p. 297, § 3A/HB 346; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 794, § 1-6/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.14 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, inserted "no more than three" in the second sentence in subparagraph (b)(6)(B). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.15. Tax credits for the adoption of foster children.

(a) As used in this Code section, the term "qualified foster child" means a foster child who is less than 18 years of age and who is in a foster home or otherwise in the foster care system under the Division of Family and Children Services of the Department of Human Services.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for the adoption of a qualified foster child. The amount of such credit shall be $6,000.00 per qualified foster child per taxable year commencing with the year in which the adoption becomes final for five taxable years and $2,000.00 per taxable year thereafter;

provided, however, that such credit shall end in the year in which the adopted child attains the age of 18.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-29.15, enacted by Ga. L. 2008, p. 942, § 1/HB 1159; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2021, p. 3, § 1/HB 114.

**Cross references.**

Foster parents bill of rights, § 49-5-280 et seq.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1/HB 670, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1/HB 1159, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2/HB 1133, was redesignated as Code Section 48-7-29.16.

**Editor's notes.**

Ga. L. 2008, p. 942, § 2/HB 1159, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2021, p. 3, § 2/HB 114, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to adoptions occurring in all taxable years beginning on or after January 1, 2021."

## 48-7-29.16. (Effective until January 1, 2025.) Tax credits for contributions to student scholarship organizations.

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

(1) "Business enterprise" means any insurance company or the headquarters of any insurance company required to pay the tax provided for in Code Section 33-8-4.

(2) "Eligible student" shall have the same meaning as in paragraph (1) of Code Section 20-2A-1.

(3) "Qualified education expense" means the expenditure of funds by the taxpayer or business enterprise during the tax year for which a credit under this Code section is claimed and allowed to a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for tuition and fees for a qualified school or program.

(4) "Qualified school or program" shall have the same meaning as in paragraph (2) of Code Section 20-2A-1.

(5) "Student scholarship organization" shall have the same meaning as in paragraph (3) of Code Section 20-2A-1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or $2,500.00 per tax year, whichever is less;

(2) In the case of a married couple filing a joint return, the actual amount expended or $5,000.00 per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount expended or $25,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(c.1) A business enterprise shall be allowed a credit against the tax imposed by Code Section 33-8-4 in an amount equal to its qualified education expenses or 75 percent of the business enterprise's state insurance premium tax liability owed pursuant to Code Section 33-8-4, whichever is less; provided, however, that the amount of such credit shall not exceed $1 million.

(d)(1) The tax credit shall not be allowed if the taxpayer or business enterprise designates its qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer or business enterprise.

(2) In soliciting contributions, a student scholarship organization shall not represent, or direct a qualified private school to represent, that, in exchange for contributing to the student scholarship organization, a taxpayer or business enterprise shall receive a scholarship for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer or business enterprise. The status as a student scholarship organization shall be revoked for any such organization which violates this paragraph.

(e) In no event shall the total amount of the tax credit allowed to any taxpayer or business enterprise under this Code section for a taxable

year exceed such taxpayer's income tax liability or such business enterprise's state insurance premium tax liability owed pursuant to Code Section 33-8-4, provided that any unused tax credit shall be allowed the taxpayer or business enterprise against up to its succeeding five years' tax liability. No such credit shall be allowed the taxpayer or business enterprise against prior years' tax liability.

(f)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed:

(A) Fifty-eight million dollars for the year ending on December 31, 2018;

(B) For 2019 through 2022, $100 million per year; and

(C) For 2023 and all subsequent years, $120 million per year.

(1.1) In no event shall the aggregate amount of tax credits allowed under this Code section to all business enterprises for state insurance premium tax liability owed pursuant to Code Section 33-8-4 exceed $6 million for any year.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, a student scholarship organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a student scholarship organization, the taxpayer or business enterprise shall electronically notify the department, in a manner specified by the department, of the total amount of contributions that the taxpayer or business enterprise intends to make to the student scholarship organization. The commissioner shall preapprove, deny, or prorate the requested amount within 30 days after receiving the request from the taxpayer or business enterprise and shall provide notice to the taxpayer or business enterprise and the student scholarship organization of such preapproval, denial, or proration which shall not require any signed release or notarized approval by the taxpayer or business enterprise. In order to receive a tax credit under this Code section, the taxpayer or business enterprise shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer or business enterprise does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limit prescribed in paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.1) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to student scholarship organizations if the commissioner preapproved a donation for a tax credit prior to the date the student scholarship organization is removed from the Department of Education list pursuant to Code Section 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(6) In addition to the reporting requirements in Code Section 20-2A-3, each student scholarship organization shall file an annual report with the department showing any fees or assessments retained by the student scholarship organization during the calendar year.

(g)(1) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return or a business enterprise's tax return provided for in Code Section 33-8-6.

(2)(A) However, in the event the taxpayer files an electronic return permitted by this chapter, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner.

(B) With respect to a business enterprise's tax return provided for in Code Section 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and regulations regarding the manner in which such letters of confirmation of donations shall be filed in the case of tax returns filed electronically.

(3) The letter of confirmation of donation shall contain the taxpayer's or business enterprise's name, address, tax identification

number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(h)(1) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer or business enterprise as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(2) The amount of any scholarship received by an eligible student or eligible pre-kindergarten student shall be excluded from taxable net income for Georgia income tax purposes.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section.

**History.**

Code 1981, § 48-7-29.16, enacted by Ga. L. 2008, p. 1108, § 2/HB 1133; Ga. L. 2009, p. 816, § 6/HB 485; Ga. L. 2011, p. 529, § 2/HB 325; Ga. L. 2013, p. 1061, § 33D/HB 283; Ga. L. 2018, p. 644, § 1/HB 217; Ga. L. 2022, p. 150, § 2-1/HB 517; Ga. L. 2023, p. 730, § 7(13)/HB 475, effective July 1, 2023.

**Delayed effective date.**

Code Section 48-7-29.16 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2022 amendment,** effective January 1, 2023, added paragraph (a)(1) and redesignated former paragraphs (a)(1) through (a)(4) as present paragraphs (a)(2) through (a)(5), in paragraph (a)(3), inserted "or business enterprise" near the beginning; substituted "$2,500.00" for "$1,000.00" in paragraph (b)(1), substituted "$5,000.00" for "$2,500.00" in paragraph (b)(2), substituted "$25,000.00" for "$10,000.00" in paragraph (b)(3); added subsection (c.1); inserted "or business enterprise" twice in paragraph (d)(1), twice in paragraph (d)(2), seven times in paragraph (f)(3), and once in paragraph (h)(1); substituted "its qualified" for "the taxpayer's qualified" in paragraph (d)(1); rewrote subsection (e), which read: "In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability."; rewrote subparagraphs (f)(1)(B) and (f)(1)(C), which read: "(B) One hundred million dollars for tax years beginning on January 1, 2019, and ending on December 31, 2028; and

"(C) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for all subsequent tax years."; added paragraph (f)(1.1); added "or the additional limitation specific to business enterprises prescribed in paragraph (1.2) of this subsection" at the end of the fifth sentence in paragraph (f)(3) and at the end of the first sentence in (f)(4); and, rewrote subsection (g), which read: "In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be

maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit." See Editor's notes for applicability.

**The 2023 amendment,** effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (1.1)" for "paragraph (1.2)" in paragraphs (f)(3) and (f)(4).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1/HB 670, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1/HB 1190, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2/HB 1133, was redesignated as Code Section 48-7-29.16.

**Editor's notes.**

Ga. L. 2008, p. 1108, § 3/HB 1133, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

Ga. L. 2009, p. 816, § 8(b)/HB 485, not codified by the General Assembly, provides, in part, that the amendment of subsection (g) by this Act shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2013, p. 1061, § 33E/HB 283, not codified by the General Assembly, provides, in part, that this Code section shall apply to all taxable years beginning on or after January 1, 2013.

Ga. L. 2018, p. 644, § 6/HB 217, not codified by the General Assembly, provides that the amendment of subsection (f) of this Code section "shall be applicable to tax years beginning on or after January 1, 2019."

Ga. L. 2022, p. 150, § 3-1/HB 517, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2023.

**U.S. Code.**

Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (h)(1), is codified as 26 U.S.C. § 501(c)(3).

**Law reviews.**

For article, "HB 517: Amendments Relating to Student Scholarship Organizations," see 39 Georgia St. U.L. Rev. 243 (2022).

## JUDICIAL DECISIONS

**Dollar-for-dollar tax credits.** — The tax credit statute, O.C.G.A. § 48-7-29.16, permits Georgia taxpayers to take a dollar-for-dollar credit against their Georgia income tax liability for donations to student scholarship organizations of up to $1,000 per individual taxpayer or $2,500 for married taxpayers filing jointly. Gaddy v. Ga. Dep't of Revenue, 301 Ga. 552, 802 S.E.2d 225, 2017 Ga. LEXIS 541 (2017).

**Tax credit never becomes property of state.** — It is clear that "tax expenditures" are different from "appropriations," and only the latter involve money taken from the state treasury. The Georgia Qualified Education Tax Credits', O.C.G.A. § 48-7-29.16, represent money appropriated from the state treasury; however, it does not involve the distribution of public funds out of the state treasury because none of the money involved ever becomes the property of the State of Georgia. Gaddy v. Ga. Dep't of Revenue, 301 Ga. 552, 802 S.E.2d 225, 2017 Ga. LEXIS 541 (2017).

**48-7-29.16. (Effective January 1, 2025.) Tax credits for contributions to student scholarship organizations.**

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

(1) "Business enterprise" means any insurance company or the headquarters of any insurance company required to pay the tax provided for in Code Section 33-8-4.

(2) "Eligible student" shall have the same meaning as in paragraph (1) of Code Section 20-2A-1.

(3) "Qualified education expense" means the expenditure of funds by the taxpayer or business enterprise during the tax year for which a credit under this Code section is claimed and allowed to a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for tuition and fees for a qualified school or program.

(4) "Qualified school or program" shall have the same meaning as in paragraph (2) of Code Section 20-2A-1.

(5) "Student scholarship organization" shall have the same meaning as in paragraph (3) of Code Section 20-2A-1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or $2,500.00 per tax year, whichever is less;

(2) In the case of a married couple filing a joint return, the actual amount expended or $5,000.00 per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount expended or $25,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(c.1) A business enterprise shall be allowed a credit against the tax imposed by Code Section 33-8-4 in an amount equal to its qualified

education expenses or 75 percent of the business enterprise's state insurance premium tax liability owed pursuant to Code Section 33-8-4, whichever is less; provided, however, that the amount of such credit shall not exceed $1 million.

(d)(1) The tax credit shall not be allowed if the taxpayer or business enterprise designates its qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer or business enterprise.

(2) In soliciting contributions, a student scholarship organization shall not represent, or direct a qualified private school to represent, that, in exchange for contributing to the student scholarship organization, a taxpayer or business enterprise shall receive a scholarship for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer or business enterprise. The status as a student scholarship organization shall be revoked for any such organization which violates this paragraph.

(e) In no event shall the total amount of the tax credit allowed to any taxpayer or business enterprise under this Code section for a taxable year exceed such taxpayer's income tax liability or such business enterprise's state insurance premium tax liability owed pursuant to Code Section 33-8-4, provided that any unused tax credit shall be allowed the taxpayer or business enterprise against up to its succeeding three years' tax liability. No such credit shall be allowed the taxpayer or business enterprise against prior years' tax liability.

(f)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed:

(A) Fifty-eight million dollars for the year ending on December 31, 2018;

(B) For 2019 through 2022, $100 million per year; and

(C) For 2023 and all subsequent years, $120 million per year.

(1.1) In no event shall the aggregate amount of tax credits allowed under this Code section to all business enterprises for state insurance premium tax liability owed pursuant to Code Section 33-8-4 exceed $6 million for any year.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, a student scholarship organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a student scholarship organization, the taxpayer or business enterprise shall electronically notify the department, in a manner specified by the

department, of the total amount of contributions that the taxpayer or business enterprise intends to make to the student scholarship organization. The commissioner shall preapprove, deny, or prorate the requested amount within 30 days after receiving the request from the taxpayer or business enterprise and shall provide notice to the taxpayer or business enterprise and the student scholarship organization of such preapproval, denial, or proration which shall not require any signed release or notarized approval by the taxpayer or business enterprise. In order to receive a tax credit under this Code section, the taxpayer or business enterprise shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer or business enterprise does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limit prescribed in paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.1) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection or the additional limitation specific to business enterprises prescribed in paragraph (1.1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to student scholarship organizations if the commissioner preapproved a donation for a tax credit prior to the date the student scholarship organization is removed from the Department of Education list pursuant to Code Section 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(6) In addition to the reporting requirements in Code Section 20-2A-3, each student scholarship organization shall file an annual report with the department showing any fees or assessments retained by the student scholarship organization during the calendar year.

(g)(1) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return or a business enterprise's tax return provided for in Code Section 33-8-6.

(2)(A) However, in the event the taxpayer files an electronic return permitted by this chapter, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner.

(B) With respect to a business enterprise's tax return provided for in Code Section 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and regulations regarding the manner in which such letters of confirmation of donations shall be filed in the case of tax returns filed electronically.

(3) The letter of confirmation of donation shall contain the taxpayer's or business enterprise's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(h)(1) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer or business enterprise as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(2) The amount of any scholarship received by an eligible student or eligible pre-kindergarten student shall be excluded from taxable net income for Georgia income tax purposes.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section.

**History.**

Code 1981, § 48-7-29.16, enacted by Ga. L. 2008, p. 1108, § 2/HB 1133; Ga. L. 2009, p. 816, § 6/HB 485; Ga. L. 2011, p. 529, § 2/HB 325; Ga. L. 2013, p. 1061, § 33D/HB 283; Ga. L. 2018, p. 644, § 1/HB 217; Ga. L. 2022, p. 150, § 2-1/HB 517; Ga. L. 2023, p. 730, § 7(13)/HB 475, effective July 1, 2023; Ga. L. 2024, p. 794, § 1-7/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.16 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years' tax liability" for "five years' tax liability" at the end of the first sentence in subsection (e). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by

Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

### 48-7-29.17. (Effective until January 1, 2025.) Tax credits for purchase of eligible single-family residence.

(a) As used in this Code section, the term "eligible single-family residence" means:

(1) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is a new residence, a residence occupied at the time of sale, or a previously occupied residence that was for sale prior to May 11, 2009, and is still for sale after May 11, 2009; or

(2) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is:

(A) An owner occupied residence with respect to which the owner's acquisition indebtedness, as defined in Section 163(h)(3)(B) of the Internal Revenue Code, determined without regard to clause (ii) thereof, was in default on or before March 1, 2009; or

(B) A residence with respect to which a foreclosure event has taken place and which is owned by the mortgagor or the mortgagor's agent.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for the purchase of one eligible single-family residence made during the six-month period commencing on June 1, 2009, and ending on November 30, 2009. The amount of such credit shall be either 1.2 percent of the purchase price of such eligible single-family residence or $1,800.00, whichever is less.

(c) The amount of the tax credit under subsection (b) of this Code section which may be claimed and allowed in a single tax year shall not exceed the taxpayer's income tax liability or one-third of the total amount of the credit allowed under subsection (b) of this Code section, whichever is less. Any excess or unused tax credit amount shall be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d)(1) A taxpayer shall submit to the commissioner a bona fide listing agreement with a real estate agent or broker licensed in this state, documentation that the eligible single-family residence was for sale

directly by the owner without a real estate agent or broker, or other appropriate documentation deemed sufficient by the commissioner to validate the eligibility of the single-family residence for purposes of the tax credit under this Code section.

(2) In the event the taxpayer files an electronic return, the documentation required under paragraph (1) of this subsection shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such documentation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such documentation shall be maintained by the taxpayer and made available upon request of the commissioner.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-29.17, enacted by Ga. L. 2009, p. 945, § 1/HB 261.
**Delayed effective date.**
Code Section 48-7-29.17 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2009, in paragraph (a)(1), "to May 11, 2009, and is still for sale after May 11, 2009; or" was substituted for "to the effective date of this Code section and is still for sale after the effective date of this Code section; or"; at the end of the first sentence of subsection (b), "commencing on June 1, 2009, and ending on November 30, 2009" was substituted for "commencing on the first day of the month following the effective date of this Code section and ending on the last day of the sixth complete month thereafter"; and a misspelling of "eligibility" was corrected in paragraph (d)(1).

## 48-7-29.17. (Effective January 1, 2025.) Tax credits for purchase of eligible single-family residence.

(a) As used in this Code section, the term "eligible single-family residence" means:

(1) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is a new residence, a residence occupied at the time of sale, or a previously occupied residence that was for sale prior to May 11, 2009, and is still for sale after May 11, 2009; or

(2) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is:

(A) An owner occupied residence with respect to which the

owner's acquisition indebtedness, as defined in Section 163(h)(3)(B) of the Internal Revenue Code, determined without regard to clause (ii) thereof, was in default on or before March 1, 2009; or

(B) A residence with respect to which a foreclosure event has taken place and which is owned by the mortgagor or the mortgagor's agent.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for the purchase of one eligible single-family residence made during the six-month period commencing on June 1, 2009, and ending on November 30, 2009. The amount of such credit shall be either 1.2 percent of the purchase price of such eligible single-family residence or $1,800.00, whichever is less.

(c) The amount of the tax credit under subsection (b) of this Code section which may be claimed and allowed in a single tax year shall not exceed the taxpayer's income tax liability or one-third of the total amount of the credit allowed under subsection (b) of this Code section, whichever is less. Any excess or unused tax credit amount shall be carried forward to apply to no more than three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d)(1) A taxpayer shall submit to the commissioner a bona fide listing agreement with a real estate agent or broker licensed in this state, documentation that the eligible single-family residence was for sale directly by the owner without a real estate agent or broker, or other appropriate documentation deemed sufficient by the commissioner to validate the eligibility of the single-family residence for purposes of the tax credit under this Code section.

(2) In the event the taxpayer files an electronic return, the documentation required under paragraph (1) of this subsection shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such documentation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such documentation shall be maintained by the taxpayer and made available upon request of the commissioner.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-29.17, enacted by Ga. L. 2009, p. 945, § 1/HB 261; Ga. L. 2024, p. 794, § 1-8/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.17 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "no more than three succeeding" for "the taxpayer's succeeding" in the second sentence in subsection (c). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.18. Tax credits for purchasers of alternative fuel heavy-duty and medium-duty vehicles.

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

(1) "Affiliated entity" means a person or business entity that is a member of the taxpayer's affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code.

(2) "Alternative fuel" means electricity, liquid petroleum gas, natural gas, or hydrogen fuel. The term does not include hybrid electric drives unless the vehicle has a gross weight equal to or greater than 8,500 pounds and less than 26,000 pounds.

(3) "Alternative fuel heavy-duty vehicle" means a new commercial vehicle, with a gross vehicle weight ratio equal to or more than 26,001 pounds, that is primarily fueled by an alternative fuel. As used in this paragraph, "primarily fueled by an alternative fuel" means a vehicle that is produced by an original equipment manufacturer and operates on 90 percent or more alternative fuel and on 10 percent or less gasoline or diesel fuel. In order to qualify for a tax credit under this Code section, the vehicle shall be registered in Georgia and be certified by the Department of Natural Resources as meeting all requirements set forth in paragraph (1) of subsection (a) of Code Section 48-7-29.19.

(4) "Alternative fuel medium-duty vehicle" means a new commercial vehicle, with a gross vehicle weight ratio equal to 8,500 pounds or more and less than 26,001 pounds, that is solely fueled by an alternative fuel and that is produced by an original equipment manufacturer. In order to qualify for a tax credit under this Code section, the vehicle shall be registered in Georgia and be certified by the Department of Natural Resources as meeting all requirements set forth in paragraph (1) of subsection (a) of Code Section 48-7-29.19.

(5) "New commercial vehicle" means a new commercial vehicle that: (A) is manufactured by an original equipment manufacturer, or

(B) is manufactured by an original equipment manufacturer and any third-party equipment manufacturers, provided that such third-party manufacturers provide such parts or services prior to the original sale of such vehicle to a purchaser, and all vehicle components, including the alternative fuel system, are covered by the original equipment manufacturer or covered under separate warranties by the original equipment manufacturer and the third-party equipment manufacturer that together provide warranty for the complete vehicle.

(6) "Taxpayer" means any person or business entity required by law to file a return or to pay taxes.

(b)(1) A taxpayer shall be allowed a credit against tax imposed under this article for the amount expended on or after July 1, 2015, and before June 30, 2017, to purchase an alternative fuel heavy-duty vehicle not to exceed $20,000.00 per vehicle.

(2) A taxpayer shall be allowed a credit against tax imposed under this article for the amount expended on or after July 1, 2015, and before June 30, 2017, to purchase an alternative fuel medium-duty vehicle not to exceed $12,000.00 per vehicle.

(c) The tax credits allowed under this Code section shall be limited to $2.5 million in each fiscal year beginning with fiscal year 2016 and ending with fiscal year 2017.

(d) In no event shall the total amount of any tax credit under this Code section for a taxpayer or an affiliated entity for a taxable year exceed the lesser of (i) a taxpayer's income tax liability, or (ii) $250,000.00. No unused portion of such tax credit shall be allowed the taxpayer or an affiliated entity against succeeding years' tax liabilities. No such credit shall be allowed the taxpayer or an affiliated entity against prior years' tax liabilities. The tax credit provided for in this Code section shall not apply to any vehicle for which the taxpayer or an affiliated entity has applied for and received a tax credit as set forth in Code Section 48-7-40.16.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.18, enacted by Ga. L. 2014, p. 14, § 1/HB 348.

**Editor's notes.**

Ga. L. 2014, p. 14, § 2/HB 348, not codified by the General Assembly, provides that the 2014 amendment shall be applicable to all taxable years beginning on or after January 1, 2015.

**Administrative rules and regulations.**

Alternative Fuel Heavy-Duty Vehicle and Alternative Fuel Medium-Duty Vehicle Tax Credits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.53.

## 48-7-29.19. Procedures, conditions, and limitations for the tax credits for purchasers of alternative fuel heavy-duty and medium-duty vehicles.

(a) A taxpayer seeking to claim a tax credit under the provisions of Code Section 48-7-29.18 shall submit an application to the commissioner for preapproval of such tax credit. Before any such application for such tax credit is filed, the applicant shall have completed the purchase and shall have registered the qualified vehicle or vehicles in this state. The application shall include:

(1) Certification from the Department of Natural Resources that the vehicle is an alternative fuel heavy-duty vehicle, or alternative fuel medium-duty vehicle, as defined in Code Section 48-7-29.18;

(2) A sworn affidavit from the taxpayer certifying that the vehicle shall accumulate at least 75 percent of its mileage in Georgia in each year for a five-year period, that is registered in Georgia and shall remain registered in Georgia for no less than five years; and

(3) Any other information requested by the commissioner pursuant to a rule or regulation promulgated hereunder. The commissioner shall create and make available the forms to be used for such applications. Within 60 days of receipt of a properly completed application, the commissioner shall preapprove the application if a sufficient amount of available tax credits remain.

(b) The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(c) In no event shall the aggregate amount of the tax credits preapproved by the commissioner for all taxpayers under the provisions of this Code section exceed the amounts specified in subsection (c) of Code Section 48-7-29.18.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section, including provisions for repayment of any credit in the event any of the certifications of paragraph (2) of subsection (a) of this Code section are or become untrue during the five-year period following the date of application.

**History.**
Code 1981, § 48-7-29.19, enacted by Ga. L. 2014, p. 14, § 1/HB 348.

**Editor's notes.**
Ga. L. 2014, p. 14, § 2/HB 348, not codified by the General Assembly,

provides that the 2014 amendment shall be applicable to all taxable years beginning on or after January 1, 2015.

**Administrative rules and regulations.**

Alternative Fuel Heavy-Duty Vehicle and Alternative Fuel Medium-Duty Vehicle Tax Credits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.53.

## 48-7-29.20. (Effective until January 1, 2025.) Tax credits for contributions to rural hospital organizations.

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

(1) "Qualified rural hospital organization expense" means the contribution of funds by an individual or corporate taxpayer to a rural hospital organization for the direct benefit of such organization during the tax year for which a credit under this Code section is claimed.

(2) "Rural hospital organization" means an organization that is approved by the Department of Community Health pursuant to Code Section 31-8-9.1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended;

(2) In the case of a married couple filing a joint return, the actual amount expended; or

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount expended; provided, however, that tax credits pursuant to this paragraph shall be allowed only for the portion of the income on which such tax was actually paid by such individual.

(b.1) From January 1 to June 30 each taxable year, an individual taxpayer shall be limited in its qualified rural hospital organization expenses allowable for credit under this Code section, and the commissioner shall not approve qualified rural hospital organization expenses incurred from January 1 to June 30 each taxable year, which exceed the following limits:

(1) In the case of a single individual or a head of household, $5,000.00;

(2) In the case of a married couple filing a joint return, $10,000.00; or

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, $10,000.00.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed $75 million per taxable year.

(2)(A) No more than $4 million of the aggregate limit established by paragraph (1) of this subsection shall be contributed to any individual rural hospital organization in any taxable year. From January 1 to June 30 each taxable year, the commissioner shall only preapprove contributions submitted by individual taxpayers in an amount not to exceed $2 million, and from corporate donors in an amount not to exceed $2 million. From July 1 to December 31 each taxable year, subject to the aggregate limit in paragraph (1) of this subsection and the individual rural hospital organization limit in this paragraph, the commissioner shall approve contributions submitted by individual taxpayers and corporations or other entities.

(B) In the event an individual or corporate donor desires to make a contribution to an individual rural hospital organization that has received the maximum amount of contributions for that taxable year, the Department of Community Health shall provide the individual or corporate donor with a list, ranked in order of financial need, as determined by the Department of Community Health, of rural hospital organizations still eligible to receive contributions for the taxable year.

(C) In the event that an individual or corporate donor desires to make a contribution to an unspecified or undesignated rural hospital organization, either directly to the department or through a third party that participates in soliciting, administering, or managing donations, such donation shall be attributed to the rural hospital organization ranked with the highest financial need that has not yet received the maximum amount of contributions for that taxable year, regardless of whether a third party

has a contractual relationship or agreement with such rural hospital organization.

(D) Any third party that participates in soliciting, advertising, or managing donations shall provide the complete list of rural hospital organizations eligible to receive the tax credit provided pursuant to this Code section including their ranking in order of financial need as determined by the Department of Community Health pursuant to Code Section 31-8-9.1, to any potential donor regardless of whether a third party has a contractual relationship or agreement with such rural hospital organization.

(3) For purposes of paragraphs (1) and (2) of this subsection, a rural hospital organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a rural hospital organization, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of contribution that the taxpayer intends to make to the rural hospital organization. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide written notice to the taxpayer and rural hospital organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the rural hospital organization within 180 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limits prescribed in paragraphs (1) and (2) of this subsection.

(4)(A) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection and the individual rural hospital organization limit established under paragraph (2) of this subsection.

(B) Any taxpayer preapproved by the department pursuant to this subsection shall retain their approval in the event the credit percentage in this Code section is modified for the year in which the taxpayer was preapproved.

(C) Upon the rural hospital organization's confirmation of receipt of donations that have been preapproved by the department, any taxpayer preapproved by the department pursuant to subsection (c) of this Code section shall receive the full benefit of the income tax credit established by this Code section even though the rural hospital organization to which the taxpayer

made a donation does not properly comply with the reports or filings required by this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to rural hospital organizations if the commissioner preapproved a donation for a tax credit prior to the date the rural hospital organization is removed from the Department of Community Health list pursuant to Code Section 31-8-9.1, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(f) In order for the taxpayer to claim the tax credit under this Code section, a letter of confirmation of donation issued by the rural hospital organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(g) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(h) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(i) The department shall post the following information in a prominent location on its website:

(1) All pertinent timelines relating to the tax credit, including, but not limited to:

(A) Beginning date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

(B) Ending date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

(C) Beginning date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period;

(D) Ending date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period; and

(E) Date by which preapproved contributions are required to be sent to the rural hospital organization;

(2) The list and ranking order of rural hospital organizations eligible to receive contributions established pursuant to paragraph (1) of subsection (b) of Code Section 31-8-9.1;

(3) A monthly progress report including:

(A) Total preapproved contributions to date by rural hospital organization;

(B) Total contributions received to date by rural hospital organization;

(C) Total aggregate amount of preapproved contributions made to date; and

(D) Aggregate amount of tax credits available; and

(4) A list of all preapproved contributions that were made to an unspecified or undesignated rural hospital organization and the rural hospital organizations that received such contributions.

(j) The Department of Audits and Accounts shall annually conduct an audit of the tax credit program established under this Code section, including the amount and recipient rural hospital organization of all contributions made, all tax credits received by individual and corporate donors, and all amounts received by third parties that solicited, administered, or managed donations pertaining to this Code section and Code Section 31-8-9.1.

(k) This Code section shall stand automatically repealed on December 31, 2024.

**History.**

Code 1981, § 48-7-29.20, enacted by Ga. L. 2016, p. 166, § 7/SB 258; Ga. L. 2017, p. 511, § 2/SB 180; Ga. L. 2018, p. 132, § 7/HB 769; Ga. L. 2019, p. 148, § 1-15/HB 186; Ga. L. 2019, p. 183, § 5/HB 321; Ga. L. 2022, p. 597, § 1/HB 1041.

**Delayed effective date.**

Code Section 48-7-29.20 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2022 amendment,** effective January 1, 2023, substituted "$75 million" for "$60 million" in paragraph (e)(1). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2016, p. 166, § 8(b)/SB 258, not codified by the General Assembly, provides that: "Sections 1 and 7 of this Act shall be applicable to all taxable years beginning on or after January 1, 2017."

Ga. L. 2017, p. 511, § 3/SB 180, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2017.

Ga. L. 2022, p. 597, § 2/HB 1041, not

codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2023.

**Administrative rules and regulations.**

Enforcement, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Rules and Regulations for Hospital Transparency, Rule 111-8-41-.06.

Qualified Rural Hospital Organization Expense Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.57.

**Law reviews.**

For article, "Tackling the Social Determinants of Health: A Central for Providers," see 33 Georgia St. U.L. Rev. 217 (2017).

## 48-7-29.20. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for contributions to rural hospital organizations.

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

(1) "Qualified rural hospital organization expense" means the contribution of funds by an individual or corporate taxpayer to a rural hospital organization for the direct benefit of such organization during the tax year for which a credit under this Code section is claimed.

(2) "Rural hospital organization" means an organization that is approved by the Department of Community Health pursuant to Code Section 31-8-9.1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended;

(2) In the case of a married couple filing a joint return, the actual amount expended; or

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount expended; provided, however, that tax credits pursuant to this paragraph shall be allowed only for the portion of the income on which such tax was actually paid by such individual.

(b.1) From January 1 to June 30 each taxable year, an individual taxpayer shall be limited in its qualified rural hospital organization expenses allowable for credit under this Code section, and the commissioner shall not approve qualified rural hospital organization expenses incurred from January 1 to June 30 each taxable year, which exceed the following limits:

(1) In the case of a single individual or a head of household, $5,000.00;

(2) In the case of a married couple filing a joint return, $10,000.00; or

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, $25,000.00.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed $100 million per taxable year.

(2)(A) No more than $4 million of the aggregate limit established by paragraph (1) of this subsection shall be contributed to any individual rural hospital organization in any taxable year. From January 1 to June 30 each taxable year, the commissioner shall only preapprove contributions submitted by individual taxpayers in an amount not to exceed $2 million, and from corporate donors in an amount not to exceed $2 million. From July 1 to December 31 each taxable year, subject to the aggregate limit in paragraph (1) of this subsection and the individual rural hospital organization limit in this paragraph, the commissioner shall approve contributions submitted by individual taxpayers and corporations or other entities.

(B) In the event an individual or corporate donor desires to make a contribution to an individual rural hospital organization that has received the maximum amount of contributions for that year, the Department of Community Health shall provide the individual or corporate donor with a list, ranked in order of financial need, as determined by the Department of Community Health, of rural hospital organizations still eligible to receive contributions for the year.

(C) In the event an individual or corporate donor desires to make a contribution to an individual rural hospital organization that would cause such rural hospital organization to exceed its

maximum amount of contributions for that year, the commissioner shall not deny such desired contribution, but shall approve the proportional amount of the desired contribution up to the rural hospital organization's maximum allowed amount and any remainder shall be attributed as provided for in subparagraph (D) of this paragraph.

(D) In the event that an individual or corporate donor desires to make a contribution to an unspecified or undesignated rural hospital organization, either directly to the department or through a third party that participates in soliciting, administering, or managing donations, such donation shall be attributed to the rural hospital organization ranked with the highest financial need that has not yet received the maximum amount of contributions for that year, regardless of whether a third party has a contractual relationship or agreement with such rural hospital organization.

(E) Any third party that participates in soliciting, advertising, or managing donations shall provide the complete list of rural hospital organizations eligible to receive the tax credit provided pursuant to this Code section including their ranking in order of financial need as determined by the Department of Community Health pursuant to Code Section 31-8-9.1, to any potential donor regardless of whether a third party has a contractual relationship or agreement with such rural hospital organization.

(3) For purposes of paragraphs (1) and (2) of this subsection, a rural hospital organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a rural hospital organization, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of contribution that the taxpayer intends to make to the rural hospital organization. The commissioner shall preapprove or deny the requested amount or a portion of such amount, if applicable pursuant to subparagraph (C) of paragraph (2) of this subsection, within 30 days after receiving the request from the taxpayer and shall provide written notice to the taxpayer and rural hospital organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, a taxpayer preapproved by the commissioner on or before September 30 shall make the contribution to the rural hospital organization within 180 days after receiving notice of preapproval from the commissioner, but not later than October 31. A taxpayer preapproved by the commissioner after September 30 shall make the contribution to the rural hospital organization on or before December 31. If the taxpayer does not

comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limits prescribed in paragraphs (1) and (2) of this subsection.

(4)(A) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection and the individual rural hospital organization limit established under paragraph (2) of this subsection.

(B) Any taxpayer preapproved by the commissioner pursuant to this subsection shall retain their approval in the event the credit percentage in this Code section is modified for the year in which the taxpayer was preapproved.

(C) Upon the rural hospital organization's confirmation of receipt of donations that have been preapproved by the commissioner, any taxpayer preapproved by the commissioner pursuant to subsection (c) of this Code section shall receive the full benefit of the income tax credit established by this Code section even though the rural hospital organization to which the taxpayer made a donation does not properly comply with the reports or filings required by this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to rural hospital organizations if the commissioner preapproved a donation for a tax credit prior to the date the rural hospital organization is removed from the Department of Community Health list pursuant to Code Section 31-8-9.1, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(f) In order for the taxpayer to claim the tax credit under this Code section, a letter of confirmation of donation issued by the rural hospital organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(g) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(h) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(i) The department shall post the following information in a prominent location on its website:

(1) All pertinent timelines relating to the tax credit, including, but not limited to:

(A) Beginning date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

(B) Ending date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

(C) Beginning date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period;

(D) Ending date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period; and

(E) Date by which preapproved contributions are required to be sent to the rural hospital organization;

(2) The list and ranking order of rural hospital organizations eligible to receive contributions established pursuant to paragraph (1) of subsection (b) of Code Section 31-8-9.1;

(3) A monthly progress report including:

(A) Total preapproved contributions to date by rural hospital organization;

(B) Total contributions received to date by rural hospital organization;

(C) Total aggregate amount of preapproved contributions made to date; and

(D) Aggregate amount of tax credits available; and

(4) A list of all preapproved contributions that were made to an unspecified or undesignated rural hospital organization and the rural hospital organizations that received such contributions.

(j) The Department of Audits and Accounts shall annually conduct an audit of the tax credit program established under this Code section, including the amount and recipient rural hospital organization of all

contributions made, all tax credits received by individual and corporate donors, and all amounts received by third parties that solicited, administered, or managed donations pertaining to this Code section and Code Section 31-8-9.1.

(k) This Code section shall stand automatically repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29.20, enacted by Ga. L. 2016, p. 166, § 7/SB 258; Ga. L. 2017, p. 511, § 2/SB 180; Ga. L. 2018, p. 132, § 7/HB 769; Ga. L. 2019, p. 148, § 1-15/HB 186; Ga. L. 2019, p. 183, § 5/HB 321; Ga. L. 2022, p. 597, § 1/HB 1041; Ga. L. 2024, p. 45, § 11/HB 1339, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.20 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "$25,000.00" for "$10,000.00" at the end of paragraph (b.1)(3); substituted "$100 million" for "$75 million" in paragraph (e)(1); in subparagraph (e)(2)(B), deleted "taxable" preceding "year" twice; added subparagraph (e)(2)(C) and redesignated former subparagraphs (e)(2)(C) and (e)(2)(D) as present subparagraphs (e)(2)(D) and (e)(2)(E); in subparagraph (e)(2)(D), deleted "taxable" preceding "year" near the end of the subparagraph; in paragraph (e)(3), inserted "or a portion of such amount, if applicable pursuant to subparagraph (C) of paragraph (2) of this subsection," in the third sentence, substituted the current provisions of the fourth sentence for the former provisions, which read: "In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the rural hospital organization within 180 days after receiving notice from the department that the requested amount was preapproved.", and added the fifth sentence; substituted "commissioner" for "department" in subparagraph (e)(4)(B) and twice in subparagraph (e)(4)(C); and, in subsection (k), inserted "and reserved" and substituted "December 31, 2029" for "December 31, 2024". See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 45, § 13/HB 1339, not codified by the General Assembly, makes subsections (b.1), (e), and (k) of this Code section applicable to taxable years beginning on or after January 1, 2025.

## 48-7-29.21. (Effective until January 1, 2025.) Tax credits for donations to nonprofit corporations awarding grants to public schools.

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

(1) "Qualified education donation" means a donation made by a taxpayer to the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in subsection (g.1) of Code Section 20-2-14.1 or, prior to January 1, 2022, to the Public Education Innovation Fund Foundation incorporated pursuant to subsection (b.1) of Code Section 20-14-26.1 for the purpose of awarding grants to public schools in this state.

(2) "Recipient" means the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in

subsection (g.1) of Code Section 20-2-14.1 or the Public Education Innovation Fund Foundation incorporated pursuant to subsection (b.1) of Code Section 20-14-26.1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education donations as follows:

(1) In the case of a single individual or a head of household, the actual amount donated or $2,500.00 per tax year, whichever is less;

(2) In the case of a married couple filing:

(A) A joint return, the actual amount donated or $5,000.00 per tax year, whichever is less; or

(B) Separate returns, the actual amount donated per individual per tax year or $2,500.00 per individual per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount donated or $25,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education donations in an amount not to exceed the actual amount donated or 75 percent of the corporation's income tax liability, whichever is less.

(d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education donation for the direct benefit of any particular school or program which the taxpayer's child or children attend. In soliciting donations, the recipient shall not represent that, in exchange for donating to such recipient, the school a taxpayer's child or children attend shall receive a grant pursuant to subsection (g.1) of Code Section 20-2-14.1 or paragraph (2) of subsection (b.1) of Code Section 20-14-26.1.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed:

(A) $5 million for the tax year ending on December 31, 2023; or

(B) $15 million for the tax year 2024, and for all subsequent tax years.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, the recipient shall notify a potential donor of the requirements of this Code section. Before making a donation to the recipient, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of donations that the taxpayer intends to make to the recipient. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide notice to the taxpayer and the recipient of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the donation to the recipient within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved donation amount when calculating the limit prescribed in paragraph (1) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of donations by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(g) In order for the taxpayer to claim a tax credit under this Code section, a confirmation of receipt of donation issued by the recipient shall be attached to the taxpayer's income tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The confirmation of receipt of donation shall contain the taxpayer's name, address, tax identification number, the amount of the donation, the date of the donation, and the amount of the credit.

(h) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section.

(j) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29.21, enacted by Ga. L. 2017, p. 100, § 2/HB 237; Ga. L. 2021, p. 248, § 3/SB 66; Ga. L. 2023, p. 408, § 1/HB 340, effective July 1, 2023; Ga. L. 2024, p. 245, § 5-2/SB 233, effective April 23, 2024.

**Delayed effective date.**

Code Section 48-7-29.21 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2023 amendment,** effective July 1, 2023, added subsection (j).

**The 2024 amendment,** effective April 23, 2024, in paragraph (b)(1), substituted "$2,500.00" for "$1,000.00"; designated the existing provisions of paragraph (b)(2) as paragraph (b)(2) and subparagraph (b)(2)(A); in subparagraph (b)(2)(A), substituted "$5,000.00" for "$2,500.00"; added subparagraph (b)(2)(B); substituted "$25,000.00" for "$10,000.00" near the middle of paragraph (b)(3); deleted the former paragraph (d)(2) designation; designated the existing provisions of paragraph (f)(1) as paragraph (f)(1) and subparagraph (f)(1)(A); added a colon at the end of paragraph (f)(1); substituted the current provisions of subparagraph (f)(1)(A) for the former provisions, which read: "$5 million per tax year"; added subparagraph (f)(1)(B); and substituted "December 31, 2029" for "December 31, 2026" at the end of subsection (j). See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2024, the former paragraph (d)(1) designation was deleted.

**Editor's notes.**

Ga. L. 2023, p. 408, § 2/HB 340, not codified by the General Assembly, provides: "An Act relating to education and to revenue and taxation to authorize the Public Education Innovation Fund Foundation to receive private donations to be used for grants to public schools; to provide for grant criteria; to provide for an income tax credit for qualified education donations; to provide for conditions and limitations; to provide for powers, duties, and authority of the state revenue commissioner with respect to such donations, approved April 27, 2017 (Ga. L. 2017, p. 100), is amended by repealing Section 3." As originally drafted, Ga. L. 2017, p. 100, § 3(b)/HB 237 repealed the Act as of December 31, 2020. Ga. L. 2017, p. 100, § 3(a)/HB 237 provided for its effective date and made the provisions of the Act applicable to all tax years beginning on or after January 1, 2018. Ga. L. 2018, p. 644, § 5/HB 217 amended Ga. L. 2017, p. 100, § 3/HB 237 by restating the full section but updating the sunset date to December 31, 2023. Ga. L. 2023, p. 408, § 2/HB 340 did not note that Ga. L. 2017, p. 100, § 3/HB 237 had been amended by Ga. L. 2018, p. 644, § 5/HB 217. The full repeal of Ga. L. 2017, p. 100, § 3/HB 237 repeals the applicability language originally found in Ga. L. 2017, p. 100, § 3(a)/HB 237.

Ga. L. 2024, p. 245, § 6-1(c)/SB 233, not codified by the General Assembly, makes the amendments to subsections (b), (d), (f), and (j) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

**Administrative rules and regulations.**

Qualified Education Donation Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia,

Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.60.

**48-7-29.21. (Effective January 1, 2025. Repealed effective December 31, 2029.) Tax credits for donations to nonprofit corporations awarding grants to public schools.**

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

(1) "Qualified education donation" means a donation made by a taxpayer to the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in subsection (g.1) of Code Section 20-2-14.1 or, prior to January 1, 2022, to the Public Education Innovation Fund Foundation incorporated pursuant to subsection (b.1) of Code Section 20-14-26.1 for the purpose of awarding grants to public schools in this state.

(2) "Recipient" means the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in subsection (g.1) of Code Section 20-2-14.1 or the Public Education Innovation Fund Foundation incorporated pursuant to subsection (b.1) of Code Section 20-14-26.1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education donations as follows:

(1) In the case of a single individual or a head of household, the actual amount donated or $2,500.00 per tax year, whichever is less;

(2) In the case of a married couple filing:

(A) A joint return, the actual amount donated or $5,000.00 per tax year, whichever is less; or

(B) Separate returns, the actual amount donated per individual per tax year or $2,500.00 per individual per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount donated or $25,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education donations in an amount not to exceed the actual amount donated or 75 percent of the corporation's income tax liability, whichever is less.

(d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education donation for the direct benefit of any particular school or program which the taxpayer's child or children attend. In soliciting donations, the recipient shall not represent that, in exchange for donating to such recipient, the school a taxpayer's child or children attend shall receive a grant pursuant to subsection (g.1) of Code Section 20-2-14.1 or paragraph (2) of subsection (b.1) of Code Section 20-14-26.1.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding three years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed:

(A) $5 million for the tax year ending on December 31, 2023; or

(B) $15 million for the tax year 2024, and for all subsequent tax years.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, the recipient shall notify a potential donor of the requirements of this Code section. Before making a donation to the recipient, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of donations that the taxpayer intends to make to the recipient. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide notice to the taxpayer and the recipient of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the donation to the recipient within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved donation amount when calculating the limit prescribed in paragraph (1) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of donations by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(g) In order for the taxpayer to claim a tax credit under this Code section, a confirmation of receipt of donation issued by the recipient shall be attached to the taxpayer's income tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The confirmation of receipt of donation shall contain the taxpayer's name, address, tax identification number, the amount of the donation, the date of the donation, and the amount of the credit.

(h) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section.

(j) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29.21, enacted by Ga. L. 2017, p. 100, § 2/HB 237; Ga. L. 2021, p. 248, § 3/SB 66; Ga. L. 2023, p. 408, § 1/HB 340, effective July 1, 2023; Ga. L. 2024, p. 245, § 5-2/SB 233, effective April 23, 2024; Ga. L. 2024, p. 794, § 1-9/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.21 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective April 23, 2024, in paragraph (b)(1), substituted "$2,500.00" for "$1,000.00"; designated the existing provisions of paragraph (b)(2) as paragraph (b)(2) and subparagraph (b)(2)(A); in subparagraph (b)(2)(A), substituted "$5,000.00" for "$2,500.00"; added subparagraph (b)(2)(B); substituted "$25,000.00" for "$10,000.00" near the middle of paragraph (b)(3); deleted the former paragraph (d)(2) designation; designated the existing provisions of paragraph (f)(1) as paragraph (f)(1) and subparagraph (f)(1)(A); added a colon at the end of paragraph (f)(1); substituted the current provisions of subparagraph (f)(1)(A) for the former provisions, which read: "$5 million per tax year"; added subparagraph (f)(1)(B); and substituted

"December 31, 2029" for "December 31, 2026" at the end of subsection (j). See Editor's notes for applicability.

**The second 2024 amendment,** effective January 1, 2025, substituted "three years' tax liability" for "five years' tax liability" at the end of the second sentence in subsection (e). See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2024, the former paragraph (d)(1) designation was deleted.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.22. (Repealed effective December 31, 2026.) Tax credits for certain medical preceptor rotations.

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

(1) "Advanced practice registered nurse student" means an individual participating in a training program in this state that is accredited by a nationally recognized accrediting body for advanced practice registered nursing programs for the training of individuals to become advanced practice registered nurses as defined in Code Section 43-26-3.

(2) "Community based faculty preceptor" means an individual who is a physician as defined in Code Section 43-34-21, an advanced practice registered nurse as defined in Code Section 43-26-3, or a physician assistant as defined in Code Section 43-34-102 and who is licensed as such by this state.

(3) "Medical student" means an individual participating in a training program in this state that is approved by the Georgia Composite Medical Board for the training of doctors of medicine or doctors of osteopathic medicine.

(4) "Physician assistant student" means an individual participating in a training program in this state that is approved by the Georgia Composite Medical Board for the training of individuals to become physician assistants as defined in Code Section 43-34-102.

(5) "Preceptorship rotation" means a period of preceptorship training of one or more medical students, physician assistant students, or advanced practice registered nurse students that in aggregate totals 160 hours.

(6) "Preceptorship training" means uncompensated community based training of a medical student, advanced practice registered nurse student, or physician assistant student matriculating in a training program in Georgia.

(b)(1) A community based faculty preceptor shall be allowed a credit

against the tax imposed by Code Section 48-7-20 if he or she conducts a preceptorship rotation.

(2) Such credit shall be accrued on a per preceptorship rotation basis in the amount of $500.00 for the first, second, or third preceptorship rotation and $1,000.00 for the fourth, fifth, sixth, seventh, eighth, ninth, or tenth preceptorship rotation completed in one calendar year by a community based faculty preceptor who is a physician as defined in Code Section 43-34-21 and $375.00 for the first, second, or third preceptorship rotation and $750.00 for the fourth, fifth, sixth, seventh, eighth, ninth, or tenth preceptorship rotation completed in one calendar year by a community based faculty preceptor who is an advanced practice registered nurse as defined in Code Section 43-26-3 or a physician assistant as defined in Code Section 43-34-102.

(3) An individual shall not accrue credit for more than ten preceptorship rotations in one calendar year.

(c)(1) A community based faculty preceptor shall not be eligible to earn hours credited toward preceptorship training if he or she has not registered with the state-wide Area Health Education Centers (AHEC) Program Office at Augusta University.

(2) The AHEC Program Office at Augusta University shall administer the Preceptor Tax Incentive Program and certify preceptorship rotations for the department on behalf of all eligible public and private training programs for medicine, osteopathic medicine, advanced practice nursing, and physician assistant at institutions in this state for the department.

(d) To receive the credit allowed by this Code section, a community based faculty preceptor shall claim such credit on his or her return for the tax year in which he or she completed the preceptorship rotation; shall certify that he or she did not receive payment during such tax year from any source for the training of a medical student, advanced practice registered nurse student, or physician assistant student; and shall submit supporting documentation as prescribed by the commissioner.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. No such tax credit shall be allowed the taxpayer against prior or succeeding years' tax liability.

(f)(1) On August 1, 2020, and annually thereafter, the commissioner and the AHEC Program Office at Augusta University shall issue a report to the Governor, the chairperson of the Senate Finance Committee, and the chairperson of the House Committee on Ways and Means concerning the tax credit created by this Code section.

(2) Such report shall include, for the prior calendar year, the:

(A) Number of community based faculty preceptors claiming a credit;

(B) Total number of preceptorship rotations completed;

(C) Number of medical students, advanced practice registered nurse students, and physician assistant students who participated in a preceptorship rotation; and

(D) Total amount of credits awarded pursuant to this Code section.

(g) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(h) This Code section shall stand repealed by operation of law at the last moment of December 31, 2026.

**History.**

Code 1981, § 48-7-29.22, enacted by Ga. L. 2019, p. 195, § 4/HB 287; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2023, p. 335, § 2-6/SB 56, effective January 1, 2024.

**Amendments.**

**The 2023 amendment,** effective January 1, 2024, substituted "December 31, 2026" for "December 31, 2023" at the end of subsection (h). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2019, p. 195, § 1/HB 287, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Georgia's primary care shortages are well documented, and it is imperative that the training of medical students, physician assistant students, and advanced practice registered nurse students be secured in this state as these are three key disciplines of the core primary care work force. Georgia invests heavily in the educational programs required to train and produce these students, and the Preceptor Tax Incentive Program is designed to alleviate some of the struggles faced by such programs as they seek to secure sufficient community based training sites for the education of their students; and

"(2) Off shore and out of state medical schools are using Georgia community based clinical faculty and paying them approximately $1,500.00 per rotation. Accordingly, a powerful incentive is required to ensure that Georgia's volunteer community based faculty preceptors are retained to provide training for medical students, physician assistant students, and advanced practice registered nurse students matriculating in Georgia based educational programs."

Ga. L. 2019, p. 195, § 2/HB 287, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Preceptor Tax Incentive Program' or 'PTIP.'"

Ga. L. 2019, p. 195, § 5/HB 287, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2019, and ending on or before December 31, 2023."

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall be effective on January 1, 2024, and shall be applicable to all taxable years beginning on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of

the Official Code of Georgia Annotated as they existed for such prior taxable years."

### 48-7-29.23. Tax credits for teachers in the teacher recruitment and retention program.

(a) A taxpayer who is designated by the Department of Education as a participating teacher in the teacher recruitment and retention program provided for in Code Section 20-2-251 shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount equal to $3,000.00.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding three years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**
Code 1981, § 48-7-29.23, enacted by Ga. L. 2021, p. 94, § 2/HB 32.
**Editor's notes.**
Ga. L. 2021, p. 94, § 3/HB 32, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2021, and shall be applicable to all taxable years beginning on or after January 1, 2022."

### 48-7-29.24. (Effective until January 1, 2025.) Tax credits for contributions to foster child support organizations.

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

(1) "Aging foster children" means:

(A) Foster children aged 16 through 18 that would benefit based on projected status at age 18, as determined by the division; and

(B) Former foster children up to and including age 21, or age 25 if legally possible, who have not been adopted or reunited with families.

(2) "Aging-out program" means a program with the primary function of supporting aging foster children.

(3) "Division" means the Division of Family and Children Services of the Department of Human Services.

(4) "Foster child support organization" means:

(A) The aging-out program of the Technical College System of Georgia Foundation;

(B) The aging-out program of the University System of Georgia Foundation, provided that such program is certified by the Governor's Office of Planning and Budget as an aging-out program; or

(C) Any domestic nonprofit corporation which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code Section 48-7-25, that has the primary function of:

(i) Operating an aging-out program or operating as or supporting a Georgia licensed child-placing agency; or

(ii) Disbursing funds directly to one or more of the entities identified in subparagraphs (A) or (B) or division (C)(i) of this paragraph.

(5) "Qualified contributions" means the preapproved contribution of funds made during the taxable year by a taxpayer to a qualified organization under the terms and conditions of this Code section.

(6) "Qualified expenditures" means expenditures made by a qualified organization for:

(A) The costs associated with tuition waivers granted pursuant to Code Section 20-3-660;

(B) Wraparound services for individuals attending a public postsecondary educational institution under a waiver granted pursuant to Code Section 20-3-660; or

(C) Mentorship services provided to aging foster children, provided that no mentor shall be compensated in excess of $100.00 per month for an aging foster child or $500.00 per year for any aging foster child.

(7) "Qualified organization" means a foster child support organization that has been certified and listed by the division pursuant to subsection (d) of this Code section.

(8) "Wraparound services" means services provided directly to aging foster children to support their education through postsecondary education services, housing services, vocation services, medical services, counseling services, mentorship services, nutrition services, transportation services, or up to $150.00 per month in direct cash payments for use on personal necessities.

(b)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed $20 million per calendar year.

(2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the limitations of subsection (b.1) of this Code section,

each taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified contributions made by the taxpayer on or after January 1, 2023, as follows:

(A) In the case of a single individual or a head of household, the actual amount of qualified contributions made;

(B) In the case of a married couple filing a joint return, the actual amount of qualified contributions made;

(C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph notwithstanding, in the case of an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the actual amount of qualified contributions it made; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership; or

(D) A corporation or other entity not provided for in subparagraphs (A) through (C) of this paragraph shall be allowed a credit against the tax imposed by this chapter, for qualified contributions in an amount not to exceed the actual amount of qualified contributions made.

(b.1) For the period beginning on January 1 and ending on June 30 of each year, an individual taxpayer shall not be allowed credit for contributions, and the commissioner shall not preapprove any contributions, that exceed the following limits:

(1) In the case of a single individual or a head of household, $2,500.00;

(2) In the case of a married couple filing a joint return, $5,000.00;

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, $5,000.00; or

(4) In the case of a corporation or other entity not provided for in paragraphs (1) through (3) of this subsection, 10 percent of such entity's income tax liability.

(c) Not later than October 1, 2022, the commissioner shall establish a page on the department's website for the purpose of implementing this Code section. Such page shall contain, at a minimum:

(1) A link to the division's web based application for certification

as a qualified organization as provided for in subsection (d) of this Code section;

(2) The current list of all qualified organizations;

(3) The total amount of tax credits remaining and available for preapproval for each year;

(4) A web based method for taxpayers seeking the preapproval status for contributions; and

(5) The information received by the department from each qualified organization pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code section.

(d)(1) The division shall establish and maintain a web based application process for the purpose of certifying foster child support organizations as qualified organizations. At a minimum such application created by the division shall include an agreement submitted by the applicant to fully comply with the terms and conditions of this Code section.

(2) The division shall certify any valid foster child support organization as a qualified organization upon successful completion of such application process.

(3) The division shall certify any foster child support organization operating as a Georgia licensed child-placing agency as a qualified organization within ten days of receipt of a written request or application.

(4) The division shall accept a first round of applications for certification as qualified organizations by October 1, 2022, and shall certify and notify such applicants of the division's decision on or before November 30, 2022. Thereafter the division shall establish a process for rolling applications and certifications.

(e)(1) Prior to making a contribution to any qualified organization, the taxpayer shall electronically notify the department, in a manner specified by the commissioner, of the total amount of contribution that such taxpayer intends to make to such qualified organization.

(2) Within 30 days after receiving a request for preapproval of contributions, the commissioner shall preapprove, deny, or prorate requested amounts on a first come, first served basis and shall provide notice to such taxpayer and the qualified organization of such preapproval, denial, or proration. Such notices shall not require any signed release or notarized approval by the taxpayer. The preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of subsection (b) of this Code section.

(3) Within 60 days after receiving the preapproval notice issued by the commissioner pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved amount to the qualified organization or such preapproved contribution amount shall expire. The commissioner shall not include such expired amounts in determining the remaining amount available under the aggregate limit for the respective calendar year.

(f)(1) Each qualified organization shall issue to each contributor a letter of confirmation of contribution, which shall include the taxpayer's name, address, tax identification number, the amount of the qualified contribution, the date of the qualified contribution, and the total amount of the credit allowed to the taxpayer.

(2) In order for a taxpayer to claim the tax credit allowed under this Code section, all such applicable letters as provided for in paragraph (1) of this subsection shall be attached to the taxpayer's tax return. When the taxpayer files an electronic return such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments to be affixed and transmitted to the department. In any such event, the taxpayer shall maintain such confirmation and such confirmation shall only be made available to the commissioner upon request.

(3) The commissioner shall allow tax credits for any preapproved contributions made to a qualified organization at the time the contributions were made if such organization was a qualified organization at the time of the commissioner's preapproval of the contributions and the taxpayer has otherwise complied with this Code section.

(g)(1) Each qualified organization shall annually submit to the department no later than May 15 of each year:

(A) A complete copy of its IRS Form 990 including applicable attachments, or for any qualified organization that is not required by federal law to file an IRS Form 990, such organization shall submit to the commissioner equivalent information on a form prescribed by the commissioner; and

(B) A report detailing the contributions received during the calendar year pursuant to this Code section on a date determined by, and on a form provided by, the commissioner which shall include:

(i) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

(ii) The total number and dollar value of corporate contributions and tax credits approved;

(iii) The total number and dollar value of all qualified expenditures made; and

(iv) A list of contributors, including the dollar value of each contribution and the dollar value of each approved tax credit.

(2) Except for the information published in accordance with subsection (c) of this Code section, all information or reports relative to this Code section that were provided by qualified organizations to the department shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information relates to the contributor or the qualified organization.

(h) By April 1 of each year each qualified organization shall publicly post on its website in a prominent place a copy of its prior year's annual budget containing the total amount of funds received from all sources relative to the amount of qualified contributions it received and the total amount and a description of how such contributions were utilized.

(i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified contributions to any particular purpose or for the direct benefit of any particular individual.

(2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or other entity that contracts directly with a qualified organization shall not be eligible for tax credits allowed under this Code section for contributions made to such qualified organization.

(3) In soliciting contributions, no person shall represent or direct that, in exchange for making qualified contributions to any qualified organization, a taxpayer shall receive any direct or particular benefit. The status as a qualified organization shall be revoked for any qualified organization determined to be in violation of this paragraph and shall not be renewed for at least two years.

(j)(1)(A) Each qualified organization shall use at least 80 percent of the funds received by it from qualified contributions to make qualified expenditures. Each qualified organization shall maintain accurate and current records of all expenditures of such funds and provide such records to the commissioner upon his or her request.

(B) No foster child support organization that meets only the definition of such term as provided in division (a)(4)(C)(ii) of this Code section shall retain more than 2.5 percent of qualified contributions for itself for any reason and shall only serve to pass

all of its qualified contributions to one or more qualified organizations that are foster child support organizations as such term is defined in subparagraphs (a)(4)(A), (a)(4)(B), or division (a)(4)(C)(i) of this Code section.

(2) A qualified organization that fails to comply with any of the requirements under this Code section shall be given written notice by the department of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(3) Upon failure to correct all deficiencies within 90 days, the department shall revoke the foster child support organization's status as a qualified organization and such entity shall be immediately removed from the department's list of organizations. All applications for preapproval of tax credits for contributions to such foster child support organization under this Code section made on or after the date of such removal shall be rejected.

(4) Each foster child support organization that has had its status revoked and has been delisted pursuant to this Code section, shall immediately cease all expenditures of funds received relative to this Code section, and shall transfer all of such funds that are not yet expended, to a properly operating qualified organization within 30 calendar days of its removal from the department's list of qualified organizations.

(k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount of qualified contributions that were utilized as deductions or exemptions from taxable income.

(2) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(l) The chairperson of the House Appropriations Committee and the chairperson of the Senate Committee on Appropriations shall have the authority to request an audit concerning this Code section as a whole or of any one or more qualified organizations. The commissioner, the state auditor, each qualified organization, each aging-out program, and the director of the division shall cooperate to the full extent necessary to conduct such audits.

(m) At the discretion of the commissioner or the director of the division, any suspected misuse of funds contributed or expended pursuant to this Code section shall be forwarded to the Attorney General for investigation and prosecution.

(n) The commissioner shall promulgate rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**
Code 1981, § 48-7-29.24, enacted by Ga. L. 2022, p. 729, § 1/HB 424.
**Delayed effective date.**
Code Section 48-7-29.24 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Cross references.**
Foster parents bill of rights, § 49-5-280 et seq.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2022, "organizations" was substituted for "organization" near the end of subparagraph (j)(1)(B) and "the" was inserted preceding "division" in the last sentence of subsection (l).
**Editor's notes.**
Ga. L. 2022, p. 729, § 2/HB 424, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2022, and shall be applicable to taxable years beginning on or after January 1, 2023."

## 48-7-29.24. (Effective January 1, 2025.) Tax credits for contributions to foster child support organizations.

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

(1) "Aging foster children" means:

(A) Foster children aged 16 through 18 that would benefit based on projected status at age 18, as determined by the division; and

(B) Former foster children up to and including age 21, or age 25 if legally possible, who have not been adopted or reunited with families.

(2) "Aging-out program" means a program with the primary function of supporting aging foster children.

(3) "Division" means the Division of Family and Children Services of the Department of Human Services.

(4) "Foster child support organization" means:

(A) The aging-out program of the Technical College System of Georgia Foundation;

(B) The aging-out program of the University System of Georgia Foundation, provided that such program is certified by the Governor's Office of Planning and Budget as an aging-out program; or

(C) Any domestic nonprofit corporation which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code Section 48-7-25, that has the primary function of:

(i) Operating an aging-out program or operating as or supporting a Georgia licensed child-placing agency; or

(ii) Disbursing funds directly to one or more of the entities

identified in subparagraphs (A) or (B) or division (C)(i) of this paragraph.

(5) "Qualified contributions" means the preapproved contribution of funds made during the taxable year by a taxpayer to a qualified organization under the terms and conditions of this Code section.

(6) "Qualified expenditures" means expenditures made by a qualified organization for:

(A) The costs associated with tuition waivers granted pursuant to Code Section 20-3-660;

(B) Wraparound services for individuals attending a public postsecondary educational institution under a waiver granted pursuant to Code Section 20-3-660; or

(C) Mentorship services provided to aging foster children, provided that no mentor shall be compensated in excess of $100.00 per month for an aging foster child or $500.00 per year for any aging foster child.

(7) "Qualified organization" means a foster child support organization that has been certified and listed by the division pursuant to subsection (d) of this Code section.

(8) "Wraparound services" means services provided directly to aging foster children to support their education through postsecondary education services, housing services, vocation services, medical services, counseling services, mentorship services, nutrition services, transportation services, or up to $150.00 per month in direct cash payments for use on personal necessities.

(b)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed $20 million per calendar year.

(2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the limitations of subsection (b.1) of this Code section, each taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified contributions made by the taxpayer on or after January 1, 2023, as follows:

(A) In the case of a single individual or a head of household, the actual amount of qualified contributions made;

(B) In the case of a married couple filing a joint return, the actual amount of qualified contributions made;

(C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph notwithstanding, in the case of an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S"

corporation, or a partner in a partnership, the actual amount of qualified contributions it made; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership; or

(D) A corporation or other entity not provided for in subparagraphs (A) through (C) of this paragraph shall be allowed a credit against the tax imposed by this chapter, for qualified contributions in an amount not to exceed the actual amount of qualified contributions made.

(b.1) For the period beginning on January 1 and ending on June 30 of each year, an individual taxpayer shall not be allowed credit for contributions, and the commissioner shall not preapprove any contributions, that exceed the following limits:

(1) In the case of a single individual or a head of household, $2,500.00;

(2) In the case of a married couple filing a joint return, $5,000.00;

(3) In the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, $5,000.00; or

(4) In the case of a corporation or other entity not provided for in paragraphs (1) through (3) of this subsection, 10 percent of such entity's income tax liability.

(c) Not later than October 1, 2022, the commissioner shall establish a page on the department's website for the purpose of implementing this Code section. Such page shall contain, at a minimum:

(1) A link to the division's web based application for certification as a qualified organization as provided for in subsection (d) of this Code section;

(2) The current list of all qualified organizations;

(3) The total amount of tax credits remaining and available for preapproval for each year;

(4) A web based method for taxpayers seeking the preapproval status for contributions; and

(5) The information received by the department from each qualified organization pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code section.

(d)(1) The division shall establish and maintain a web based application process for the purpose of certifying foster child support organizations as qualified organizations. At a minimum such application created by the division shall include an agreement submitted by the applicant to fully comply with the terms and conditions of this Code section.

(2) The division shall certify any valid foster child support organization as a qualified organization upon successful completion of such application process.

(3) The division shall certify any foster child support organization operating as a Georgia licensed child-placing agency as a qualified organization within ten days of receipt of a written request or application.

(4) The division shall accept a first round of applications for certification as qualified organizations by October 1, 2022, and shall certify and notify such applicants of the division's decision on or before November 30, 2022. Thereafter the division shall establish a process for rolling applications and certifications.

(e)(1) Prior to making a contribution to any qualified organization, the taxpayer shall electronically notify the department, in a manner specified by the commissioner, of the total amount of contribution that such taxpayer intends to make to such qualified organization.

(2) Within 30 days after receiving a request for preapproval of contributions, the commissioner shall preapprove, deny, or prorate requested amounts on a first come, first served basis and shall provide notice to such taxpayer and the qualified organization of such preapproval, denial, or proration. Such notices shall not require any signed release or notarized approval by the taxpayer. The preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of subsection (b) of this Code section.

(3) Within 60 days after receiving the preapproval notice issued by the commissioner pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved amount to the qualified organization or such preapproved contribution amount shall expire. The commissioner shall not include such expired amounts in determining the remaining amount available under the aggregate limit for the respective calendar year.

(f)(1) Each qualified organization shall issue to each contributor a letter of confirmation of contribution, which shall include the taxpayer's name, address, tax identification number, the amount of the qualified contribution, the date of the qualified contribution, and the total amount of the credit allowed to the taxpayer.

(2) In order for a taxpayer to claim the tax credit allowed under this Code section, all such applicable letters as provided for in paragraph (1) of this subsection shall be attached to the taxpayer's tax return. When the taxpayer files an electronic return such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments to be affixed and transmitted to the department. In any such event, the taxpayer shall maintain such confirmation and such confirmation shall only be made available to the commissioner upon request.

(3) The commissioner shall allow tax credits for any preapproved contributions made to a qualified organization at the time the contributions were made if such organization was a qualified organization at the time of the commissioner's preapproval of the contributions and the taxpayer has otherwise complied with this Code section.

(g)(1) Each qualified organization shall annually submit to the department no later than May 15 of each year:

(A) A complete copy of its IRS Form 990 including applicable attachments, or for any qualified organization that is not required by federal law to file an IRS Form 990, such organization shall submit to the commissioner equivalent information on a form prescribed by the commissioner; and

(B) A report detailing the contributions received during the calendar year pursuant to this Code section on a date determined by, and on a form provided by, the commissioner which shall include:

(i) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

(ii) The total number and dollar value of corporate contributions and tax credits approved;

(iii) The total number and dollar value of all qualified expenditures made; and

(iv) A list of contributors, including the dollar value of each contribution and the dollar value of each approved tax credit.

(2) Except for the information published in accordance with subsection (c) of this Code section, all information or reports relative to this Code section that were provided by qualified organizations to the department shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information relates to the contributor or the qualified organization.

(h) By April 1 of each year each qualified organization shall publicly post on its website in a prominent place a copy of its prior year's annual budget containing the total amount of funds received from all sources relative to the amount of qualified contributions it received and the total amount and a description of how such contributions were utilized.

(i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified contributions to any particular purpose or for the direct benefit of any particular individual.

(2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or other entity that contracts directly with a qualified organization shall not be eligible for tax credits allowed under this Code section for contributions made to such qualified organization.

(3) In soliciting contributions, no person shall represent or direct that, in exchange for making qualified contributions to any qualified organization, a taxpayer shall receive any direct or particular benefit. The status as a qualified organization shall be revoked for any qualified organization determined to be in violation of this paragraph and shall not be renewed for at least two years.

(j)(1)(A) Each qualified organization shall use at least 80 percent of the funds received by it from qualified contributions to make qualified expenditures. Each qualified organization shall maintain accurate and current records of all expenditures of such funds and provide such records to the commissioner upon his or her request.

(B) No foster child support organization that meets only the definition of such term as provided in division (a)(4)(C)(ii) of this Code section shall retain more than 2.5 percent of qualified contributions for itself for any reason and shall only serve to pass all of its qualified contributions to one or more qualified organizations that are foster child support organizations as such term is defined in subparagraphs (a)(4)(A), (a)(4)(B), or division (a)(4)(C)(i) of this Code section.

(2) A qualified organization that fails to comply with any of the requirements under this Code section shall be given written notice by the department of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(3) Upon failure to correct all deficiencies within 90 days, the department shall revoke the foster child support organization's status as a qualified organization and such entity shall be immediately removed from the department's list of organizations. All applications for preapproval of tax credits for contributions to such foster

child support organization under this Code section made on or after the date of such removal shall be rejected.

(4) Each foster child support organization that has had its status revoked and has been delisted pursuant to this Code section, shall immediately cease all expenditures of funds received relative to this Code section, and shall transfer all of such funds that are not yet expended, to a properly operating qualified organization within 30 calendar days of its removal from the department's list of qualified organizations.

(k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount of qualified contributions that were utilized as deductions or exemptions from taxable income.

(2) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding three years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(l) The chairperson of the House Appropriations Committee and the chairperson of the Senate Committee on Appropriations shall have the authority to request an audit concerning this Code section as a whole or of any one or more qualified organizations. The commissioner, the state auditor, each qualified organization, each aging-out program, and the director of the division shall cooperate to the full extent necessary to conduct such audits.

(m) At the discretion of the commissioner or the director of the division, any suspected misuse of funds contributed or expended pursuant to this Code section shall be forwarded to the Attorney General for investigation and prosecution.

(n) The commissioner shall promulgate rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.24, enacted by Ga. L. 2022, p. 729, § 1/HB 424; Ga. L. 2024, p. 794, § 1-10/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.24 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years' tax liability" for "five years' tax liability" at the end of the second sentence in paragraph (k)(2). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

**48-7-29.25. (Effective until January 1, 2025.) Tax credits for contributions to law enforcement foundations.**

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

(1) "Law enforcement foundation" means any domestic nonprofit corporation with the sole function of supporting one local law enforcement unit through a formal relationship recognized by such local law enforcement unit and which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code Section 48-7-25.

(2) "Local law enforcement unit" means any agency, office, or department of a county, municipality, or consolidated government of this state whose primary functions include the enforcement of criminal or traffic laws, preservation of public order, protection of life and property, or the prevention, detection, or investigation of crime. Such term shall include any sheriff's office in this state. Such term shall not include any agency, office, or department conducting similar functions for any court, state board, state authority, state law enforcement division or department, railroad police, or any unit appointed under the authority of Chapter 9 of Title 35 of the Official Code of Georgia Annotated.

(3) "Qualified contributions" means the preapproved contribution of funds by a taxpayer to a qualified law enforcement foundation under the terms and conditions of this Code section.

(4) "Qualified expenditures" means expenditures made by a qualified law enforcement foundation:

(A)(i) For salary supplements paid no more than twice annually or training provided directly to law enforcement officers employed by the local law enforcement unit affiliated with such qualified law enforcement foundation; or

(ii) For the purchase, lease, maintenance, or improvement of equipment to be used by such officers; or

(B) To cover any costs incurred by the local law enforcement unit for the operation of an emergency response team that combines law enforcement officers and behavioral health specialists, provided that such costs shall not include salaries or other regular compensation.

(5) "Qualified law enforcement foundation" means any law enforcement foundation that has been designated as the sole local law enforcement foundation for a single local law enforcement unit and has been certified and listed by the commissioner pursuant to subsection (d) of this Code section.

(b)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed $75 million per calendar year. Each qualified law enforcement foundation shall be limited to accepting $3 million per year of contributions made under this Code section.

(2) Subject to the aggregate limit provided in paragraph (1) of this subsection for taxable years beginning on or after January 1, 2023, and ending on or before December 31, 2027, each taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified contributions made by the taxpayer as follows:

(A) In the case of a single individual or a head of household, the actual amount of qualified contributions made or $5,000.00 per tax year, whichever is less;

(B) In the case of a married couple filing a joint return, the actual amount of qualified contributions made or $10,000.00 per tax year, whichever is less;

(C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph notwithstanding, in the case of an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the actual amount of qualified contributions it made or $10,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership; or

(D) A corporation or other entity not provided for in subparagraphs (A) through (C) of this paragraph shall be allowed a credit against the tax imposed by this chapter, for qualified contributions in an amount not to exceed the actual amount of qualified contributions made or 75 percent of such corporation's or other entity's income tax liability, whichever is less.

(3) Nothing in this Code section shall be construed to limit the ability of a local law enforcement unit to receive gifts, grants, and other benefits from any source allowed by law; provided, however, that no local law enforcement unit shall, under this Code section, accept or receive more than $3 million in contributions in any calendar year.

(c) The commissioner shall establish a page on the department's website for the purpose of implementing this Code section. Such page shall contain, at a minimum:

(1) The application and requirements to be certified as a qualified law enforcement foundation;

(2) The current list of all qualified law enforcement foundations and their affiliate law enforcement units;

(3) The total amount of tax credits remaining and available for preapproval for each year;

(4) A web based method for taxpayers seeking the preapproval status for contributions; and

(5) The information received by the department from each qualified law enforcement foundation pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code section.

(d) Any valid law enforcement foundation as a qualified law enforcement foundation shall be certified by the commissioner following the commissioner's receipt of a properly completed application and after the commissioner has confirmed that a single local law enforcement unit has validly designated the applicant as its sole law enforcement foundation. Such application shall be prescribed by the commissioner and shall include an agreement by the applicant to fully comply with the terms and conditions of this Code section.

(e)(1) Prior to making a contribution to any qualified law enforcement foundation, the taxpayer shall electronically notify the department, in a manner specified by the commissioner, of the total amount of contribution that such taxpayer intends to make to such qualified law enforcement foundation.

(2) Within 30 days after receiving a request for preapproval of contributions, the commissioner shall preapprove, deny, or prorate requested amounts on a first come, first served basis and shall provide notice to such taxpayer and the qualified law enforcement foundation of such preapproval, denial, or proration. Such notices shall not require any signed release or notarized approval by the taxpayer. The preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the limits established under paragraph (1) of subsection (b) of this Code section.

(3) Within 60 days after receiving the preapproval notice issued by the commissioner pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved amount to the qualified law enforcement foundation or such preapproved contribution amount shall expire. The commissioner shall not include such expired amounts in determining the remaining amount available under the aggregate limit for the respective calendar year.

(f)(1) Each qualified law enforcement foundation shall issue to each contributor a letter of confirmation of contribution, which shall include the taxpayer's name, address, tax identification number, the amount of the qualified contribution, the date of the qualified

contribution, and the total amount of the credit allowed to the taxpayer.

(2) In order for a taxpayer to claim the tax credit allowed under this Code section, all such applicable letters as provided for in paragraph (1) of this subsection shall be attached to the taxpayer's tax return. When the taxpayer files an electronic return such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments to be affixed and transmitted to the department. In any such event, the taxpayer shall maintain such confirmation and such confirmation shall only be made available to the commissioner upon request.

(3) The commissioner shall allow tax credits for any preapproved contributions made to a local law enforcement foundation at the time the contributions were made if such foundation was a qualified law enforcement foundation at the time of the commissioner's preapproval of the contributions and the taxpayer has otherwise complied with this Code section.

(g)(1) Each qualified law enforcement foundation shall annually submit to the department:

(A) A complete copy of its IRS Form 990 and other applicable attachments, or for any qualified law enforcement foundation that is not required by federal law to file an IRS Form 990, such foundation shall submit to the commissioner equivalent information on a form prescribed by the commissioner; and

(B) A report detailing the contributions received during the calendar year pursuant to this Code section on a date determined by, and on a form provided by, the commissioner which shall include:

(i) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

(ii) The total number and dollar value of corporate contributions and tax credits approved;

(iii) The total number and dollar value of all qualified expenditures made; and

(iv) A list of contributors, including the dollar value of each contribution and the dollar value of each approved tax credit.

(2) Except for the information published in accordance with paragraph (c) or (h) of this Code section, all information or reports

relative to this Code section that were provided by qualified law enforcement foundations to the department shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information relates to the contributor or the qualified law enforcement foundation.

(h) Each qualified law enforcement foundation shall publish on its website a copy of its affiliated local law enforcement unit's prior year's annual budget containing the total amount of funds received from its local governing body. If a qualified law enforcement foundation does not maintain a public website, such information shall be otherwise made available by the qualified law enforcement foundation to the public upon request.

(i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified contributions to any particular purpose or for the direct benefit of any particular individual.

(2) A taxpayer that operates, owns, is affiliated with, or is a subsidiary of an association, organization, or other entity that contracts directly with a qualified law enforcement foundation or the local law enforcement unit that is affiliated with a qualified law enforcement foundation shall not be eligible for tax credits allowed under this Code section for contributions made to such qualified law enforcement foundation.

(3) In soliciting contributions, no person shall represent or direct that, in exchange for making qualified contributions to any qualified law enforcement foundation, a taxpayer shall receive any direct or particular benefit. The status as a qualified law enforcement foundation shall be revoked for any law enforcement foundation determined to be in violation of this paragraph and shall not be renewed for at least two years.

(j)(1) Qualified contributions shall only be used for qualified expenditures. Each qualified law enforcement foundation shall maintain accurate and current records of all expenditures of qualified contributions and provide such records to the commissioner upon his or her request.

(2) A qualified law enforcement foundation that fails to comply with any of the requirements under this Code section shall be given written notice by the department of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(3) Upon failure to correct all deficiencies within 90 days, the department shall revoke the law enforcement foundation's status as a qualified law enforcement foundation and such entity shall be

immediately removed from the department's list of qualified law enforcement foundations. All applications for preapproval of tax credits for contributions to such law enforcement foundation under this Code section made on or after the date of such removal shall be rejected.

(4) Each law enforcement foundation that has had its status revoked and has been delisted pursuant to this Code section, shall immediately cease all expenditures of funds received relative to this Code section, and shall transfer all of such funds that are not yet expended, to a properly operating qualified law enforcement foundation within 30 calendar days of its removal from the department's list of qualified law enforcement foundations.

(k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount of qualified contributions that were utilized as deductions or exemptions from taxable income.

(2) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(l) The commissioner shall promulgate rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.25, enacted by Ga. L. 2022, p. 716, § 2/SB 361.

**Delayed effective date.**

Code Section 48-7-29.25 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 2022, p. 716, § 1/SB 361, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Law Enforcement Strategic Support Act' or the 'LESS Crime Act.'"

Ga. L. 2022, p. 716, § 3/SB 361, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2023.

**Law reviews.**

For article, "SB 361: Law Enforcement Strategic Support Act," see 39 Georgia St. U.L. Rev. 263 (2022).

## 48-7-29.25. (Effective January 1, 2025.) Tax credits for contributions to law enforcement foundations.

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

(1) "Law enforcement foundation" means any domestic nonprofit corporation with the sole function of supporting one local law enforcement unit through a formal relationship recognized by such local law enforcement unit and which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code Section 48-7-25.

(2) "Local law enforcement unit" means any agency, office, or department of a county, municipality, or consolidated government of this state whose primary functions include the enforcement of criminal or traffic laws, preservation of public order, protection of life and property, or the prevention, detection, or investigation of crime. Such term shall include any sheriff's office in this state. Such term shall not include any agency, office, or department conducting similar functions for any court, state board, state authority, state law enforcement division or department, railroad police, or any unit appointed under the authority of Chapter 9 of Title 35 of the Official Code of Georgia Annotated.

(3) "Qualified contributions" means the preapproved contribution of funds by a taxpayer to a qualified law enforcement foundation under the terms and conditions of this Code section.

(4) "Qualified expenditures" means expenditures made by a qualified law enforcement foundation:

(A)(i) For salary supplements paid no more than twice annually or training provided directly to law enforcement officers employed by the local law enforcement unit affiliated with such qualified law enforcement foundation; or

(ii) For the purchase, lease, maintenance, or improvement of equipment to be used by such officers; or

(B) To cover any costs incurred by the local law enforcement unit for the operation of an emergency response team that combines law enforcement officers and behavioral health specialists, provided that such costs shall not include salaries or other regular compensation.

(5) "Qualified law enforcement foundation" means any law enforcement foundation that has been designated as the sole local law enforcement foundation for a single local law enforcement unit and has been certified and listed by the commissioner pursuant to subsection (d) of this Code section.

(b)(1) The aggregate amount of tax credits allowed under this Code section shall not exceed $75 million per calendar year. Each qualified law enforcement foundation shall be limited to accepting $3 million per year of contributions made under this Code section.

(2) Subject to the aggregate limit provided in paragraph (1) of this subsection for taxable years beginning on or after January 1, 2023, and ending on or before December 31, 2027, each taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified contributions made by the taxpayer as follows:

(A) In the case of a single individual or a head of household, the

actual amount of qualified contributions made or $5,000.00 per tax year, whichever is less;

(B) In the case of a married couple filing a joint return, the actual amount of qualified contributions made or $10,000.00 per tax year, whichever is less;

(C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph notwithstanding, in the case of an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the actual amount of qualified contributions it made or $10,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership; or

(D) A corporation or other entity not provided for in subparagraphs (A) through (C) of this paragraph shall be allowed a credit against the tax imposed by this chapter, for qualified contributions in an amount not to exceed the actual amount of qualified contributions made or 75 percent of such corporation's or other entity's income tax liability, whichever is less.

(3) Nothing in this Code section shall be construed to limit the ability of a local law enforcement unit to receive gifts, grants, and other benefits from any source allowed by law; provided, however, that no local law enforcement unit shall, under this Code section, accept or receive more than $3 million in contributions in any calendar year.

(c) The commissioner shall establish a page on the department's website for the purpose of implementing this Code section. Such page shall contain, at a minimum:

(1) The application and requirements to be certified as a qualified law enforcement foundation;

(2) The current list of all qualified law enforcement foundations and their affiliate law enforcement units;

(3) The total amount of tax credits remaining and available for preapproval for each year;

(4) A web based method for taxpayers seeking the preapproval status for contributions; and

(5) The information received by the department from each qualified law enforcement foundation pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code section.

(d) Any valid law enforcement foundation as a qualified law enforcement foundation shall be certified by the commissioner following the commissioner's receipt of a properly completed application and after the commissioner has confirmed that a single local law enforcement unit has validly designated the applicant as its sole law enforcement foundation. Such application shall be prescribed by the commissioner and shall include an agreement by the applicant to fully comply with the terms and conditions of this Code section.

(e)(1) Prior to making a contribution to any qualified law enforcement foundation, the taxpayer shall electronically notify the department, in a manner specified by the commissioner, of the total amount of contribution that such taxpayer intends to make to such qualified law enforcement foundation.

(2) Within 30 days after receiving a request for preapproval of contributions, the commissioner shall preapprove, deny, or prorate requested amounts on a first come, first served basis and shall provide notice to such taxpayer and the qualified law enforcement foundation of such preapproval, denial, or proration. Such notices shall not require any signed release or notarized approval by the taxpayer. The preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the limits established under paragraph (1) of subsection (b) of this Code section.

(3) Within 60 days after receiving the preapproval notice issued by the commissioner pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved amount to the qualified law enforcement foundation or such preapproved contribution amount shall expire. The commissioner shall not include such expired amounts in determining the remaining amount available under the aggregate limit for the respective calendar year.

(f)(1) Each qualified law enforcement foundation shall issue to each contributor a letter of confirmation of contribution, which shall include the taxpayer's name, address, tax identification number, the amount of the qualified contribution, the date of the qualified contribution, and the total amount of the credit allowed to the taxpayer.

(2) In order for a taxpayer to claim the tax credit allowed under this Code section, all such applicable letters as provided for in paragraph (1) of this subsection shall be attached to the taxpayer's tax return. When the taxpayer files an electronic return such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments to be affixed and transmitted to the department. In any such event, the taxpayer shall maintain such confirmation and such confirmation shall only be made available to the commissioner upon request.

(3) The commissioner shall allow tax credits for any preapproved contributions made to a local law enforcement foundation at the time the contributions were made if such foundation was a qualified law enforcement foundation at the time of the commissioner's preapproval of the contributions and the taxpayer has otherwise complied with this Code section.

(g)(1) Each qualified law enforcement foundation shall annually submit to the department:

(A) A complete copy of its IRS Form 990 and other applicable attachments, or for any qualified law enforcement foundation that is not required by federal law to file an IRS Form 990, such foundation shall submit to the commissioner equivalent information on a form prescribed by the commissioner; and

(B) A report detailing the contributions received during the calendar year pursuant to this Code section on a date determined by, and on a form provided by, the commissioner which shall include:

(i) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;

(ii) The total number and dollar value of corporate contributions and tax credits approved;

(iii) The total number and dollar value of all qualified expenditures made; and

(iv) A list of contributors, including the dollar value of each contribution and the dollar value of each approved tax credit.

(2) Except for the information published in accordance with paragraph (c) or (h) of this Code section, all information or reports relative to this Code section that were provided by qualified law enforcement foundations to the department shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information relates to the contributor or the qualified law enforcement foundation.

(h) Each qualified law enforcement foundation shall publish on its website a copy of its affiliated local law enforcement unit's prior year's annual budget containing the total amount of funds received from its local governing body. If a qualified law enforcement foundation does not maintain a public website, such information shall be otherwise made available by the qualified law enforcement foundation to the public upon request.

(i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified contributions to any particular purpose or for the direct benefit of any particular individual.

(2) A taxpayer that operates, owns, is affiliated with, or is a subsidiary of an association, organization, or other entity that contracts directly with a qualified law enforcement foundation or the local law enforcement unit that is affiliated with a qualified law enforcement foundation shall not be eligible for tax credits allowed under this Code section for contributions made to such qualified law enforcement foundation.

(3) In soliciting contributions, no person shall represent or direct that, in exchange for making qualified contributions to any qualified law enforcement foundation, a taxpayer shall receive any direct or particular benefit. The status as a qualified law enforcement foundation shall be revoked for any law enforcement foundation determined to be in violation of this paragraph and shall not be renewed for at least two years.

(j)(1) Qualified contributions shall only be used for qualified expenditures. Each qualified law enforcement foundation shall maintain accurate and current records of all expenditures of qualified contributions and provide such records to the commissioner upon his or her request.

(2) A qualified law enforcement foundation that fails to comply with any of the requirements under this Code section shall be given written notice by the department of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(3) Upon failure to correct all deficiencies within 90 days, the department shall revoke the law enforcement foundation's status as a qualified law enforcement foundation and such entity shall be immediately removed from the department's list of qualified law enforcement foundations. All applications for preapproval of tax credits for contributions to such law enforcement foundation under this Code section made on or after the date of such removal shall be rejected.

(4) Each law enforcement foundation that has had its status revoked and has been delisted pursuant to this Code section, shall immediately cease all expenditures of funds received relative to this Code section, and shall transfer all of such funds that are not yet expended, to a properly operating qualified law enforcement foundation within 30 calendar days of its removal from the department's list of qualified law enforcement foundations.

(k)(1) No credit shall be allowed under this Code section to a

taxpayer for any amount of qualified contributions that were utilized as deductions or exemptions from taxable income.

(2) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding three years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(l) The commissioner shall promulgate rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**

Code 1981, § 48-7-29.25, enacted by Ga. L. 2022, p. 716, § 2/SB 361; Ga. L. 2024, p. 794, § 1-11/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-29.25 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years' tax liability" for "five years' tax liability" at the end of the second sentence in paragraph (k)(2). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-29.26. (Reserved effective December 31, 2029.) Tax credits for rural health care professionals.

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

(1) "Dentist" means a person licensed pursuant to Chapter 11 of Title 43 to practice dentistry in this state.

(2) "Physician" means a person licensed pursuant to Chapter 34 of Title 43 as a physician who practices medicine in the field of family practice, obstetrics and gynecology, pediatrics, internal medicine, or general surgery.

(3) "Rural county" means a county in this state that has a population of less than 50,000 according to the United States decennial census of 2020 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(4) "Rural health care professional" means a dentist or physician who practices in a rural county and resides in a rural county.

(b)(1) A person qualifying as a rural health care professional shall be allowed a credit against the tax imposed by Code Section 48-7-20 in

the amount of $5,000.00 for each 12 month period of employment as a rural health care professional; provided, however, that such amount shall be prorated on a monthly basis for the first year during which a person qualifies as a rural health care professional. The tax credit may be claimed each year for up to five years, provided that the rural health care professional continues to qualify as a rural health care professional. No person shall be allowed a tax credit under this Code section and Code Section 48-7-29 in the same taxable year. Each person shall be limited to a total of five years of tax credits across this Code section and Code Section 48-7-29 combined. In no event shall the amount of the tax credit exceed the taxpayer's income tax liability, nor shall any unused tax credit be allowed to be carried forward or applied to any of the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) No rural health care professional who on May 15, 2024, is currently practicing in a rural county shall be eligible to receive the credit provided for in paragraph (1) of this subsection. No credit shall be allowed for a rural health care professional who has previously practiced in a rural county, unless after May 15, 2024, that rural health care professional returns to practice in a rural county after having practiced in a county other than a rural county for at least three years.

(3) The aggregate amount of tax credits allowed pursuant to this Code section shall not exceed $2 million for any calendar year. The commissioner shall allow the tax credits on a first come, first served basis.

(c) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

(d) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-29.26, enacted by Ga. L. 2024, p. 72, § 2/HB 82, effective May 15, 2024.

**Effective date.**

This Code section became effective May 15, 2024. See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 72, § 3/HB 82, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2024.

**48-7-30. Taxation of nonresident's net income derived from activities within state; separate accounting; deductions; applicability of provisions for corporations to nonresidents.**

(a) The tax imposed by this chapter shall apply to the entire net income of a taxable nonresident derived from employment, trade, business, professional, or other activity for financial gain or profit performed or carried on within this state, including, but not limited to, the rental of real or personal property located within this state or for use within this state, the sale, exchange, or other disposition of tangible or intangible property having a situs in this state, the receipt of proceeds of any lottery prize awarded by the Georgia Lottery Corporation, and withdrawals of contributions to a savings trust account under Article 11 of Chapter 3 of Title 20 which are required to be included in taxable net income as provided in subparagraph (b)(10)(C) of Code Section 48-7-27.

(b) A taxable nonresident whose income is derived from employment, trade, business, professional, or other activity performed or carried on within and outside this state shall be taxed only upon the income derived from carrying on the activity within this state. The amount of taxable income may be determined by a separate accounting of the income if the commissioner is satisfied that the separate accounting reflects correctly the income fairly attributable to this state. Otherwise, the amount of taxable income shall be determined in the manner prescribed by this chapter for the allocation and apportionment of income of corporations engaged in business within and outside this state.

(c) Except as otherwise provided by law, all provisions of this chapter with respect to the definitions, determination, and computation of taxable net income of residents of this state and with respect to the assessment, levy, and collection of the tax imposed by this chapter on the net income of residents of this state shall apply equally to the taxation of the net income of taxable nonresidents.

(d)(1) A taxable nonresident shall be allowed to deduct allowable expenses, interest, taxes, losses, bad debts, depreciation, and similar business expenses when the income of the taxable nonresident is derived from:

(A) Employment, trade, business, professional, or other activity performed or carried on:

(i) Entirely within this state; or

(ii) Within and outside this state when the nonresident is permitted by the commissioner to use separate accounting;

(B) The rental of real or personal property located within this state or for use within this state;

(C) The sale, exchange, or other disposition of tangible or intangible property having a situs in this state.

(2) Expenses allowable to a taxable nonresident as provided in paragraph (1) of this subsection shall be allowable only to the extent that the expenses are attributable to the production of income allocable to and taxable by this state. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, alimony, medical expenses, the optional standard deduction, personal exemptions, and credits for dependents, the taxable nonresident shall be allowed deductions for such deductions essentially personal in nature in the ratio that the gross income allocated to this state bears to the total gross income of the taxable nonresident computed as if the taxable nonresident were a resident of this state. The commissioner may accept total federal gross income as the equivalent of total Georgia gross income for purposes of this allocation.

(e) A taxable nonresident whose income is derived from the activities specified in subsection (d) of this Code section performed or carried on within and outside this state and who is required to allocate and apportion his income in the manner of corporations engaged in business within and outside this state shall compute his net taxable income as if he were a resident of this state. The net taxable income so computed shall be apportioned in the manner of corporations engaged in business within and outside this state.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 15; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3112; Ga. L. 1957, p. 397, § 3; Code 1933, § 91A-3610, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 597, § 3; Ga. L. 2002, p. 372, § 4; Ga. L. 2008, p. 159, § 9/HB 1014; Ga. L. 2017, p. 774, § 48/HB 323.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2008, p. 159, § 10/HB 1014, not codified by the General Assembly, provides, in part, that the 2008

amendment shall be applicable to all taxable years beginning on or after January 1, 2008.

**Law reviews.**

For comment on Forrester v. Culpepper, 194 Ga. 744, 22 S.E.2d 595 (1942), see 6 Ga. B. J. 155 (1943).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

**JUDICIAL DECISIONS**

**Legislative intent as to income earned outside state before becoming resident.** — Former Code 1933, §§ 92-3002, 92-3101, and 92-3112 (see now O.C.G.A. §§ 48-7-1, 48-7-20 and 48-7-30) when construed together, authorize if the statutes do not compel the interpretation that the legislature did not intend to impose a tax upon such portion of the income of a resident as was derived by the resident from sources without the state before the date on which the individual became a resident of this state. Forrester v. Culpepper, 194 Ga. 744, 22 S.E.2d 595, 1942 Ga. LEXIS 663 (1942) (commented on in) 6 Ga. B.J. 155 (1943).

**OPINIONS OF THE ATTORNEY GENERAL**

**Scope of term "business."** — Word "business" as used in this section is not meant to include sole proprietorships or partnerships whose entire income is from professional or personal services. 1954-56 Ga. Op. Att'y Gen. 760.

**When income received by nonresident from certificate of deposit issued by Georgia bank taxable.** — Income received by a nonresident from a certificate of deposit issued by a Georgia bank would not be subject to income tax in this state unless the certificate of deposit had been acquired as income from property otherwise held in this state or as the result of regular conduct by a nonresident of a business dealing in such intangibles within the State of Georgia. 1967 Op. Att'y Gen. No. 67-250.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, §§ 451, 456.

**C.J.S.**

85 C.J.S., Taxation, §§ 1971 et seq., 1979 et seq., 1998 et seq., 2026, 2027, 2042 et seq.

**ALR.**

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 76 A.L.R. 806; 143 A.L.R. 361.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations, 100 A.L.R. 1216.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

## 48-7-31. Taxation of corporations; computation, allocation, and apportionment of income.

(a) The tax imposed by this chapter shall apply to the entire net income, as defined in this article, received by every foreign or domestic corporation owning property within this state, doing business within this state, or deriving income from sources within this state to the

extent permitted by the United States Constitution. A corporation shall be deemed to be doing business within this state if it engages within this state in any activities or transactions for the purpose of financial profit or gain whether or not:

(1) The corporation qualifies to do business in this state;

(2) The corporation maintains an office or place of doing business within this state; or

(3) Any such activity or transaction is connected with interstate or foreign commerce.

(b)(1) If the entire business income of the corporation is derived from property owned or business done in this state, the tax shall be imposed on the entire business income.

(2) If the business income of the corporation is derived in part from property owned or business done in this state and in part from property owned or business done outside this state, the tax shall be imposed only on that portion of the business income which is reasonably attributable to the property owned and business done within this state, such portion to be determined as provided in subsections (c) and (d) of this Code section.

(c)(1) Interest received on bonds held for investment and income received from other intangible property held for investment are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from intangible property shall be allocated to this state if the situs of the corporation is in this state or if the intangible property was acquired as income from property held in this state or as a result of business done in this state.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of any business are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from tangible property located in this state shall be allocated to this state.

(3) Gains from the sale of tangible or intangible property not held, owned, or used in connection with the trade or business of the corporation nor held for sale in the regular course of business shall be allocated to this state if the property sold is real or tangible personal property situated in this state or intangible property having an actual situs or a business situs within this state. Otherwise, the gains shall not be allocated to this state.

(d) Net income of the classes described in subsection (c) of this Code

section having been separately allocated and deducted, the remainder of the net business income shall be apportioned as follows:

(1) Where the net business income of the corporation is derived principally from the manufacture, production, or sale of tangible personal property, the portion of net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For the purposes of this subparagraph, receipts shall be deemed to have been derived from business done within this state only if the receipts are received from products shipped to customers in this state, or from products delivered within this state to customers. In determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside this state and delivered from storage in this state to customers outside this state shall be excluded;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (2) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (2) of this subsection and shall be attributed to Georgia based upon division (2)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the net business income is derived principally from business other than the manufacture, production, or sale of tangible personal property, the net business income of the corporation shall be determined by applying the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For purposes of this subparagraph, the term "gross receipts" means all gross receipts received from activities

which constitute the taxpayer's regular trade or business. Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (1) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (1) of this subsection and shall be attributed to Georgia based upon division (1)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(C) If the allocation and apportionment provisions provided for in this paragraph do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition the commissioner for, or the commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The denial of a petition under this subparagraph shall be appealable pursuant to Code Section 48-2-59. Such an appeal shall be filed within 30 days of the date of the commissioner's notice of denial;

(2.1)(A) Except as otherwise provided in this paragraph, all terms used in this paragraph shall have the same meaning as such terms are defined in 49 U.S.C. Section 1301 and the United States Department of Transportation's Uniform System of Accounts and Reports for Large Certificated Air Carriers, 14 C.F.R. Part 241, as now or hereafter amended.

(B) Where the net business income of the corporation is derived principally from transporting passengers or cargo in revenue flight, the portion of the net income therefrom attributable to property owned or business done within this state shall be

taken to be the portion arrived at by application of the following three-factor formula:

(i) Revenue air miles factor. The revenue air miles factor is a fraction, the numerator of which shall be equal to the total, for each flight stage which originates or terminates in this state, of revenue passenger miles by aircraft type flown in this state and revenue cargo ton miles by aircraft type flown in this state and the denominator of which shall be equal to the total, for all flight stages flown everywhere, of total revenue passenger miles by aircraft type and total revenue cargo ton miles by aircraft type;

(ii) Tons handled factor. The tons handled factor is a fraction, the numerator of which shall be equal to the total of revenue passenger tons by aircraft type handled in this state and revenue cargo tons by aircraft type handled in this state and the denominator of which shall be equal to the total of revenue passenger tons by aircraft type flown everywhere and revenue cargo tons by aircraft type flown everywhere. For purposes of this division, the term "handled" means the product of 60 percent multiplied by the revenue passenger tons flown on each flight stage which originates in this state or 60 percent multiplied by the revenue cargo tons flown on each flight stage which originates in this state;

(iii) Originating revenue factor. The originating revenue factor is a fraction, the numerator of which shall be equal to the total of passenger and cargo revenue by aircraft type which is attributable to this state and the denominator of which shall be the total of passenger and cargo revenue by aircraft type everywhere. For purposes of this division, passenger or cargo revenue which is attributable to this state shall be equal to the product of passenger or cargo revenue everywhere by aircraft type multiplied by the ratio of revenue passenger miles or revenue cargo ton miles in this state to total revenue passenger miles everywhere or total revenue cargo ton miles everywhere for each aircraft type as separately determined in division (i) of this subparagraph. If records of total passenger revenue everywhere by aircraft type or total cargo revenue everywhere by aircraft type are not maintained, then for purposes of this division, total passenger revenue everywhere for all aircraft types or total cargo revenue everywhere for all aircraft types shall be allocated to each aircraft type based on the ratio of total revenue passenger miles everywhere for that aircraft type to all aircraft types or total revenue cargo ton miles everywhere for that aircraft type to all aircraft types;

(iv) The revenue air miles factor, the tons handled factor, and the originating revenue factor shall be separately determined and an apportionment fraction shall be calculated using the following formula:

(I) The revenue air miles factor shall represent 25 percent of the fraction;

(II) The tons handled factor shall represent 25 percent of the fraction; and

(III) The originating revenue factor shall represent 50 percent of the fraction.

The net income of the corporation shall be apportioned to this state according to such average fraction;

(2.2)(A) As used in this paragraph, the term:

(i) "Credit card data processing and related services" shall include, but not be limited to, the provision of infrastructure services for bank credit card and private label card issuers, such as new account application processing, international and domestic clearing, statement preparation, point-of-sale authorization processing, card embossing, and other related processing services for managing cardholder accounts.

(ii) "Customer" means the banks and institutions to whom credit card data processing and related services are provided.

(iii) "Gross receipts factor" means a fraction, the numerator of which is the total gross receipts from the taxpayer's customers during the tax period, if the principal office of the customer's credit card operation is in this state or if the principal office of the taxpayer's customer is in this state, and the denominator of which is the total gross receipts from all of the taxpayer's customers during the tax period.

(B) Where more than 60 percent of the total gross receipts of a corporation are derived from the provision of credit card data processing and related services to banks and other institutions, the portion of the net income attributable to business done in this state shall be determined by multiplying the corporation's net income by the gross receipts factor in division (iii) of subparagraph (A) of this paragraph;

(3) For the purposes of this subsection, the term "sale" shall include, but not be limited to, an exchange, and the term "manufacture" shall include, but not be limited to, the extraction and recovery of natural resources and all processes of fabricating and curing.

(e) The net income of a domestic or foreign corporation which is a subsidiary of another corporation or which is closely affiliated with another corporation by stock ownership shall be determined by eliminating all payments to the parent corporation or affiliated corporation in excess of fair value and by including fair compensation to the domestic business corporation for its commodities sold to or services performed for the parent corporation or affiliated corporation. For the purposes of determining net income as provided in this subsection, the commissioner may equitably determine the net income by reasonable rules of apportionment of the combined income of the subsidiary, its parent, and affiliates, or any combination of the subsidiary, its parent, and any one or more of its affiliates.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 15; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3113; Ga. L. 1935, p. 121, § 4; Ga. L. 1937, p. 109, § 9; Ga. L. 1941, p. 210, § 5; Ga. L. 1950, p. 299, § 1; Ga. L. 1962, p. 455, § 1; Ga. L. 1969, p. 114, §§ 3, 4; Ga. L. 1974, p. 406, § 1; Code 1933, § 91A-3611, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 69; Ga. L. 1987, p. 191, § 2; Ga. L. 1995, p. 714, §§ 1, 2; Ga. L. 1996, p. 181, §§ 7, 8; Ga. L. 1996, p. 220, § 1; Ga. L. 1997, p. 459, §§ 1, 2; Ga. L. 1998, p. 6, § 1; Ga. L. 2001, p. 984, § 5; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 30, §§ 4-6/HB 191; Ga. L. 2005, p. 159, § 15/HB 488; Ga. L. 2012, p. 318, § 10/HB 100.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1995, p. 714, § 4, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 181, § 10, not codified by the General Assembly, provides for a study and report by the state revenue commissioner regarding the effect of the Act on revenue received by the state, counties, and cities in 1997 and 1998 from the tax imposed by Article 4 of Chapter 6 of Title 48 of the Code.

Ga. L. 1996, p. 181, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 459, § 3, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 1998, p. 6, § 2, not codified by the General Assembly, provides that the 1998 amendment shall be applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 30, § 7(d)/HB 191, not codified by the General Assembly,

provides that the 2005 amendment to paragraphs (d)(1) and (d)(2) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

**Administrative rules and regulations.**

Corporations: Allocation and Apportionment of Income, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Taxes, Rule 560-7-7-.03.

**Law reviews.**

For note discussing Georgia corporate income tax in light of commerce clause immunity, see 10 Ga. B. J. 172 (1947).

For comment on Redwine v. Schenley Indus., Inc., 210 Ga. 769, 83 S.E.2d 16 (1954), see 17 Ga. B. J. 261 (1954).

For comment, "Doing Business for Purposes of State Taxation of Foreign Corporations," focusing on Minnesota v. Northwestern States Portland Cement Co., CCH State Tax Reports 16-001 (Hennepin County Dist. Court, October, 1955), see 5 J. Pub. L. 263 (1956).

For comment on Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959), upholding constitutionality of state net income tax levied on revenues of foreign corporation derived from interstate commerce where tax is "fairly apportioned," see 22 Ga. B. J. 107 (1959).

For comment on Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536 (1967), see 19 Mercer L. Rev. 464 (1968).

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For article, "Primary Tax Incentives for Industrial Investment in the Southeastern United States," see 25 Emory L.J. 789 (1976).

For note on the 1995 amendment of this Code section, see 12 Georgia St. U.L. Rev. 347 (1995).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

## JUDICIAL DECISIONS

### Analysis

General Considerations
Doing Business
Three-Factor Formula
Gross Receipts Factor
Net Income of Subsidiaries and Affiliates

### General Considerations

**History of this Code section through Ga. L. 1950, p. 299.** State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

**Legislative intent.** — General Assembly clearly and plainly showed the legislature's intention to tax the activities or transactions which every corporation carries on within this state for the purpose of financial profit or gain. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**Purpose of section.** — Evident purpose of this section is to require the taxpayer to pay to this state income tax on that portion of the taxpayer's business which is fairly attributable to its activities in this state. Twentieth Century-Fox Film Corp. v. Phillips, 76 Ga. App. 825, 47 S.E.2d 183, 1948 Ga. App. LEXIS 462 (1948).

Obvious purpose of this section as a whole is to provide some of the rules for determining corporate net income within the state. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Section fixes a legislative definition of what constitutes basis for assessing income taxes against corporations,** foreign or domestic, which engage in any activities or transactions in this

state for the purpose of financial profit or gain. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**Alternative means of computing Georgia-derived income.** — Under former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35), that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and elsewhere, which should be allocated and apportioned to this state, may be determined. This is especially true when such a corporation in the corporation's regular business activities does not have all of the factors of the three factor formula. State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

Former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-3 and 48-7-35) conferred upon nonresidents and corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income. Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**Purpose of apportionment provisions.** — Common sense meaning of this section as to apportioning of business income is that a corporation carrying on an active interstate business in this state and one or more other states is entitled to apportion its total taxable income between or among those states. Its liability to this state is on the amount apportioned to Georgia. Blackmon v. Habersham Mills, Inc., 233 Ga. 501, 212 S.E.2d 337, 1975 Ga. LEXIS 1358 (1975).

**Amount of business in this state historically is primary factor in allocating net income.** — Throughout the history of this section, one of the primary factors in determining the proportion of the net income properly to be allocated to this state has been the amount of business within the state. Twentieth Century-Fox Film Corp. v. Phillips, 76 Ga. App. 825, 47 S.E.2d 183, 1948 Ga. App. LEXIS 462 (1948).

**When interstate operations of foreign corporation may be taxed.** — Net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming a sufficient nexus to support the levy. Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 1959 U.S. LEXIS 1488 (1959), superseded by statute as stated in Quill Corp. v. North Dakota, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91, 1992 U.S. LEXIS 3123 (1992), superseded by statute as stated in Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214, 112 S. Ct. 2447, 120 L. Ed. 2d 174, 1992 U.S. LEXIS 3694 (1992), superseded by statute as stated in United States v. Frega, 933 F. Supp. 1536, 1996 U.S. Dist. LEXIS 10036 (S.D. Cal. 1996).

**Jurisdiction in other states for tax purposes immaterial to liability in this state.** — Whether a corporation is subject to the taxing jurisdiction of other states is immaterial. If a domestic or foreign corporation has an apportioned tax liability in this state, the remainder of the corporation's apportioned tax liability being in other states, whether those other states do or do not levy a state income tax is immaterial. Blackmon v. Habersham Mills, Inc., 233 Ga. 501, 212 S.E.2d 337, 1975 Ga. LEXIS 1358 (1975).

**Apportionment provisions inapplicable when entire net income derived from doing business in this state.** — When corporation's entire net income is derived from doing business in this state, the remainder of this section, relating to an apportionment of income when it is derived only in part from property owned or business done within this state and in part from property owned or business done elsewhere, is wholly inapplicable. State v. Coca-Cola Bottling Co., 214 Ga. 316, 104 S.E.2d 574, 1958 Ga. LEXIS 411 (1958).

**Apportionment under paragraph (d)(3) of section.** — When subsection (5) of former Code 1933, § 92-3113 (see now

**General Considerations** (Cont'd)

O.C.G.A. § 48-7-31) was applicable, equitable apportionment was mandatory unless the taxpayer made application for other treatment pursuant to former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35) and such application was granted by the commissioner. Blackmon v. Henry C. Beck Co., 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

Under former paragraph (d)(3) of O.C.G.A. § 48-7-31, a corporation engaged in a unitary-service related business with other corporations could use a unitary method of apportioning income since the provision, prior to the 1995 amendment, did not require a specific method of apportionment. Collins v. AT & T Co., 219 Ga. App. 196, 464 S.E.2d 642, 1995 Ga. App. LEXIS 1009 (1995), cert. denied, No. S96C0489, 1996 Ga. LEXIS 671 (Ga. Apr. 1, 1996).

**Separate business rule inapplicable under paragraph (d)(3) of section.** — "Separate business" rule cannot be supported by subsection (5) of this section, which stated that the net income shall be equitably apportioned within and outside the state under rules and regulations of the commissioner, in the ratio that the business within the state was to the total business of the corporation. Blackmon v. Henry C. Beck Co., 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**Failure of commissioner to apportion income derived both within and outside state is abuse of discretion.** — If the net income of a corporation is derived from the performance of the corporation's business operations both within and outside this state, it is an abuse of the commissioner's discretion to tax that corporation on a separate accounting basis, when the General Assembly has required that such income be equitably apportioned. Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**Tax liability when principal office and place of business located in state.** — When orders for the taxpayer's product come to it unsolicited and when the taxpayer's principal office and place of business is in this state, the taxpayer is liable to this state for income tax upon the net income derived from its entire business operations. Its business is done in this state and the destination or origin of its shipment in no wise alters this fact. State v. Coca-Cola Bottling Co., 214 Ga. 316, 104 S.E.2d 574, 1958 Ga. LEXIS 411 (1958).

**Sale of whiskey.** — It is illogical and unreasonable to contend that the sale of whiskey in this state by an unlicensed nonresident, upon orders taken in this state and approved by the state revenue commissioner in conformity with regulations, is doing business in this state and is subject to income tax on the income arising therefrom. Redwine v. Schenley Indus., Inc., 210 Ga. 769, 83 S.E.2d 16, 1954 Ga. LEXIS 452 (1954); (commented on in) 17 Ga. B.J. 261 (1954).

### Doing Business

**Term "doing business" comports with due process requirements.** — Term "doing business" within former Code 1933, §§ 92-2401 and 92-3113, which means any activity or transactions for the purpose of financial profit or gain, did not violate the due process requirement of either the Fourteenth Amendment or Ga. Const. 1976, Art. I, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599, 1979 Ga. LEXIS 1342 (1979).

**No prohibition against tax benefit or exemption for domestic corporation doing business outside state.** — Regardless of constitutional limitations on the state's power to tax foreign corporations, it is not prohibited from granting a tax benefit or exemption to a domestic corporation doing business outside the state. Blackmon v. Habersham Mills, Inc., 131 Ga. App. 59, 205 S.E.2d 21, 1974 Ga. App. LEXIS 1326 (1974).

**Constitutionality of tax on income from unsolicited orders received from outside state.** — Income derived by a corporation from unsolicited orders received by the corporation from outside the state cannot, under the Fourteenth

Amendment and the commerce clause of the United States Constitution, be taxed elsewhere than in the state. State v. Coca-Cola Bottling Co., 214 Ga. 316, 104 S.E.2d 574, 1958 Ga. LEXIS 411 (1958).

**Former "closed transaction" test replaced by "activities or transactions" test.** — Georgia Laws 1950, p. 299, had the legal effect of shifting the operation of this section from the "closed transaction" test, which the courts of this state had previously applied to it, to the "activities or transactions" test, which Ga. L. 1950, p. 299 established as the criterion to be used thereafter in determining an income tax liability to this state of a corporation, foreign or domestic, which engages in any activities or transactions in this state for the purpose of financial profit or gain. Owens-Illinois Glass Co. v. Oxford, 216 Ga. 316, 116 S.E.2d 293, 1960 Ga. LEXIS 456 (1960).

**"Doing business" identifies who is liable, not extent of liability.** — First paragraph of this section defines who was liable for the tax. The references to "doing business" do not relate in any manner to the amount of the tax liability. Blackmon v. Habersham Mills, Inc., 233 Ga. 501, 212 S.E.2d 337, 1975 Ga. LEXIS 1358 (1975).

**"Doing business" means any activity or transaction for the purpose of financial profit or gain.** Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599, 1979 Ga. LEXIS 1342 (1979).

**"Doing business" encompasses substantial activity on behalf of the corporation.** — Courts have interpreted the words "doing business" when applied to a foreign corporation to encompass a substantial activity on the corporation's own behalf in this state. Likewise, the same test is applied as to a domestic corporation seeking to apportion the corporation's income for "doing business" outside the state. Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536, 1967 Ga. App. LEXIS 736 (1967) (for comment see 19 Mercer L. Rev. 464 (1968)).

**Same activity not necessarily likewise doing business both within and outside state.** — This section is designed to provide a broad basis for taxation of foreign corporations and to offer domestic corporations doing business outside the state commensurate tax benefits. However, this section does not provide that whatsoever would be deemed to constitute doing business within the state shall similarly constitute doing business outside the state. It merely provides a definition of "doing business". Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536, 1967 Ga. App. LEXIS 736 (1967) (for comment see 19 Mercer L. Rev. 464 (1968)).

**What activities insufficient to constitute "doing business".** — Following activities have been found insufficient to constitute "doing business": (1) customers and delivery of merchandise; (2) salaried salesman; and (3) sales arrangements and selling contracts with various companies. Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536, 1967 Ga. App. LEXIS 736 (1967) (for comment see 19 Mercer L. Rev. 464 (1968)).

**What activity of foreign corporation constitutes doing business.** — In order to incur tax liability under statutes imposing taxes on persons doing business in a state, a foreign corporation must transact some substantial part of its ordinary business, and it must be continuous in character as distinguished from a mere casual or occasional transaction. Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536, 1967 Ga. App. LEXIS 736 (1967) (for comment see 19 Mercer L. Rev. 464 (1968)).

### Three-Factor Formula

**Gross receipts factor and apportionment formula comport with due process.** — Gross receipts factor, when taken in connection with the two other factors of the three factor formula and subsection (4)(d) of this section did not violate the due process clause of either the federal or state Constitutions. United States Steel Corp. v. Undercofler, 220 Ga. 553, 140 S.E.2d 269, 1965 Ga. LEXIS 559 (1965).

**Discussion of the history of the three factor formula.** — See Oxford v. Nehi Corp., 215 Ga. 74, 109 S.E.2d 329, 1959 Ga. LEXIS 398 (1959).

**Three-Factor Formula** (Cont'd)

**Object of apportionment** is to fairly allocate the net income of the taxpayer, which is accomplished by the selection of factors which are causally related to the production of the income. State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

**Fair and proper allocation is obtained only when** all three factors actually exist and are used by the taxpayer in making an apportionment of the taxpayer's net income. State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

**Use of fewer than all three factors in computations no longer allowed.** — In determining the amount of the taxpayer's net income which should be allocated and apportioned to this state, former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31), unlike former Code 1933, § 92-3113 as it existed prior to Ga. L. 1950, p. 299, did not permit the use of two or one of the factors making up the formula, but expressly declared that all the factors must be used by the taxpayer in determining the amount of the taxpayer's net income which should be allocated and apportioned to this state. State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

**When out-of-state sales taxable as Georgia income.** — Out-of-state sales of a taxpayer who is engaged in the sale of tangible goods both within and outside the state are taxable as Georgia income when the out-of-state deliveries are made under a contract that title to the goods passes to the purchaser at destination, and when the three factor formula is applicable. Oxford v. Nehi Corp., 98 Ga. App. 779, 106 S.E.2d 857, 1958 Ga. App. LEXIS 684 (1958), aff'd, 215 Ga. 74, 109 S.E.2d 329, 1959 Ga. LEXIS 398 (1959).

**When a corporation derives the corporation's income from business done both within and without the state,** Georgia taxes only that income which is "reasonably attributable to the property owned and business done within this state," pursuant to a three-part statutory formula. The three factors which are considered are: the corporation's property; payroll; and gross receipts. Strickland v. Patcraft Mills, Inc., 251 Ga. 43, 302 S.E.2d 544, 1983 Ga. LEXIS 687 (1983).

**Gross Receipts Factor**

**Gross receipts factor comports with due process.** — Gross receipts factor in view of the property and payroll factors of the three factor formula is not unreasonable on its face or violative of the taxpayer's rights under the due process clause of either the federal or state Constitutions. United States Steel Corp. v. Undercofler, 220 Ga. 553, 140 S.E.2d 269, 1965 Ga. LEXIS 559 (1965).

**Taxable nexus for gross receipts purposes is the destination of the goods.** — That the shipment of goods is F.O.B. an out-of-state factory to customers in this state makes no difference in the application of this factor. Undercofler v. United States Steel Corp., 109 Ga. App. 8, 135 S.E.2d 69, 1964 Ga. App. LEXIS 778 (1964), aff'd, 220 Ga. 553, 140 S.E.2d 269, 1965 Ga. LEXIS 559 (1965).

**Adoption of "destination" or "place of market" theory for apportioning gross receipts.** — O.C.G.A. § 48-7-31(d)(2)(C) must be construed in accordance with prior judicial interpretations of the law, which held that the legislature, in enacting the predecessor to that section, intended to adopt the "destination" or "place of market" theory for apportioning gross receipts under the statute. Strickland v. Patcraft Mills, Inc., 251 Ga. 43, 302 S.E.2d 544, 1983 Ga. LEXIS 687 (1983).

**Destination test,** as opposed to the "transfer of physical possession" theory, is easy to apply and is not subject to manipulation by taxpayers. Strickland v. Patcraft Mills, Inc., 251 Ga. 43, 302 S.E.2d 544, 1983 Ga. LEXIS 687 (1983).

Destination test correctly recognizes the contribution by a consumer state to the realization of corporate income, and acknowledges that the process of manufacturing results in no profits until it ends in sales. Strickland v. Patcraft Mills, Inc., 251 Ga. 43, 302 S.E.2d 544, 1983 Ga. LEXIS 687 (1983).

**Limitations as to receipts included in computing gross receipts factor.** — That portion of subdivision (4)(c) (now

(d)(2)(c)) of this section which read, "for the purposes of this section (now subparagraph) receipts shall be deemed to have been derived from business done within this state only if received from products shipped to customers in this state, or delivered within this state to customers," simply meant that receipts from products shipped to customers outside of this state or delivered to customers outside of this state should not be included as being Georgia receipts. Oxford v. Nehi Corp., 215 Ga. 74, 109 S.E.2d 329, 1959 Ga. LEXIS 398 (1959).

Receipts referred to in a portion of subdivision (4)(c) of this section reading "in determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside the state and delivered from storage in this state to customers outside this state shall be excluded," were receipts for sales effected outside of the state for products delivered to customers outside the state, have no reference to the kind of receipts referred to in the first part of that subdivision (now subparagraph), and neither included, limited, excluded, or affected the receipts from "products shipped to customers in this state or products delivered within this state to customers." Oxford v. Nehi Corp., 215 Ga. 74, 109 S.E.2d 329, 1959 Ga. LEXIS 398 (1959).

**Receipts from carpet sales** made by the taxpayer to out-of-state customers who took possession of the goods at the taxpayer's place of business in Dalton, Georgia, for immediate transport and resale out of state did not constitute "gross receipts from business done within this state" for purposes of the three factor formula for determining the taxable income of multistate corporations in Georgia under O.C.G.A. § 48-7-31(d)(2). Strickland v. Patcraft Mills, Inc., 251 Ga. 43, 302 S.E.2d 544, 1983 Ga. LEXIS 687 (1983).

### Net Income of Subsidiaries and Affiliates

**Purpose of provisions as to subsidiaries and affiliates.** — Obvious purpose of subsection (6) of this section, as a whole, as stated in the first sentence, was to pierce the veil of a corporate entity to reflect income as if all transactions with a parent corporation or an affiliate were at arm's length. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Construction of provisions as to subsidiaries and affiliates with other provisions.** — Bifurcated accounting rule of subsection (6) of former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31) did not render former Code 1933, § 92-3209 (see now O.C.G.A. § 48-7-58) meaningless because the purpose of former Code 1933 § 92-3207 was much broader than specific accounting rules provided in that former section. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Commissioner alone may pierce corporate veils and apply a unitary theory** to determine equitably net income by reasonable rules of apportionment. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Duty to determine net income of subsidiaries and affiliates.** — First sentence of subsection (6) of this section, in failing to state who shall make adjustments, imposed a mandatory obligation on the taxpayer and the commissioner, to determine net income of the subsidiary or affiliate. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Commissioner's power discretionary.** — The second sentence of subsection (6) of this section (see now subsection (e)), unlike the first, stated a discretionary rule. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Commissioner's power may be exercised only when mandatory rule cannot be used.** — The two sentences of subsection (6) of this section must be read together, the second as limited by the first, which as a mandatory rule has priority. In order to exercise the discretion under the second rule, the commissioner must find that the income of the taxpayer cannot be adjusted in the manner first prescribed. Blackmon v. Campbell Sales Co., 125 Ga.

**Net Income of Subsidiaries and Affiliates** (Cont'd)

App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**No basis for application of unitary theory when taxpayer has done all the law requires.** — When findings of fact reflect that the taxpayer has done all that the law requires, no basis exists for the commissioner to rely upon the second sentence of subsection (6) of this section as authority to apply the unitary theory. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Mere existence of unitary business is not test for exercising discretion** vested in the commissioner under the second sentence of subsection (6) of this section. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

## OPINIONS OF THE ATTORNEY GENERAL

**Due process limits on what constitutes doing business.** — This section is necessarily limited by the requirements of due process so that isolated, casual, and intermittent activity incidental to the conduct of a business conducted in another state does not constitute doing business in this state. 1960-61 Ga. Op. Att'y Gen. 497; 1960-61 Ga. Op. Att'y Gen. 498; 1960-61 Ga. Op. Att'y Gen. 500.

**Tax on net worth, not franchise or privilege of doing business.** — Income tax is imposed upon net income of the corporation and not upon the franchise or the privilege of doing business. 1950-51 Ga. Op. Att'y Gen. 373.

**No right to file consolidated returns.** — General Assembly, by adopting former Code 1933, § 92-3202 (see now § O.C.G.A. 48-7-51) did not give to corporate taxpayers, for Georgia income tax purposes, the right to file consolidated income tax returns. 1969 Op. Att'y Gen. No. 69-77.

**Taxpayer may amend filing unauthorized under § 48-7-34.** — Company which filed the company's income tax return under former Code 1933, § 92-3114 (see now O.C.G.A. § 48-7-34), which return was accepted by the commissioner, although no express consent was given by the latter permitting the filing under former § 92-3114, may nevertheless within the statute of limitations amend the company's return by filing under former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31) and procure any refund to which the company may be entitled, since the first filing was unauthorized and therefore did not work an estoppel. 1952-53 Ga. Op. Att'y Gen. 434.

**What activity constitutes doing business in this state.** — Branch manufacturing shop in this state, shipping all its completed goods to a main plant located outside the state, which in turn makes all sales, is taxable under laws of this state to the extent that the operation in this state produced income to the main corporation and, therefore, is considered as doing business in Georgia. 1954-56 Ga. Op. Att'y Gen. 703.

Corporation stocking wares in this state for shipment to consumers in southeast is doing business in this state and is subject to taxation. 1957 Ga. Op. Att'y Gen. 280.

Foreign corporation which leases furniture, fixtures, and equipment to a company in this state for the operation of a store is doing business in this state, and is subject to the payment of income tax upon the rent received for such fixtures. 1958-59 Ga. Op. Att'y Gen. 366.

When a foreign corporation merely qualifies as a fiduciary or merely holds a fiduciary title to property located in this state, and engages in no other activity in this state with respect to such property, it is not engaged in sufficient activity in this state to constitute its personally doing business in this state. Such corporation, as a fiduciary, would have an income tax liability on account of income or gains derived from such property. 1960-61 Ga. Op. Att'y Gen. 497.

Foreign corporation which merely maintains a bank account in a bank located in this state is not engaged in suffi-

cient activity in this state to constitute doing business under this section; nor would the activity of a bank located in this state which receives collections from the customers of such corporation and deposits those collections to such account be attributed to the foreign corporation. 1960-61 Ga. Op. Att'y Gen. 500.

When an out-of-state lending institution intermittently merely purchases from a Georgia real estate and mortgage company notes secured by mortgages on Georgia real estate, such activity was not enough to constitute doing business in this state for purposes of income tax liability. 1960-61 Ga. Op. Att'y Gen. 501.

Income received by a nonresident from a certificate of deposit issued by a Georgia bank would not be subject to income tax in this state unless the certificate of deposit had been acquired as income from property otherwise held in this state, or as the result of regular conduct by a nonresident of a business dealing in such intangibles within the State of Georgia. 1967 Op. Att'y Gen. No. 67-250.

**Loan business conducted through employee, agent, or place of business in state constitutes doing business.** — When a foreign corporation has a place of business in this state out of which an employee or agent solicits applications for loans to be there approved or executed, or to be submitted to an out-of-state office for approval or execution, or makes reports concerning applicants and the proffered security, etc., or makes collections on loans, or otherwise services such loans, it is doing business in this state. A foreign corporation which has no place of business in this state but does have an employee or agent in this state who is regularly engaged in any of the activities described above is doing business in this state. 1960-61 Ga. Op. Att'y Gen. 498.

**Joint venture or partnership in such business.** — If a foreign corporation is in partnership or in a joint venture with a local independent business which negotiates, effects, sells, or assigns loans secured by property in this state, the activity of the local independent business is attributable to the foreign corporation and it is doing business in this state. 1960-61 Ga. Op. Att'y Gen. 498.

**When foreign corporation purchases or is assigned loans effected by local independent business.** — When a local independent business, for the business's own account and not as an employee or agent of a foreign corporation, negotiates and effects loans secured by mortgages against property located in this state, and thereafter sells or assigns outright such loans, in whole or part, to a foreign corporation which is not otherwise regularly engaged in activity within this state, such foreign corporation is not doing business in this state even though the corporation contracts with such local business to collect and service such loans, and makes occasional inspections of the security. 1960-61 Ga. Op. Att'y Gen. 498.

**When borrower contacts foreign corporation outside state even if loan secured by property in state.** — If a foreign corporation has no place of business in this state nor any employee who is regularly engaged in activities in this state, and a borrower goes to or contacts the foreign corporation at the corporation's place of business outside this state to arrange a loan secured by property located in this state, and the corporation is regularly engaged in no other activity in this state, the foreign corporation is not engaged in sufficient activities to constitute doing business in this state merely because the property securing such loan is located in this state or because the corporation sends or brings the security instrument into this state for incidental or recording purposes. 1960-61 Ga. Op. Att'y Gen. 498.

**What income taxable as result of foreclosure by out-of-state lender on Georgia realty.** — When an out-of-state financial institution incidentally forecloses on Georgia property and holds that property for a reasonable time before the property can be disposed of by sale, there is no "doing business" within the state and such activities, while it would subject the income from the property involved to this state's income tax, would not subject the out-of-state institution to income tax on that portion of its entire investment portfolio which incidentally happened to be secured by real property

located in Georgia. 1968 Op. Att'y Gen. No. 68-384.

**Any sale or distribution of any alcoholic beverage within this state falls within section.** 1950-51 Ga. Op. Att'y Gen. 369.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 159 et seq.

**C.J.S.**

85 C.J.S., Taxation, § 1773 et seq.

**ALR.**

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 76 A.L.R. 806; 143 A.L.R. 361.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations, 100 A.L.R. 1216.

State excise, privilege, or franchise tax upon foreign corporation as affected by commerce clause, 105 A.L.R. 11; 139 A.L.R. 950.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Income of subsidiary as taxable to it or to parent corporation, 10 A.L.R.2d 576.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate commerce as regards local taxation, 10 A.L.R.2d 651.

Validity, under federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 A.L.R.2d 1322.

State income tax treatment of partnerships and partners, 2 A.L.R.6th 1.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

Protection of out-of-state sellers from state income tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384), 182 A.L.R. Fed. 291.

## 48-7-31.1. Conditions for allocating taxpayer's income pursuant to agreement; public inspection; criteria for evaluating proposals.

(a) For purposes of paragraphs (1) and (2) of subsection (d) of Code Section 48-7-31, the commissioner may enter into an agreement with a taxpayer establishing the allocation and apportionment of the taxpayer's income for a limited period, provided that the following conditions are met:

(1) The taxpayer is planning a new facility in the State of Georgia or an expansion of an existing facility;

(2) The taxpayer submits a proposal asking the commissioner to enter into a contract under this Code section requesting a different allocation and apportionment method and stating the reasons for such proposal; and

(3) Following the commissioner's referral of the proposal to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the proposal, certifies that:

(A) The new facility or expansion will have a significant beneficial economic effect on the region for which it is planned; and

(B) The benefits to the public from the new facility or expansion exceed its costs to the public.

(b) The following records shall constitute public records that are open for inspection under the provisions of Article 4 of Chapter 18 of Title 50:

(1) Proposals submitted by taxpayers under this Code section or under any prior Code section that allowed taxpayers to enter into a contract or agreement with the commissioner to use a different allocation method, a different apportionment method, or both; and

(2) Any agreement or contract entered into as a result of such proposal.

(c) Taxpayers' tax information from any state or federal income tax return contained in records subject to disclosure pursuant to subsection (b) of this Code section which would otherwise be privileged or protected from disclosure by law shall be deleted or redacted from records made available for public inspection.

(d) In evaluating proposals pursuant to subsection (a) of this Code section, the panel shall not determine that a proposal has significant beneficial economic effect on the region for which it is planned unless two or more of the following criteria are met:

(1) The proposal creates new full-time jobs that meet the requirements contained in Regulations 110-9-1-.01, 110-9-1-.02, and 110-9-1-.03 of the Department of Community Affairs, relating to job tax credits, with average wages which are, as determined by the Georgia Department of Labor for all jobs for the county in question:

(A) Twenty percent above such average wage for projects located in tier 1 counties;

(B) Ten percent above such average wage for projects located in tier 2 counties; or

(C) Five percent above such average wage for projects located in tier 3 or tier 4 counties;

(2) The project invests in qualified investment property, as defined in Regulation 560-7-8-.37 of the department, which is valued at over $10 million in tier 1 counties, over $35 million in tier 2 counties, and over $75 million in tier 3 or tier 4 counties. Past investment will not be considered;

(3) The proposal creates a minimum of 50 new full-time jobs that meet the requirements contained in Regulations 110-9-1-.01,

110-9-1-.02, and 110-9-1-.03 of the Department of Community Affairs, relating to job tax credits, in a tier 1 county, 150 such jobs in a tier 2 county, or 300 such jobs in a tier 3 or tier 4 county; or

(4) The proposal demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the company's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

**History.**

Code 1981, § 48-7-31.1, enacted by Ga. L. 2001, p. 984, § 6; Ga. L. 2002, p. 372, § 5; Ga. L. 2004, p. 690, § 18.

**Editor's notes.**

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

**Law reviews.**

For note on the 2001 enactment of this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-7-32. Taxation of railroad and public service corporations; computation of net income where business is within and outside state; net income for all other such corporations.

(a) When the business of any corporation engaged in the operation of a railroad, express service, telephone or telegraph business, or other form of public service is partly within and partly outside the state, the net income of the corporation for the purpose of this chapter shall be that amount ascertained by apportioning to the state the sum of the net income of the corporation, including, but not limited to, dividend income that may legally be taxed by the state (exclusive of income from tax-exempt securities and without any deduction for federal and state income taxes), as shown by the corporation's records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission when the standard classification of accounts includes in net income rents from all sources; and when the standard classification does not include all rents, then such rents shall be included in net income in the proportion that the total gross operating revenues from business done wholly within the state plus the equal mileage proportion within the state of all gross operating revenues from interstate business of the company, wherever done, bear to the total gross operating revenues from all business done by the company. If any such corporation keeps its records of operating revenues and operating expenses on a state basis in accordance with the standard classification

of accounts prescribed by the Interstate Commerce Commission and in a manner which includes in net income for the state the effect of all intrastate and interstate business applicable to the state, the state records may be used by the taxpayer under the supervision of the commissioner in reporting the net taxable income within the state.

(b) All other corporations engaged in the business of operating a railroad, express service, telephone or telegraph business, or other form of public service, whether or not the corporation is required to make reports to the Interstate Commerce Commission, shall keep records according to the standard classifications of accounting of the Interstate Commerce Commission. The net income of the corporation, including, but not limited to, dividend income that can legally be taxed by the state (exclusive of tax-exempt securities and without any deduction for federal and state income taxes) shall be determined in accordance with such records. If any such corporation keeps its records of operating revenues and operating expenses on a state basis in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission and in a manner which includes in net income for the state the effect of all intrastate and interstate business applicable to the state, the state records may, with the consent of the commissioner, be used by the taxpayer in reporting the net taxable income within the state.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 18; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3116; Code 1933, § 91A-3614, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 112A; Ga. L. 1987, p. 191, § 2; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2024, p. 1052, § 5(30)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

## JUDICIAL DECISIONS

**Scope of commissioner's discretion.** — Discretion of the commissioner, if any, allowed by this section refers to the method of computation and records of corporations which keep records on a state basis, and does not refer to the method

and records in the other parts of the section. Atlanta, Birmingham & Coast R.R. v. Forrester, 69 Ga. App. 369, 25 S.E.2d 581, 1943 Ga. App. LEXIS 83 (1943).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 296 et seq.
**C.J.S.**
85 C.J.S., Taxation, § 1782 et seq.
**ALR.**
What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

## 48-7-33. Annual accounting periods.

(a) The net income shall be computed upon the basis of the taxpayer's annual accounting period in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. If no such method of accounting has been so employed or if the method employed does not clearly reflect the income, the computation shall be made in accordance with the method which, in the opinion of the commissioner, clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. A taxpayer utilizing a fiscal year may return his net income under this chapter on the basis of his fiscal year with the approval of the commissioner and subject to such rules and regulations as the commissioner may establish.

(b) With the approval of the commissioner and under such regulations as he may prescribe, a taxpayer may change his taxable year from fiscal year to calendar year or otherwise. In the case of any such change, the net income shall be computed upon the basis of the new taxable year when approval is obtained from the commissioner at least 30 days prior to the close of the proposed taxable year.

(c) The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted by this Code section, any amounts of gross income are to be properly accounted for as of a different period.

(d) The deductions and credits provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred" depending upon the method of accounting on the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period.

(e) Whenever in the opinion of the commissioner it is necessary in order to determine clearly the income of any taxpayer, inventories shall

be taken by the taxpayer on the basis prescribed by the commissioner. Each such basis shall conform as nearly as possible to the best accounting practice in the particular trade or business which most clearly reflects the income.

(f) If a return has been filed within the three years immediately preceding the date of the taxpayer's death, income and expenses of a taxpayer who dies during the taxable year shall be computed on the same method of accounting, whether cash or accrual, as was used by the taxpayer in the preparation of the last income tax return filed by him with the commissioner. If no return has been filed within the three-year period, the return of a deceased taxpayer shall be prepared on the cash method unless the commissioner certifies that the cash method, because of particular circumstances, is not reasonable to either the state or the heirs, legatees, or devisees interested in the taxpayer's estate. If the commissioner certifies that the cash method is unreasonable, he may order the preparation of the return on the accrual method.

(g) The provisions of Internal Revenue Code Section 441(f) regarding the election of a taxable year consisting of 52-53 weeks shall also apply for purposes of this chapter. Accordingly, when the effective date or the applicability of any provision of this chapter or any general law is expressed in terms of taxable years beginning with reference to a specified date which is the first day of a month, a 52-53 week taxable year shall be treated:

(1) As beginning with the first day of the calendar month beginning nearest to the first day of such 52-53 week taxable year; and

(2) As ending with the last day of the calendar month ending nearest to the last day of such 52-53 week taxable year.

(h) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 20; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3118; Ga. L. 1941, p. 210, § 6; Ga. L. 1945, p. 483, §§ 1, 2; Ga. L. 1978, p. 1444, § 1; Code 1933, § 91A-3616, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 70; Ga. L. 1987, p. 191, § 2; Ga. L. 2006, p. 221, § 1/HB 1042.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2006, p. 221, § 2/HB 1042, not codified by the General Assembly, provides that subsections (g) and (h) shall be applicable to all taxable years beginning on or after January 1, 2006, and to all taxable years which would be considered as beginning on January 1, 2006.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 459 et seq.

**C.J.S.**

85 C.J.S., Taxation, § 1832.

**ALR.**

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income, 67 A.L.R. 1015; 21 A.L.R. 697; 135 A.L.R. 1430.

Right of bank in computing income tax to deduction corresponding to amount which it has been required by banking authorities to write down or charge off in respect of securities held by it, 100 A.L.R. 702.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

## 48-7-34. Returns of corporations and nonresidents based upon books of account; application to commissioner; time; contents.

If any corporation or nonresident employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the processes or formulas prescribed by this chapter the income attributable to the trade or business within this state, application for permission to base its return upon the books of account shall be considered by the commissioner. The application shall be made at least 60 days prior to the last day on which the taxpayer's return is to be filed and shall be accompanied by a full and complete explanation of the method employed.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 16; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3114; Code 1933, § 91A-3612, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Law reviews.**

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

**JUDICIAL DECISIONS**

**Alternative means of computing Georgia-derived income.** — Former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35) confer upon nonresidents and corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income than would former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31). Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

Under former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35) that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and elsewhere, which should be allocated and apportioned to this state, may be determined. This is especially true when such a corporation in the corporation's regular business activities did not have all of the factors of the three factor formula in former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31). State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

**Commissioner not empowered to select basis for return when no request made.** — No power is granted to the commissioner to decide personally, when no request is made, whether another formula would be more indicative of a taxpayer's tax situation. Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**OPINIONS OF THE ATTORNEY GENERAL**

**Taxpayer may amend unauthorized filing.** — Company which files the company's income tax return under former Code 1933, § 92-3114 (see now O.C.G.A. § 48-7-34), which return was accepted by the commissioner, although no express consent was given by the latter permitting the filing under former § 92-3114, may nevertheless within the statute of limitations amend the company's return by filing under former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31) and procure any refund to which the company may be entitled since the first filing was unauthorized and therefore did not work an estoppel. 1952-53 Ga. Op. Att'y Gen. 434.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 469.

**C.J.S.**
85 C.J.S., Taxation, § 1772et seq.

## 48-7-35. Application for permission to use other method of allocation by corporation or nonresident; contents; effect of failure to receive notice of rejection.

If any corporation or nonresident shows by any method of allocation other than the processes or formulas prescribed by this chapter that another method reflects more clearly the income attributable to the trade or business within this state, application for permission to base its return upon the other method shall be considered by the commissioner. The application shall be accompanied by a statement setting

forth in detail with full explanations the method the taxpayer believes will more clearly reflect its income from business within the state. If the commissioner concludes that the method of allocation and apportionment submitted by the taxpayer is in fact inapplicable and inequitable, he shall reject the application and shall so notify the taxpayer. Failure to receive the commissioner's notice shall not operate to relieve the taxpayer from liability for not filing the return on its due date utilizing the allocation and apportionment method prescribed by this chapter.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 17; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3115; Code 1933, § 91A-3613, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Administrative rules and regulations.**

Alternate Method of Determining Income, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.03.

## JUDICIAL DECISIONS

**Alternative means of computing Georgia-derived income.** — Under former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35) that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and elsewhere, which should be allocated and apportioned to this state may be determined. This is especially true when such a corporation in the corporation's regular business activities does not have all of the factors of the three factor formula in former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31). State v. Coca Cola Bottling Co., 212 Ga. 630, 94 S.E.2d 708, 1956 Ga. LEXIS 475 (1956).

Former Code 1933, §§ 92-3114 and 92-3115 (see now O.C.G.A. §§ 48-7-34 and 48-7-35) confer upon nonresidents and corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income than would former Code 1933, § 92-3113 (see now O.C.G.A. § 48-7-31). Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**Commissioner not empowered to select basis for return when no request made.** — No power is granted to the commissioner to decide personally, when no request is made, whether another formula would be more indicative of a taxpayer's tax situation. Henry C. Beck Co. v. Blackmon, 131 Ga. App. 634, 206 S.E.2d 842, 1974 Ga. App. LEXIS 1501 (1974), aff'd, 233 Ga. 412, 211 S.E.2d 711, 1975 Ga. LEXIS 1324 (1975).

**OPINIONS OF THE ATTORNEY GENERAL**

**Reasonable interpretation of section would require the taxpayer annually to file an application.** 1948-49 Ga. Op. Att'y Gen. 376.

## 48-7-36. Tolling of time limits for filings by reason of war related service in armed forces.

In the case of an individual:

(1) Serving in the armed forces of the United States or in support of the armed forces of the United States in an area designated by the President of the United States by executive order as a "combat zone," as that term is defined by the Internal Revenue Code of 1986, at any time during the period designated by the President's executive order as the period of combat activities in the zone;

(2) Hospitalized as a result of an injury received while serving in such an area during the period of combat activities; or

(3) Who is confined as a prisoner of the forces opposing the United States in a combat zone,

the period of service in the combat zone, plus the period of continuous hospitalization attributable to an injury, plus any period of confinement, and the next 180 days thereafter shall be disregarded in determining whether any filing required by this title has been performed within the time prescribed for the filing.

**History.**

Code 1933, § 92-3122, enacted by Ga. L. 1971, p. 605, § 8; Code 1933, § 91A-3617, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in paragraph (1).

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**RESEARCH REFERENCES**

**ALR.**

Military service as basis of discrimination in statutes or ordinances

relating to taxation or licenses, 83 A.L.R. 1231.

## 48-7-37. Taxes due from members of armed forces dying on active duty; applicability of tax to particular taxable years; assessment of unpaid taxes; abatement; credit or refund of collected payments.

In the case of any individual who dies while in active service as a member of the armed forces of the United States, if the death occurred while serving in a combat zone, as that term is defined by the Internal Revenue Code of 1986, or as a result of wounds, disease, or injury incurred while so serving, any tax imposed by this article:

(1) Shall not apply with respect to the taxable year in which falls the date of his or her death or with respect to any prior taxable year ending on or after the first day he or she served in a combat zone after June 24, 1960;

(2) For a taxable year preceding those specified in paragraph (1) of this Code section which is unpaid at the date of his or her death, including, but not limited to, interest, additions to the tax, and additional amounts shall not be assessed. If assessed, the assessment shall be abated. If any such amount is collected, it shall be credited or refunded as an overpayment.

**History.**

Code 1933, § 92-3123, enacted by Ga. L. 1971, p. 605, § 8; Code 1933, § 91A-3618, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 2022, p. 352, § 48/HB 1428.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "his or her death" for "his death" and "he or she" for "he" in paragraph (1); and substituted "his or her death," for "his death" in paragraph (2).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in the introductory language.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**RESEARCH REFERENCES**

**ALR.**

Military service as basis of discrimination in statutes or ordinances relating to taxation or licenses, 83 A.L.R. 1231.

Income tax on income of taxpayer who dies during taxable year, 142 A.L.R. 213.

## 48-7-38. Deduction for payments to classified subcontractors; disclosure of tax returns; maintenance of list of classified subcontractors.

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

(1) "Classified subcontractor" means a small business certified as a minority business enterprise, women owned business, or veteran owned business under Code Section 50-5-132.

(2) "Small business" shall have the same meaning as provided in Code Section 50-5-121.

(3) "State contract" means a contract for the purchase by the state of goods, property, or services or for the construction of any building or structure for the state, which contract is executed by any department, board, bureau, commission, or agency of state government, by any state authority, or by any officer, official, employee, or agent of any of the foregoing.

(b) In computing Georgia taxable net income of a corporation, partnership, or individual, there shall be subtracted from federal taxable income or federal adjusted gross income 10 percent of the amount of qualified payments to classified subcontractors. A payment to a classified subcontractor shall be a qualified payment if:

(1) The payment is for goods, personal property, or services furnished by the classified subcontractor to the taxpayer and delivered by the taxpayer to the state in furtherance of a state contract to which the taxpayer is a party; and the payment does not exceed the value of the goods, property, or services to the taxpayer;

(2) The payment is made during the taxable year for which the subtraction from federal taxable income or federal adjusted gross income is claimed; and

(3) The payment is made to a small business which, at the time of the payment, is certified as a minority business enterprise, women owned business, or veteran owned business under Code Section 50-5-132.

(c) The total amount which may be subtracted under this Code section from federal taxable income or federal adjusted gross income of any taxpayer shall be limited to $100,000.00 per taxable year.

(d) The department may disclose to the commissioner of administrative services the income tax returns of taxpayers applying for certification as minority business enterprises, women owned businesses, and veteran owned businesses under Code Section 50-5-132. The commissioner of administrative services shall maintain and periodically revise a list of classified subcontractors and shall make such list available to the department no later than December 31 of each year and to the general public.

**History.**

Code 1981, § 48-7-38, enacted by Ga. L. 1984, p. 1644, § 3; Ga. L. 1987, p. 191, § 2; Ga. L. 2001, p. 105, § 1; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2023, p. 43, § 3/HB 128, effective January 1, 2024.

**Amendments.**

**The 2023 amendment,** effective January 1, 2024, rewrote this Code section.

**Editor's notes.**

Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that the Act would apply to taxable years beginning on or after January 1, 1985.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2001, p. 105, § 4, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years ending on or after January 1, 2001.

Code Section 50-5-121, referred to in paragraph (a)(2), was repealed by Ga. L. 2024, p. 922, § 11-1/SB 341, effective May 6, 2024.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-7-39. Depreciation of property placed in service in prior tax years.

(a) With respect to property placed in service in taxable years ending prior to March 11, 1987, a taxpayer shall in his return for the first taxable year ending on or after January 1, 1987, elect to:

(1) Continue to depreciate or otherwise recover the cost of such property according to the same method used for Georgia income tax purposes for the taxable year in which the property was placed in service; or

(2) Depreciate or otherwise recover the cost of such property according to the method used for federal income tax purposes for the taxable year in which the property was placed in service.

The election required by this subsection shall be made for a taxpayer's first taxable year ending on or after January 1, 1987, in such manner as may be specified by the commissioner. If a return for such a taxable year has been filed without such an election prior to or within 90 days after March 11, 1987, the taxpayer may file an amended return containing such an election.

(b) The election provided for in subsection (a) of this Code section shall apply to all property of the taxpayer uniformly and shall be irrevocable and applicable to all subsequent taxable years. Except as otherwise provided in the last sentence of subsection (a) of this Code section, if no such election is made, the taxpayer shall be deemed to have elected the option afforded by paragraph (2) of subsection (a) of this Code section. The General Assembly recognizes and intends that if a taxpayer elects the option afforded by paragraph (2) of subsection (a) of this Code section then in certain cases the taxpayer may never fully depreciate or recover the cost of certain property for Georgia income tax purposes and in certain cases the taxpayer may be allowed to depreciate or recover more than the full cost of certain property for Georgia income tax purposes. Taxpayers electing the option afforded by paragraph (1) of subsection (a) of this Code section shall in determining Georgia taxable income make such adjustments to federal taxable income as are required to reflect the effect of such election. Any such election shall apply both to determination of deductions for depreciation or cost recovery of affected property and also to determination of gain or loss on the sale or other disposition of such property. The commissioner shall specify the manner in which such adjustments shall be made.

**History.**

Code 1981, § 48-7-39, enacted by Ga. L. 1987, p. 191, § 2; Ga. L. 2002, p. 415, § 48.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1987, a second "of " was deleted following "paragraph (1) of subsection (a) of " in the fourth sentence of subsection (b).

**Editor's notes.**

Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed this Code section and enacted the present Code section. The former Code section, related to taxing the income of small business corporations under Subchapter S, was enacted by Ga. L. 1984, p. 1323, § 2 as Code Section 48-7-38 and was redesignated as this Code section pursuant to Code Section 28-9-5.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**48-7-40. (Effective until January 1, 2025.) Designation of counties as less developed areas; tax credits for certain business enterprises.**

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

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

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

(4) "Existing business enterprise" means any business or the headquarters of any such business which has operated for the immediately preceding three years a facility in this state which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, ware-

housing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, or research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(5) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(2) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this

Code section any tier 3 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 2 county.

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county is reclassified in a different tier.

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that, where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 paragraph shall not constitute income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties designated by

the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to $750.00 annually for each new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years. Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 paragraph shall not constitute income to the taxpayer. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those business enterprises that increase employment by two or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The wage of each new job created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia

Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises shall be allowed an additional tax credit for taxes imposed under this article equal to $500.00 per eligible new full-time employee job the first year in which the new full-time employee job is created. The additional credit shall be claimed in the first taxable year in which the new full-time employee job is created. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit generated and utilized for years prior to the year in which the net employment increase falls below the number required in such tier

shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.

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

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) 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 jobs were established, subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in tiers 3 and 4 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. In tier 1 and 2 counties, the credit allowed under this Code section against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year.

(i) Notwithstanding any provision of this Code section to the contrary, in counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises or existing business enterprises, to any business of any nature.

(j) Notwithstanding Code Section 48-2-35, any tax credit claimed

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

(k) The commissioner may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section.

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

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

**History.**

Code 1981, § 48-7-40, enacted by Ga. L. 1989, p. 905, § 1; Ga. L. 1992, p. 2031, § 1; Ga. L. 1994, p. 928, § 2; Ga. L. 1995, p. 585, § 1; Ga. L. 1996, p. 220, § 2; Ga. L. 1997, p. 461, § 1; Ga. L. 1998, p. 1224, § 2; Ga. L. 2000, p. 605, § 1; Ga. L. 2001, p. 984, § 7; Ga. L. 2005, p. 210, § 1/HB 389; Ga. L. 2008, p. 874, § 1/HB 1246; Ga. L. 2009, p. 654, § 1/HB 439; Ga. L. 2012, p. 1309, § 1/HB 868; Ga. L. 2016, p. 553, § 1/HB 936; Ga. L. 2020, p. 184, § 3-1/HB 846; Ga. L. 2024, p. 1052, § 5(31)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization; and revised punctuation in paragraph (e)(1).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that this Code section is applicable to all taxable

years beginning on or after January 1, 2001.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 210, § 2/HB 389, not codified by the General Assembly, provides that the 2005 amendment to this Code section shall apply to all taxable years beginning on or after January 1, 2006.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

**Administrative rules and regulations.**

Low Emission Vehicle Certification, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-25.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 338 (1992).

For note on 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 344 (1992).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

## 48-7-40. (Effective January 1, 2025.) Designation of counties as less developed areas; tax credits for certain business enterprises.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommuni-

cations, broadcasting, tourism, research and development industries, biomedical manufacturing, and services for the elderly and persons with disabilities. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

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

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

(5) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(2) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this Code section any tier 3 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 2 county.

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county is reclassified in a different tier.

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that, where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 paragraph shall not constitute income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to $750.00 annually for each new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years. Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable

year $2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 paragraph shall not constitute income to the taxpayer. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those business enterprises that increase employment by two or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The wage of each new job created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises shall be allowed an additional tax credit for taxes imposed under this article equal to $500.00 per eligible new full-time employee job the first year in which the new full-time employee job is created. The additional credit shall be claimed in the first taxable year in which the new full-time employee job is created. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time

employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit generated and utilized for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.

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

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of

community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in tiers 3 and 4 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. In tier 1 and 2 counties, the credit allowed under this Code section against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year.

(i) Notwithstanding any provision of this Code section to the contrary, in counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises or existing business enterprises, to any business of any nature.

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

(k) The commissioner may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section.

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

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

**History.**

Code 1981, § 48-7-40, enacted by Ga. L. 1989, p. 905, § 1; Ga. L. 1992, p. 2031, § 1; Ga. L. 1994, p. 928, § 2; Ga. L. 1995, p. 585, § 1; Ga. L. 1996, p. 220, § 2; Ga. L. 1997, p. 461, § 1; Ga. L. 1998, p. 1224, § 2; Ga. L. 2000, p. 605, § 1; Ga. L. 2001, p. 984, § 7; Ga. L. 2005, p. 210, § 1/HB 389; Ga. L. 2008, p. 874, § 1/HB 1246; Ga. L. 2009, p. 654, § 1/HB 439; Ga. L. 2012, p. 1309, § 1/HB 868; Ga. L. 2016, p. 553, § 1/HB 936; Ga. L. 2020, p. 184, § 3-1/HB 846; Ga. L. 2024, p. 794, § 1-12/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(31)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" near the beginning of the first sentence in subsection (h). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization; and revised punctuation in paragraph (e)(1).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.1. (Effective until January 1, 2025.) Tax credits for business enterprises in less developed areas.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where ser-

vices or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(3) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas the areas composed of ten or more contiguous census tracts in this state using a combination of the following equally weighted factors:

(1) Highest unemployment rate for the most recent 36 month period;

(2) Lowest per capita income for the most recent 36 month period; and

(3) Highest percentage of residents whose income is below the poverty level according to the most recent data available.

(c) The commissioner of community affairs, and the commissioner of economic development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this subsection, also shall be authorized to include in the designation provided for in subsection (b) of this Code section:

(1) Any area composed of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area;

(2) Any area composed of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater as reflected in the most recent decennial census; provided, however, that the subsequent redrawing or alteration of census tracts in a manner which results in an area no longer being in a census tract adjacent to a federal military installation shall not disqualify an area which has previously qualified under this paragraph if the area continues to have pervasive poverty as described in this paragraph;

(2.1) Any census tract in a county that contains a federal military installation with a garrison of at least 5,000 federal or military personnel combined and also contains an industrial park that is owned and operated by a governmental entity;

(3) Any area composed of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs and the commissioner of economic development, results or will result in a sudden and severe period of economic distress; or

(4) Any area which is within or adjacent to one or more contiguous census block groups with a poverty rate of 15 percent or greater as determined from data in the most current United States decennial census, where the area is also included within a state enterprise zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of community affairs and the commissioner of economic development, displays pervasive poverty, underdevelopment, general distress, and blight.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area. Notwithstanding any provision of this Code section to the contrary, in areas designated as suffering from pervasive poverty under this subsection, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any lawful business.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular area is removed from the list of less developed areas.

(e) Business enterprises in areas designated by the commissioner of community affairs as less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that, where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment

under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 subsection. 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 subsection shall not constitute income to the taxpayer. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by five or more in a less developed area shall be eligible for the credit; provided, however, that, within areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c) of this Code section, businesses shall only have to increase employment by two or more jobs in order to be eligible for the credit, provided that, if a business only increases employment by two jobs, the persons hired for such jobs shall not be married to one another. The wage of each new job created must be above the average wage of the county that has the lowest wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below five or two, as applicable. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of five or two.

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

The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) 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 jobs were established, subject to forfeiture as provided in subsection (e) of this Code section, but the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

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

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

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

**History.**

Code 1981, § 48-7-40.1, enacted by Ga. L. 1993, p. 1649, § 2; Ga. L. 1994, p. 928, § 3; Ga. L. 1996, p. 220, §§ 3, 4; Ga. L. 1997, p. 461, § 2; Ga. L. 2000, p. 605, § 2; Ga. L. 2001, p. 984, § 8; Ga. L. 2004, p. 939, § 1; Ga. L. 2008, p. 874, § 2/HB 1246; Ga. L. 2008, p. 1152, § 1/HB 1273; Ga. L. 2009, p. 654, § 2/HB 439; Ga. L. 2012, p. 1309, § 2/HB 868; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 677, § 2/SB 137; Ga. L. 2014, p. 204, § 1/HB 791; Ga. L. 2016, p. 553, § 2/HB 936; Ga. L. 2018, p. 318, § 1/HB 843; Ga. L. 2020,

p. 184, § 3-2/HB 846; Ga. L. 2024, p. 1052, § 5(32)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.1 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization; and revised punctuation in subsection (e).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2004, "this subsection" was substituted for "this paragraph" in the second sentence of the undesignated paragraph at the end of subsection (c).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be "applicable to all taxable years beginning on or after January 1, 1994."

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be "applicable to all taxable years beginning on or after January 1, 1996."

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be "applicable to all taxable years beginning on or after January 1, 1997."

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be "applicable to all taxable years beginning on or after January 1, 2000."

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment "shall be applicable to all taxable years beginning on or after January 1, 2001."

Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 1152, § 2/HB 1273, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

The reference to "paragraph (e)(1)" in the directory language of Ga. L. 2024, p. 1052, § 5(32)/SB 448, should read "subsection (e)".

**Administrative rules and regulations.**

Job Tax Credit Program Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Job Tax Credit Program, Rule 110-9-1-.01 et seq.

Opportunity Zone Tax Credit Program Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Opportunity Zone Tax Credit Program, Rule 110-24-1-.01 et seq.

**Law reviews.**

For note on the 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 218 (1993).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

**RESEARCH REFERENCES**

**ALR.**

Validity, construction, and application of state taxes on revenues and income from communications satellite services, 51 A.L.R.6th 257.

## 48-7-40.1. (Effective January 1, 2025.) Tax credits for business enterprises in less developed areas.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

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

(3) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas the areas composed of ten or more contiguous census tracts in this state using a combination of the following equally weighted factors:

(1) Highest unemployment rate for the most recent 36 month period;

(2) Lowest per capita income for the most recent 36 month period; and

(3) Highest percentage of residents whose income is below the poverty level according to the most recent data available.

(c) The commissioner of community affairs, and the commissioner of economic development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this subsection, also shall be authorized to include in the designation provided for in subsection (b) of this Code section:

(1) Any area composed of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area;

(2) Any area composed of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater as reflected in the most recent decennial census; provided, however, that the subsequent redrawing or alteration of census tracts in a manner which results in an area no longer being in a census tract adjacent to a federal military installation shall not disqualify an area which has previously qualified under this paragraph if the area continues to have pervasive poverty as described in this paragraph;

(2.1) Any census tract in a county that contains a federal military installation with a garrison of at least 5,000 federal or military personnel combined and also contains an industrial park that is owned and operated by a governmental entity;

(3) Any area composed of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs and the commissioner of economic

development, results or will result in a sudden and severe period of economic distress; or

(4) Any area which is within or adjacent to one or more contiguous census block groups with a poverty rate of 15 percent or greater as determined from data in the most current United States decennial census, where the area is also included within a state enterprise zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of community affairs and the commissioner of economic development, displays pervasive poverty, underdevelopment, general distress, and blight.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area. Notwithstanding any provision of this Code section to the contrary, in areas designated as suffering from pervasive poverty under this subsection, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any lawful business.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular area is removed from the list of less developed areas.

(e) Business enterprises in areas designated by the commissioner of community affairs as less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that, where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise'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 subsection. 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 subsection shall not constitute income to the taxpayer. The number of new full-time

employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by five or more in a less developed area shall be eligible for the credit; provided, however, that, within areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c) of this Code section, businesses shall only have to increase employment by two or more jobs in order to be eligible for the credit, provided that, if a business only increases employment by two jobs, the persons hired for such jobs shall not be married to one another. The wage of each new job created must be above the average wage of the county that has the lowest wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time employee job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below five or two, as applicable. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of five or two.

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

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any

taxable year may be carried forward for five years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in subsection (e) of this Code section, but the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

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

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

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

**History.**

Code 1981, § 48-7-40.1, enacted by Ga. L. 1993, p. 1649, § 2; Ga. L. 1994, p. 928, § 3; Ga. L. 1996, p. 220, §§ 3, 4; Ga. L. 1997, p. 461, § 2; Ga. L. 2000, p. 605, § 2; Ga. L. 2001, p. 984, § 8; Ga. L. 2004, p. 939, § 1; Ga. L. 2008, p. 874, § 2/HB 1246; Ga. L. 2008, p. 1152, § 1/HB 1273; Ga. L. 2009, p. 654, § 2/HB 439; Ga. L. 2012, p. 1309, § 2/HB 868; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 677, § 2/SB 137; Ga. L. 2014, p. 204, § 1/HB 791; Ga. L. 2016, p. 553, § 2/HB 936; Ga. L. 2018, p. 318, § 1/HB 843; Ga. L. 2020, p. 184, § 3-2/HB 846; Ga. L. 2024, p. 794, § 1-13/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(32)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.1 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" near the beginning of subsection (h). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization; and revised punctuation in subsection (e).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax

credits generated during the taxable years beginning on or after January 1, 2025.

The reference to "paragraph (e)(1)" in the directory language of Ga. L. 2024, p. 1052, § 5(32)/SB 448, should read "subsection (e)".

## 48-7-40.1A. (Effective until January 1, 2025.) Tax credits for personal protective equipment manufacturers.

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

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

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

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

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

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

(2) The additional tax credit provided for in paragraph (1) of this subsection shall be claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but shall, except as provided in this Code section, be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to

the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the amount allowed to offset taxes imposed by this article shall be 100 percent; and provided, further, that when such tax credit exceeds a business enterprise's liability for taxes imposed by this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the dollar limitations provided therein. Additionally, such tax credit shall be disallowed during any year that a business enterprise does not qualify as a PPE manufacturer.

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

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

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

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

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

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

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

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

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

(2) Any tax credit claimed under subsection (b) of 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 jobs were established.

(3) No taxpayer shall be eligible for the tax credit provided for under subsection (b) of this Code section for any job for which the taxpayer claims the tax credit provided for under Code Section 48-7-40.1B.

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

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

**History.**
Code 1981, § 48-7-40.1A, enacted by Ga. L. 2020, p. 184, § 2-1/HB 846; Ga. L. 2021, p. 289, § 2-2/SB 6.
**Delayed effective date.**
Code Section 48-7-40.1A is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Editor's notes.**
Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part that: "Parts II through IV of this Act shall be known and may be cited as the 'Georgia Economic Renewal Act of 2021.'"
**Law reviews.**
For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).
For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

## 48-7-40.1A. (Effective January 1, 2025.) Tax credits for personal protective equipment manufacturers.

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

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

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

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

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

(b)(1) When any PPE manufacturer is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1, there shall be allowed an additional $1,250.00 job tax credit against the tax imposed under

this article for those qualifying jobs to the extent they are engaged in the qualifying activity of manufacturing PPE in this state during the taxable year. Such PPE manufacturer shall be eligible for such additional job tax credit at an individual establishment of the business. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity of manufacturing PPE in this state shall be eligible for such additional job tax credit.

(2) The additional tax credit provided for in paragraph (1) of this subsection shall be claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but shall, except as provided in this Code section, be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the amount allowed to offset taxes imposed by this article shall be 100 percent; and provided, further, that when such tax credit exceeds a business enterprise's liability for taxes imposed by this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the dollar limitations provided therein. Additionally, such tax credit shall be disallowed during any year that a business enterprise does not qualify as a PPE manufacturer.

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

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

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

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

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

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

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

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

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

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

(3) No taxpayer shall be eligible for the tax credit provided for under subsection (b) of this Code section for any job for which the taxpayer claims the tax credit provided for under Code Section 48-7-40.1B.

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

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

**History.**
Code 1981, § 48-7-40.1A, enacted by Ga. L. 2020, p. 184, § 2-1/HB 846; Ga. L. 2021, p. 289, § 2-2/SB 6; Ga. L. 2024, p. 794, § 1-14/HB 1181, effective January 1, 2025.

**Delayed effective date.**
Code Section 48-7-40.1A is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**
**The 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" in the middle of paragraph (c)(2). See Editor's notes for applicability.

**Editor's notes.**
Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.1B. (Effective until January 1, 2025.) Tax credits for manufacturers of medical equipment and supplies, pharmaceuticals, and medicine.

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

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

(2) "Medical equipment and supplies manufacturer" means any business which is engaged in the manufacturing of medical equipment and supplies in this state. Such term shall be limited to establishments classified under the North American Industry Classification System (NAICS) Industry Code 3391 — Medical Equipment

and Supplies Manufacturing. Such term shall not include retail businesses that sell medical equipment or supplies.

(3) "Pharmaceutical and medicine manufacturer" means any business which is engaged in the manufacturing of pharmaceuticals or medicine in this state. Such term shall be limited to establishments classified under the North American Industry Classification System (NAICS) Industry Code 3254 — Pharmaceutical and Medicine Manufacturing. Such term shall not include retail businesses that sell pharmaceuticals or medicine.

(b)(1) When any medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer is qualified to claim a job tax credit pursuant to Code Section 48-7-40 or 48-7-40.1, for a qualifying job created on or after July 1, 2021, there shall be allowed an additional $1,250.00 per job tax credit against the tax imposed under this article for those qualifying jobs to the extent that they are engaged in the qualifying activities of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in this state during the taxable year. Such medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer shall be eligible for such additional per job tax credit at an individual establishment of the business. If more than one business activity is conducted at an establishment, then only the jobs engaged in the qualifying activities of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in this state shall be eligible for such additional per job tax credit.

(2) The additional tax credit provided for in paragraph (1) of this subsection shall be claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but shall, except as provided in this Code section, be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the amount allowed to offset taxes imposed by this article shall be 100 percent; and provided, further, that when such tax credit exceeds a business enterprise's liability for taxes imposed by this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the dollar limitations provided therein. Additionally, such tax credit shall be disallowed during any year in which a business enterprise does not qualify as a medical equipment and supplies manufacturer or as a pharmaceutical and medicine manufacturer.

(3) The additional tax credit provided for in paragraph (1) of this

subsection may be used in conjunction with the tax credit provided for under Code Section 48-7-40.15.

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

(1) Any tax credit claimed under subsection (b) of 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 jobs were established; and

(2) No taxpayer shall be eligible for the tax credit provided for under subsection (b) of this Code section for any job for which the taxpayer claims the tax credit provided for under Code Section 48-7-40.1A, or for any job claimed pursuant to Code Section 48-7-40 or 48-7-40.1 prior to July 1, 2021.

(d) This Code section shall be effective as of July 1, 2021, and shall be applicable to taxable years beginning on or after January 1, 2021.

**History.**
Code 1981, § 48-7-40.1B, enacted by Ga. L. 2021, p. 289, § 2-1/SB 6.
**Delayed effective date.**
Code Section 48-7-40.1B is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Editor's notes.**
Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Parts II through IV of this Act shall be known and may be cited as the 'Georgia Economic Renewal Act of 2021.'"
**Law reviews.**
For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## 48-7-40.1B. (Effective January 1, 2025.) Tax credits for manufacturers of medical equipment and supplies, pharmaceuticals, and medicine.

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

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

(2) "Medical equipment and supplies manufacturer" means any business which is engaged in the manufacturing of medical equipment and supplies in this state. Such term shall be limited to establishments classified under the North American Industry Classification System (NAICS) Industry Code 3391 — Medical Equipment and Supplies Manufacturing. Such term shall not include retail businesses that sell medical equipment or supplies.

(3) "Pharmaceutical and medicine manufacturer" means any business which is engaged in the manufacturing of pharmaceuticals

or medicine in this state. Such term shall be limited to establishments classified under the North American Industry Classification System (NAICS) Industry Code 3254 — Pharmaceutical and Medicine Manufacturing. Such term shall not include retail businesses that sell pharmaceuticals or medicine.

(b)(1) When any medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer is qualified to claim a job tax credit pursuant to Code Section 48-7-40 or 48-7-40.1, for a qualifying job created on or after July 1, 2021, there shall be allowed an additional $1,250.00 per job tax credit against the tax imposed under this article for those qualifying jobs to the extent that they are engaged in the qualifying activities of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in this state during the taxable year. Such medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer shall be eligible for such additional per job tax credit at an individual establishment of the business. If more than one business activity is conducted at an establishment, then only the jobs engaged in the qualifying activities of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in this state shall be eligible for such additional per job tax credit.

(2) The additional tax credit provided for in paragraph (1) of this subsection shall be claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but shall, except as provided in this Code section, be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the amount allowed to offset taxes imposed by this article shall be 100 percent; and provided, further, that when such tax credit exceeds a business enterprise's liability for taxes imposed by this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the dollar limitations provided therein. Additionally, such tax credit shall be disallowed during any year in which a business enterprise does not qualify as a medical equipment and supplies manufacturer or as a pharmaceutical and medicine manufacturer.

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

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

(1) Any tax credit claimed under subsection (b) of this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the qualified jobs were established; and

(2) No taxpayer shall be eligible for the tax credit provided for under subsection (b) of this Code section for any job for which the taxpayer claims the tax credit provided for under Code Section 48-7-40.1A, or for any job claimed pursuant to Code Section 48-7-40 or 48-7-40.1 prior to July 1, 2021.

(d) This Code section shall be effective as of July 1, 2021, and shall be applicable to taxable years beginning on or after January 1, 2021.

**History.**

Code 1981, § 48-7-40.1B, enacted by Ga. L. 2021, p. 289, § 2-1/SB 6; Ga. L. 2024, p. 794, § 1-15/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.1B is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" in the middle of paragraph (c)(1). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.2. (Effective until January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities in tier 1 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing

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 has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the commissioner of the Department of Community Affairs shall publish a list of such counties.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or a manufacturing or telecommunications support facility in this state in a tier 1 county designated pursuant to Code Section 48-7-40, 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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 for a manufacturing or telecommunications facility in a rural county made on or after January 1, 2020, 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 50 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, provided that such $1 million limit shall be reduced by any amount taken by such taxpayer pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.3. 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 and pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.3 shall not exceed $10 million in aggregate for all taxpayers for any calendar year. The commissioner shall establish an application process to ensure that the $10 million aggregate maximum and the $1 million per taxpayer maximum are not exceeded. If applications for such credit exceed $10 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 $10 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;

(D) The automatic repeal of paragraph (2.1) of this subsection on December 31, 2024, shall not impair or affect a taxpayer's ability or right to apply an unused credit for a taxable year after December 31, 2024, that such taxpayer accrued pursuant to and under the conditions of said paragraph prior to its automatic repeal.

(2.1) (Repealed effective December 31, 2024.)

(A) Any credit claimed prior to January 1, 2020, 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, 2020, for which such credit may be carried forward pursuant to paragraph (2) of this subsection provided that within a single taxable year beginning on or after January 1, 2020, 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) Purchases or acquires at least $5 million of qualified investment property for manufacturing or telecommunications facilities 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 state 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, 2024;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.2, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 585, § 2; Ga. L. 1996, p. 220, § 5; Ga. L. 1997, p. 461, § 3; Ga. L. 1998, p. 1224, § 3; Ga. L. 2019, p. 661, § 3-1/HB 224; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2024, p. 1052, § 5(33)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.2 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1) and at the end of subparagraph (c)(2)(A).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment "shall be applicable to all taxable years beginning on or after January 1, 1994."

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment "shall be applicable to all taxable years beginning on or after January 1, 1995."

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment "shall be applicable to all taxable years beginning on or after January 1, 1996."

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment "shall be applicable to all taxable years beginning on or after January 1, 1997."

Ga. L. 2019, p. 661, § 4-1/HB 224 not codified by the General Assembly, provides that Parts II and III of this Act "shall be applicable to taxable years beginning on or after January 1, 2020."

## 48-7-40.2. (Effective January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities in tier 1 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing 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, includ-

ing 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 has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the commissioner of the Department of Community Affairs shall publish a list of such counties.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or a manufacturing or telecommunications support facility in this state in a tier 1 county designated pursuant to Code Section 48-7-40, 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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 five 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 for a manufacturing or telecommunications facility in a rural county made on or after January 1, 2020, 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 50 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, provided that such $1 million limit shall be reduced by any amount taken by such taxpayer pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.3. 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 and pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.3 shall not exceed $10 million in aggregate for all taxpayers for any calendar year. The commissioner shall establish an application process to ensure that the $10 million aggregate maximum and the $1 million per taxpayer maximum are not exceeded. If applications for such credit exceed $10 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 $10 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;

(D) The automatic repeal of paragraph (2.1) of this subsection on December 31, 2024, shall not impair or affect a taxpayer's ability or right to apply an unused credit for a taxable year after December 31, 2024, that such taxpayer accrued pursuant to and under the conditions of said paragraph prior to its automatic repeal.

(2.1) (Repealed effective December 31, 2024.)

(A) Any credit claimed prior to January 1, 2020, 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, 2020, for which such credit may be carried forward pursuant to paragraph (2) of this subsection provided that within a single taxable year beginning on or after January 1, 2020, 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) Purchases or acquires at least $5 million of qualified investment property for manufacturing or telecommunications facilities 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 state 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, 2024;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.2, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 585, § 2; Ga. L. 1996, p. 220, § 5; Ga. L. 1997, p. 461, § 3; Ga. L. 1998, p. 1224, § 3; Ga. L. 2019, p. 661, § 3-1/HB 224; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2024, p. 794, § 1-16/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(33)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.2 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, in subparagraph (c)(2)(A), substituted "five years" for "ten years" and substituted a period for a semicolon at the end. See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1) and at the end of subparagraph (c)(2)(A).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.3. (Effective until January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities in tier 2 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing 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 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 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 has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the commissioner of the Department of Community Affairs shall publish a list of such counties.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 3 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 5 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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 for a manufacturing or telecommunications facility in a rural county made on or after January 1, 2020, 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 50 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, provided that such $1 million limit shall be reduced by any amount taken by such taxpayer pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.2. 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 and pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.2 shall not exceed $10 million in aggregate for all taxpayers for any calendar year. The commissioner shall establish an application process to ensure that the $10 million aggregate maximum and the $1 million per taxpayer maximum are not exceeded. If applications for such credit exceed $10 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 $10 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;

(D) The automatic repeal of paragraph (2.1) of this subsection on December 31, 2024, shall not impair or affect a taxpayer's ability or right to apply an unused credit for a taxable year after December 31, 2024, that such taxpayer accrued pursuant to and under the conditions of said paragraph prior to its automatic repeal.

(2.1) (Repealed effective December 31, 2024.)

(A) Any credit claimed prior to January 1, 2020, 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, 2020, for which such credit may be carried forward pursuant to paragraph (2) of this subsection provided that within a single taxable year beginning on or after January 1, 2020, 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) Purchases or acquires at least $10 million of qualified investment property for manufacturing or telecommunications facilities 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 state 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, 2024;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or

personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.3, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 3; Ga. L. 1997, p. 461, § 4; Ga. L. 1998, p. 1224, § 4; Ga. L. 2019, p. 661, § 3-2/HB 224; Ga. L. 2024, p. 1052, § 5(34)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.3 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2019, p. 661, § 4-1/HB 224, not codified by the General Assembly, provides that Parts II and III of this Act "shall be applicable to taxable years beginning on or after January 1, 2020."

## 48-7-40.3. (Effective January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities in tier 2 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing 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 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 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 has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the commissioner of the Department of Community Affairs shall publish a list of such counties.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 3 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 5 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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 five 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 for a manufacturing or telecommunications facility in a rural county made on or after January 1, 2020, 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 50 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, provided that such $1 million limit shall be reduced by any amount taken by such taxpayer pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.2. 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 and pursuant to subdivision (c)(2)(B)(ii)(II) of Code Section 48-7-40.2 shall not exceed $10 million in aggregate for all taxpayers for any calendar year. The commissioner shall establish an application process to ensure that the $10 million aggregate maximum and the $1 million per taxpayer maximum

are not exceeded. If applications for such credit exceed $10 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 $10 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;

(D) The automatic repeal of paragraph (2.1) of this subsection on December 31, 2024, shall not impair or affect a taxpayer's ability or right to apply an unused credit for a taxable year after December 31, 2024, that such taxpayer accrued pursuant to and under the conditions of said paragraph prior to its automatic repeal.

(2.1) (Repealed effective December 31, 2024.)

(A) Any credit claimed prior to January 1, 2020, 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, 2020, for which such credit may be carried forward pursuant to paragraph (2) of this subsection provided that within a single taxable year beginning on or after January 1, 2020, 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) Purchases or acquires at least $10 million of qualified investment property for manufacturing or telecommunications facilities 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 state 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, 2024;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.3, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 3; Ga. L. 1997, p. 461, § 4; Ga. L. 1998, p. 1224, § 4; Ga. L. 2019, p. 661, § 3-2/HB 224; Ga. L. 2024, p. 794, § 1-17/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(34)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.3 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years"

for "ten years" in subparagraph (c)(2)(A). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.4. (Effective until January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 or 4 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing 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 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 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.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 1 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 3 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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) 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. 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. 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;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.4, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 4; Ga. L. 1997, p. 461, § 5; Ga. L. 1998, p. 1224, § 5; Ga. L. 2000, p. 605, § 3; Ga. L. 2019, p. 661, § 3-3/HB 224; Ga. L. 2024, p. 1052, § 5(35)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.4 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2019, p. 661, § 4-1/HB 224, not codified by the General Assembly, provides that Parts II and III of this Act "shall be applicable to taxable years beginning on or after January 1, 2020."

## 48-7-40.4. (Effective January 1, 2025.) Tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 or 4 counties.

(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 or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not

limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing 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 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 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.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 1 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 3 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 is purchased or acquired by the taxpayer; provided, however, that, for tax years beginning on or after January 1, 2020, the credit may only 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 $100,000.00 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) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five 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. 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. 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;

(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 the amount required by paragraph (1) of this subsection;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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) 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.

**History.**

Code 1981, § 48-7-40.4, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 4; Ga. L. 1997, p. 461, § 5; Ga. L. 1998, p. 1224, § 5; Ga. L. 2000, p. 605, § 3; Ga. L. 2019, p. 661, § 3-3/HB 224; Ga. L. 2024, p. 794, § 1-18/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(35)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.4 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" near the beginning of the first sentence in paragraph (c)(2). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.5. (Effective until January 1, 2025.) Tax credits for employers providing approved retraining programs.

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

(1) "Approved retraining" means employer provided or employer sponsored retraining that meets the following conditions:

(A) It enhances the functional skills of employees otherwise unable to function effectively on the job due to skill deficiencies or who would otherwise be displaced because such skill deficiencies would inhibit their utilization of new technology; provided, however, that approved retraining shall not include any retraining on commercially, mass produced software packages for word processing, data base management, presentations, spreadsheets, email, personal information management, or computer operating systems except a retraining tax credit shall be allowable for those providing support or training on such software;

(B) It is approved and certified by the Technical College System of Georgia; and

(C) The employer does not require the employee to make any payment for the retraining, either directly or indirectly through use of forfeiture of leave time, vacation time, or other compensable time.

(2) "Cost of retraining" means direct instructional costs as defined by the Technical College System of Georgia including instructor salaries, materials, supplies, and textbooks but specifically excluding costs associated with renting or otherwise securing space.

(3) "Employee" means any employee resident in this state who is employed for at least 25 hours a week and who has been continuously employed by the employer for at least 16 consecutive weeks.

(4) "Employer" means any employer upon whom an income tax is imposed by this chapter.

(5) "Employer provided" refers to approved retraining offered on the premises of the employer or on premises approved by the Technical College System of Georgia by instructors hired by or employed by an employer.

(6) "Employer sponsored" refers to a contractual arrangement with a school, university, college, or other instructional facility which offers approved retraining that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors one or more approved retraining programs in a taxable year. The total amount of the tax credit allowed per full-time employee shall be equal to one-half of the costs of retraining per full-time employee, or $500.00 per full-time employee, whichever is less, for each employee who has successfully completed an approved retraining program; provided, however, that in no event shall the amount of the tax credit

authorized under this subsection exceed $1,250.00 per year per full-time employee who has successfully completed more than one approved retraining program. No employer shall receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of retraining.

(c) Any tax credit claimed under this Code section for any taxable year beginning on or after January 1, 1998, but not used for any such taxable year may be carried forward for ten years from the close of the taxable year in which the tax credit was granted. The tax credit granted to any employer pursuant to this Code section shall not exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year as computed without regard to this Code section. Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(d) To be eligible to claim the credit granted under this Code section, the employer shall certify to the department the name of the employee, the coursework successfully completed by such employee, the name of the provider of the approved retraining, and such other information as may be required by the department to ensure that credits are only granted to employers who provide or sponsor approved retraining pursuant to this Code section and that such credits are only granted to employers with respect to employees who successfully complete such approved retraining. The department shall adopt rules and regulations and forms to implement this credit program. The department is expressly authorized and directed to work with the Technical College System of Georgia to ensure the proper granting of credits pursuant to this Code section.

(e) The Technical College System of Georgia is expressly authorized and directed to establish such standards as it deems necessary and convenient in approving employer provided and employer sponsored retraining programs. In establishing such standards, the Technical College System of Georgia shall establish required hours of classroom instruction, required courses, certification of teachers or instructors, progressive levels of instruction, and standardized measures of employee evaluation to determine successful completion of a course of study.

**History.**

Code 1981, § 48-7-40.5, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 5; Ga. L. 1996, p. 220, § 6; Ga. L. 1998, p. 1224, § 6; Ga. L. 2008, p. 335, § 9/SB 435; Ga. L. 2009, p. 654, § 3/HB 439; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 1052, § 5(36)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.5 is set out twice in this Code. This version is effective until

January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in subparagraph (a)(1)(A).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L 1998, p. 1224, § 8, not codified by the General Assembly, provides that the 1998 amendment shall be applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

## 48-7-40.5. (Effective January 1, 2025.) Tax credits for employers providing approved retraining programs.

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

(1) "Approved retraining" means employer provided or employer sponsored retraining that meets the following conditions:

(A) It enhances the functional skills of employees otherwise unable to function effectively on the job due to skill deficiencies or who would otherwise be displaced because such skill deficiencies would inhibit their utilization of new technology; provided, however, that approved retraining shall not include any retraining on commercially, mass produced software packages for word processing, data base management, presentations, spreadsheets, email, personal information management, or computer operating systems except a retraining tax credit shall be allowable for those providing support or training on such software;

(B) It is approved and certified by the Technical College System of Georgia; and

(C) The employer does not require the employee to make any payment for the retraining, either directly or indirectly through use of forfeiture of leave time, vacation time, or other compensable time.

(2) "Cost of retraining" means direct instructional costs as defined by the Technical College System of Georgia including instructor salaries, materials, supplies, and textbooks but specifically excluding costs associated with renting or otherwise securing space.

(3) "Employee" means any employee resident in this state who is employed for at least 25 hours a week and who has been continuously employed by the employer for at least 16 consecutive weeks.

(4) "Employer" means any employer upon whom an income tax is imposed by this chapter.

(5) "Employer provided" refers to approved retraining offered on the premises of the employer or on premises approved by the Technical College System of Georgia by instructors hired by or employed by an employer.

(6) "Employer sponsored" refers to a contractual arrangement with a school, university, college, or other instructional facility which offers approved retraining that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors one or more approved retraining programs in a taxable year. The total amount of the tax credit allowed per full-time employee shall be equal to one-half of the costs of retraining per full-time employee, or $500.00 per full-time employee, whichever is less, for each employee who has successfully completed an approved retraining program; provided, however, that in no event shall the amount of the tax credit authorized under this subsection exceed $1,250.00 per year per full-time employee who has successfully completed more than one approved retraining program. No employer shall receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of retraining.

(c) Any tax credit claimed under this Code section for any taxable year beginning on or after January 1, 1998, but not used for any such taxable year may be carried forward for five years from the close of the taxable year in which the tax credit was granted. The tax credit granted to any employer pursuant to this Code section shall not exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year as computed without regard to this Code section. Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(d) To be eligible to claim the credit granted under this Code section, the employer shall certify to the department the name of the employee, the coursework successfully completed by such employee, the name of the provider of the approved retraining, and such other information as may be required by the department to ensure that credits are only granted to employers who provide or sponsor approved retraining pursuant to this Code section and that such credits are only granted to

employers with respect to employees who successfully complete such approved retraining. The department shall adopt rules and regulations and forms to implement this credit program. The department is expressly authorized and directed to work with the Technical College System of Georgia to ensure the proper granting of credits pursuant to this Code section.

(e) The Technical College System of Georgia is expressly authorized and directed to establish such standards as it deems necessary and convenient in approving employer provided and employer sponsored retraining programs. In establishing such standards, the Technical College System of Georgia shall establish required hours of classroom instruction, required courses, certification of teachers or instructors, progressive levels of instruction, and standardized measures of employee evaluation to determine successful completion of a course of study.

**History.**

Code 1981, § 48-7-40.5, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 5; Ga. L. 1996, p. 220, § 6; Ga. L. 1998, p. 1224, § 6; Ga. L. 2008, p. 335, § 9/SB 435; Ga. L. 2009, p. 654, § 3/HB 439; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 794, § 1-19/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(36)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.5 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" near the middle of the first sentence in subsection (c). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in subparagraph (a)(1)(A).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.6. Tax credits for employers providing child care.

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

(1) "Cost of operation" means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities; provided, however, that the term cost of operation shall exclude the cost of any property that is qualified child care property.

(2) "Employer" means any employer upon whom an income tax is imposed by this article.

(3) "Employer provided" refers to child care offered on the premises of the employer.

(4) "Employer sponsored" refers to a contractual arrangement with a child care facility that is paid for by the employer.

(5) "Premises of the employer" refers to any location within the State of Georgia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; provided, however, that, if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(6) "Qualified child care property" means all real property and tangible personal property purchased or acquired on or after July 1, 1999, or which property is first placed in service on or after July 1, 1999, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The facility is licensed or commissioned by the Department of Early Care and Learning pursuant to Chapter 1A of Title 20;

(B) At least 95 percent of the children who use the facility are children of employees of:

(i) The taxpayer and other employers in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of Section 1504(a) of the Internal Revenue Code; and

(C) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2000.

Qualified child care property includes, but is not limited to, amounts expended on land acquisition, improvements, buildings, and building improvements and furniture, fixtures, and equipment.

(7) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this Code section for all taxable years preceding the recapture year, whether or not such credits were used.

(8) "Recapture event" refers to any disposition of qualified child care property by the taxpayer, or any other event or circumstance

under which property ceases to be qualified child care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(9) "Recapture percentage" refers to the applicable percentage set forth in the following table:

| If the recapture event occurs within— | The recapture percentage is: |
|---|---|
| Five full years after the qualified child care property is placed in service | 100 |
| The sixth full year after the qualified child care property is placed in service | 90 |
| The seventh full year after the qualified child care property is placed in service | 80 |
| The eighth full year after the qualified child care property is placed in service | 70 |
| The ninth full year after the qualified child care property is placed in service | 60 |
| The tenth full year after the qualified child care property is placed in service | 50 |
| The eleventh full year after the qualified child care property is placed in service | 40 |
| The twelfth full year after the qualified child care property is placed in service | 30 |
| The thirteenth full year after the qualified child care property is placed in service | 20 |
| The fourteenth full year after the qualified child care property is placed in service | 10 |
| Any period after the close of the fourteenth full year after the qualified child care property is placed in service | 0 |

(10) "Recapture year" means the taxable year in which a recapture event occurs with respect to qualified child care property.

(b) A tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for

employees. The amount of the tax credit shall be equal to 75 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

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

(1) Such credit shall not exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year as computed without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this Code section.

(d) In addition to the tax credit provided under subsection (b) of this Code section, a taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing nine taxable years following such taxable year. The aggregate amount of the credit shall equal 100 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 10 percent per year over a period of ten taxable years.

(e) The tax credit allowable under subsection (d) of this Code section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit, including any carryover of such credit from a prior taxable year, exceed 50 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child care facility;

(B) The amount of qualified child care property acquired during the taxable year and the cost of such property;

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

(D) The amount of qualified child care property acquired in prior taxable years and the cost of such property;

(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;

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

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(f) If a recapture event occurs with respect to qualified child care property:

(1) The credit otherwise allowable under subsection (d) of this Code section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (d) of this Code section shall be recaptured as follows:

(A) Any carryover attributable to such credits under paragraph (1) of subsection (e) of this Code section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable under subsection (d) of this Code section for the recapture year, if any, as reduced under paragraph (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account under subparagraph (A) of this paragraph; and

(C) The tax imposed under this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account under subparagraphs (A) and (B) of this paragraph, as applicable.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.6, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 585, § 6; Ga. L. 1999, p. 13, § 3; Ga. L. 2004, p. 645, § 6; Ga. L. 2024, p. 1052, § 5(37)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(5).

**Editor's notes.**

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1999, p. 13, § 4, not codified by the General Assembly, provides that the 1999 amendment shall be applicable to all taxable years beginning on or after January 1, 2000.

**Administrative rules and regulations.**

Child Care Credit, Definitions and Description, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.38.

## 48-7-40.7. (Effective until January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities in tier 1 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunica-

tions facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 1 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.2. No taxpayer who claims the credit under Code Section 48-7-40.2 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 10 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $5 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $5 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.** Code 1981, § 48-7-40.7, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 6.

**Delayed effective date.**

Code Section 48-7-40.7 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

**Administrative rules and regulations.**

Optional Investment Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.40.

## 48-7-40.7. (Effective January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities in tier 1 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 1 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing five taxable years following the taxable year the qualified investment property was

first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.2. No taxpayer who claims the credit under Code Section 48-7-40.2 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 10 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the fifth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $5 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $5 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.**

Code 1981, § 48-7-40.7, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 6; Ga. L. 2024, p. 794, § 1-20/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.7 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five taxable years" for "ten taxable years" near the middle of subsection (b), and substituted "fifth year" for "tenth year" in paragraph (b)(3). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by

Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

### 48-7-40.8. (Effective until January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities in tier 2 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.3. No taxpayer who claims the credit under Code Section 48-7-40.3 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit

allowed under this Code section shall equal 8 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $10 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $10 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.**

Code 1981, § 48-7-40.8, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 7.

**Delayed effective date.**

Code Section 48-7-40.8 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

## 48-7-40.8. (Effective January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities in tier 2 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing five taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.3. No taxpayer who claims the credit under Code Section 48-7-40.3 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 8 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be

determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the fifth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $10 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $10 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.**

Code 1981, § 48-7-40.8, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 7; Ga. L. 2024, p. 794, § 1-21/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.8 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five taxable years" for "ten taxable years" near the middle of subsection (b), and substituted "fifth year" for "tenth year" in paragraph (b)(3). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.9. (Effective until January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 and 4 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.4. No taxpayer who claims the credit under Code Section 48-7-40.4 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 6 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $20 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of unused tax credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $20 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.**

Code 1981, § 48-7-40.9, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 8; Ga. L. 2000, p. 605, § 4.

**Delayed effective date.**

Code Section 48-7-40.9 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

## 48-7-40.9. (Effective January 1, 2025.) Optional tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 and 4 counties.

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

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "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.

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

or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing five taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.4. No taxpayer who claims the credit under Code Section 48-7-40.4 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 6 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the fifth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(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 qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of $20 million. 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 placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of unused tax credit available at the end of the prior tax year;

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

(G) The amount of tax credit remaining for subsequent tax years;

(2) 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 placing in service of qualified investment property having an aggregate cost in excess of $20 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing 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

(4) 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) 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.

**History.**
Code 1981, § 48-7-40.9, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 8; Ga. L. 2000, p. 605, § 4; Ga. L. 2024, p. 794, § 1-22/HB 1181, effective January 1, 2025.
**Delayed effective date.**
Code Section 48-7-40.9 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.
**Amendments.**
**The 2024 amendment,** effective January 1, 2025, substituted "five taxable years" for "ten taxable years" near the middle of subsection (b), and substituted "fifth year" for "tenth year" in paragraph (b)(3). See Editor's notes for applicability.
**Editor's notes.**
Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.10. [Reserved] Tax credits for water conservation facilities and qualified water conservation investment property.

**History.**
Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2015, p. 370, § 1/HB 464; repealed by Ga. L. 2015, p. 370, § 1/HB 464, effective December 31, 2016.
**Editor's notes.**
Ga. L. 2015, p. 370, § 1/HB 464 repealed and reserved this Code section, effective December 31, 2016.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2017, this Code section was reserved.

## 48-7-40.11. [Reserved] Tax credits for shift from ground-water usage.

**History.**
Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2015, p. 370, § 2/HB 464; repealed by Ga. L. 2015, p. 370, § 2/HB 464, effective December 31, 2016.
**Editor's notes.**
Ga. L. 2015, p. 370, § 2/HB 464 repealed and reserved this Code section, effective December 31, 2016.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2017, this Code section was reserved.

## 48-7-40.12. (Effective until January 1, 2025.) Tax credits for qualified research expenses.

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

(1) "Base amount" means the product of a business enterprise's

Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit provided in this Code section. For purposes of this paragraph, "Georgia gross receipts" shall be the numerator of the gross receipts factor provided in subsection (d) of Code Section 48-7-31.

(2) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses. Any business or the headquarters of any such business that otherwise meets the definition of a business enterprise shall not be considered a retail business due to the retail activities of any of its affiliate entities, as such term is defined in subsection (a) of Code Section 48-7-42.

(4) "Qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(b) A tax credit is allowed a business enterprise which has qualified research expenses in Georgia in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended.

(c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the excess over the base amount referred to in said subsection.

(d) Any unused credit claimed under this Code section may be carried forward ten years from the close of the taxable year in which the qualified research expenses were made. The credit taken in any one

taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(e) Where the amount of a credit claimed under this Code section exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a 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 subsection. 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 subsection shall not constitute income to the taxpayer.

(f) Any credit earned under this Code section in any taxable year beginning before January 1, 2012, and any credit carryforward attributable thereto, shall be governed by this Code section as in effect for the taxable year in which such credit was earned, including, but not limited to, when determining whether such credit or any credit carryforward may be taken as a credit against the taxpayer's quarterly or monthly payments under Code Section 48-7-103.

**History.**

Code 1981, § 48-7-40.12, enacted by Ga. L. 1997, p. 461, § 9; Ga. L. 1998, p. 128, § 48; Ga. L. 2008, p. 874, § 3/HB 1246; Ga. L. 2009, p. 654, § 4/HB 439; Ga. L. 2012, p. 1309, § 3/HB 868; Ga. L. 2013, p. 7, § 3/HB 266; Ga. L. 2021, p. 289, § 7-1/SB 6; Ga. L. 2024, p. 1052, § 5(38)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.12 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(2), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2013, p. 7, § 7(b)/HB 266, not codified by the General Assembly, provides, in part, that the 2013

amendment shall be applicable to all taxable years beginning on or after January 1, 2012.

**Administrative rules and regulations.**

Tax Credit for Qualified Research Expenses, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.42.

**Law reviews.**

For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

**JUDICIAL DECISIONS**

**Trial court erred in finding invalid a regulation** which interpreted a research tax credit codified in a statute; the regulation's requirement that a business enterprise have a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's intent that research activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc., 270 Ga. App. 615, 607 S.E.2d 207, 2004 Ga. App. LEXIS 1543 (2004), cert. denied, No. S05C0574, 2005 Ga. LEXIS 272 (Ga. Mar. 28, 2005).

**RESEARCH REFERENCES**

**ALR.**

Validity, construction, and application of state taxes on revenues and income from communications satellite services, 51 A.L.R.6th 257.

## 48-7-40.12. (Effective January 1, 2025.) Tax credits for qualified research expenses.

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

(1) "Base amount" means the product of a business enterprise's Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit provided in this Code section. For purposes of this paragraph, "Georgia gross receipts" shall be the numerator of the gross receipts factor provided in subsection (d) of Code Section 48-7-31.

(2) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is

limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses. Any business or the headquarters of any such business that otherwise meets the definition of a business enterprise shall not be considered a retail business due to the retail activities of any of its affiliate entities, as such term is defined in subsection (a) of Code Section 48-7-42.

(4) "Qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(b) A tax credit is allowed a business enterprise which has qualified research expenses in Georgia in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended.

(c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the excess over the base amount referred to in said subsection.

(d) Any unused credit claimed under this Code section may be carried forward five years from the close of the taxable year in which the qualified research expenses were made. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(e) Where the amount of a credit claimed under this Code section exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a 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 subsection. 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 subsection shall not constitute income to the taxpayer.

(f) Any credit earned under this Code section in any taxable year beginning before January 1, 2012, and any credit carryforward attributable thereto, shall be governed by this Code section as in effect for the taxable year in which such credit was earned, including, but not limited to, when determining whether such credit or any credit carryforward may be taken as a credit against the taxpayer's quarterly or monthly payments under Code Section 48-7-103.

**History.**

Code 1981, § 48-7-40.12, enacted by Ga. L. 1997, p. 461, § 9; Ga. L. 1998, p. 128, § 48; Ga. L. 2008, p. 874, § 3/HB 1246; Ga. L. 2009, p. 654, § 4/HB 439; Ga. L. 2012, p. 1309, § 3/HB 868; Ga. L. 2013, p. 7, § 3/HB 266; Ga. L. 2021, p. 289, § 7-1/SB 6; Ga. L. 2024, p. 794, § 1-23/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(38)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.12 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" in the middle of the first sentence in subsection (d). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(2), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.13. [Reserved] "Business enterprise" defined; tax credit.

**History.**

Ga. L. 1997, p. 461, § 9; repealed by Ga. L. 2005, p. 1125, § 1/HB 539, effective May 9, 2005.

**Editor's notes.**

Ga. L. 2005, p. 1125, § 1/HB 539 repealed and reserved this Code section, effective May 9, 2005.

## 48-7-40.14. Calculation of new full-time jobs.

Notwithstanding any provision to the contrary of Code Sections 48-7-40 and 48-7-40.1, business enterprises may make a one-time election to calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs created during calendar year 1994 and thereafter as compared against the preceding calendar year. Such one-time election may be made by claiming job tax credits in connection with any 1995 state income tax return or amended return that is filed after April 29, 1997. Such election will not change the taxable year of the business enterprise.

**History.**
Code 1981, § 48-7-40.14, enacted by Ga. L. 1997, p. 1344, § 1.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 48-7-40.12, was redesignated as Code Section 48-7-40.14 and "April 29, 1997" was substituted for "the effective date of this Code section" in the second sentence.

## 48-7-40.15. (Effective until January 1, 2025.) Tax credits for base year port traffic increases.

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

(1) "Base year port traffic" means:

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

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

(2) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including,

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

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

(5) "Port traffic" means:

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

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

(6) "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.

(7) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or in the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, moneys expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility.

The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this Code section.

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

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

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

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

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

(1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's state income tax

return which shall set forth the following information, as a minimum, in addition to the information required under Code Sections 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

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

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

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

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

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

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

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

(2)(A) Any tax credit claimed under subsection (b) of 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 jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 or 48-7-40.1 and this Code section, respectively.

(B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 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 the increase in port traffic remains above the minimum level established in this Code section and the qualified investment property remains in service.

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

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and 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.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 or 48-7-40.1 and 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.

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

**History.**

Code 1981, § 48-7-40.15, enacted by Ga. L. 1998, p. 744, § 1; Ga. L. 1998, p. 1224, § 7; Ga. L. 2000, p. 605, § 5; Ga. L. 2001, p. 855, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 159, § 16/HB 488; Ga. L. 2008, p. 874, § 4/HB 1246; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 654, § 5/HB 439; Ga. L. 2012, p. 1309, § 4/HB 868; Ga. L. 2024, p. 1052, §§ 5(39), 6(31)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.15 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraphs (a)(1)(A) and (a)(1)(B); and, in paragraph (a)(2), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 1998, p. 1224, § 8, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 855, § 2, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2001."

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2024, p. 1052, § 6(31)/SB 448, which amended this Code section, purported to amend Code Section 40-7-40.15 but actually amended Code Section 48-7-40.15.

**Law reviews.**

For review of 1998 legislation relating to revenue and taxation, see 15 Georgia St. U.L. Rev. 224 (1998).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Cred-

its and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

### 48-7-40.15. (Effective January 1, 2025.) Tax credits for base year port traffic increases.

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

(1) "Base year port traffic" means:

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

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

(2) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and re-

search and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by subsection (b) of this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

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

(5) "Port traffic" means:

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

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

(6) "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.

(7) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or in the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, moneys expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this Code section.

(b)(1) In the case of any business enterprise which has increased its

port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed an additional $1,250.00 job tax credit against the tax imposed under this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and 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.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 or 48-7-40.1 and 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.

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

**History.**

Code 1981, § 48-7-40.15, enacted by Ga. L. 1998, p. 744, § 1; Ga. L. 1998, p. 1224, § 7; Ga. L. 2000, p. 605, § 5; Ga. L. 2001, p. 855, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 159, § 16/HB 488; Ga. L. 2008, p. 874, § 4/HB 1246; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 654, § 5/HB 439; Ga. L. 2012, p. 1309, § 4/HB 868; Ga. L. 2024, p. 794, § 1-24/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, §§ 5(39), 6(31)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.15 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" in subparagraphs (e)(2)(A) and (e)(2)(B), and substituted "five taxable years" for "ten taxable years" in subparagraph (e)(3)(A). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraphs (a)(1)(A) and (a)(1)(B); and, in paragraph (a)(2), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 2024, p. 1052, § 6(31)/SB 448, which amended this Code section, purported to amend Code Section 40-7-40.15 but actually amended Code Section 48-7-40.15.

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.15A. (Effective until January 1, 2025.) Tax credit for employer with base year port traffic increases.

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

(1) "Base year port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that, in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's), then "base year port traffic" means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

(2) "Business enterprise" means any business located in a tier 2 or tier 3 county established pursuant to Code Section 48-7-40 and in a less developed area established pursuant to Code Section 48-7-40.1 and which qualifies and receives the tax credit under Code Section 48-7-40.1 and which:

(A) Consists of a distribution facility of greater than 650,000 square feet in operation in this state prior to December 31, 2008;

(B) Distributes product to retail stores owned by the same legal entity or its subsidiaries as such distribution facility; and

(C) Has a minimum of eight retail stores in this state in the first year of operations.

(3) "Port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(4) "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.

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

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

(c) No business enterprise shall be authorized to claim the credits provided for in both subsection (b) of this Code section and subsection (b) of Code Section 48-7-40.15 on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic and has increased employment by 400 or more no sooner than January 1, 1998.

(d)(1) The credit granted under this Code section shall be subject to the following conditions and limitations:

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

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

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

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

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

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

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

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

(3)(A) Any tax credit claimed under subsection (b) of 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 jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 and this Code section, respectively.

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and 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.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 and 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.

(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer,

but any unused credit may be transferred and continued by any transferee of the taxpayer.

(e) No tax credit may be claimed and allowed pursuant to this Code section for any jobs created on or after January 1, 2015.

**History.**
Code 1981, § 48-7-40.15A, enacted by Ga. L. 2009, p. 816, § 7/HB 485; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 1052, § 5(40)/SB 448, effective July 1, 2024.

**Delayed effective date.**
Code Section 48-7-40.15A is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**
**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(1).

**Editor's notes.**
Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

## 48-7-40.15A. (Effective January 1, 2025.) Tax credit for employer with base year port traffic increases.

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

(1) "Base year port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product actually imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that, in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's), then "base year port traffic" means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

(2) "Business enterprise" means any business located in a tier 2 or tier 3 county established pursuant to Code Section 48-7-40 and in a less developed area established pursuant to Code Section 48-7-40.1 and which qualifies and receives the tax credit under Code Section 48-7-40.1 and which:

(A) Consists of a distribution facility of greater than 650,000 square feet in operation in this state prior to December 31, 2008;

(B) Distributes product to retail stores owned by the same legal entity or its subsidiaries as such distribution facility; and

(C) Has a minimum of eight retail stores in this state in the first year of operations.

(3) "Port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this

state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(4) "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.

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

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

(c) No business enterprise shall be authorized to claim the credits provided for in both subsection (b) of this Code section and subsection (b) of Code Section 48-7-40.15 on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic and has increased employment by 400 or more no sooner than January 1, 1998.

(d)(1) The credit granted under this Code section shall be subject to the following conditions and limitations:

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

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

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

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

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

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

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

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

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

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and 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.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 and 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.

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

(e) No tax credit may be claimed and allowed pursuant to this Code section for any jobs created on or after January 1, 2015.

**History.**

Code 1981, § 48-7-40.15A, enacted by Ga. L. 2009, p. 816, § 7/HB 485; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 794, § 1-25/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(40)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.15A is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" in subparagraph (d)(3)(A). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(1).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by

Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

**48-7-40.16. (Effective until January 1, 2025.) Tax credits for alternative fuel, low-emission, and zero-emission vehicles and electric vehicle chargers.**

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

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; and electricity, including electricity from solar energy.

(2) "Clean fueled vehicle" means a motor vehicle which has been certified by the Environmental Protection Agency to meet, for any model year, a set of emission standards that classifies it as a low-emission vehicle or zero emission vehicle.

(3) "Conventionally fueled vehicle" means a motor vehicle which is fueled solely by a petroleum based fuel such as gasoline or diesel.

(4) "Converted vehicle" means a motor vehicle that is retrofitted so that it is fueled solely by an alternative fuel and which meets the emission standards set forth for that class of low-emission vehicles as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, when operating on such alternative fuel, or which meets the emission standards set forth for zero emission vehicles as defined under rules and regulations of the Board of Natural Resources.

(5) "Low-emission vehicle" means a motor vehicle which is fueled solely by an alternative fuel and which meets emission standards as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles classified as low-emission vehicles, as amended, when operating on such alternative fuel.

(6) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that is registered by the Department of Revenue, except vehicles that are defined as "low-speed vehicles" in paragraph (25.1) of Code Section 40-1-1.

(7) "Zero emission vehicle" means a motor vehicle which has zero tailpipe and evaporative emissions as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, and shall include an electric vehicle

whose drive train is powered solely by electricity, provided said electricity is not provided by any on-board combustion device.

(b)(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the purchase or lease of a new low-emission vehicle or new zero emission vehicle that is registered in the State of Georgia. The amount of the credit shall be:

(A) For any new low-emission vehicle, 10 percent of the cost of such vehicle or $2,500.00, whichever is less; and

(B) For any new zero emission vehicle, 20 percent of the cost of such vehicle or $5,000.00, whichever is less.

(2) For any new low-emission vehicle or new zero emission vehicle purchased or leased on or after July 1, 2015, the amount of the credit shall be $0.00.

(c) A tax credit is allowed against the tax imposed under this article to a taxpayer for the conversion of a conventionally fueled vehicle to a converted vehicle that is registered in the State of Georgia. The amount of the credit shall be equal to 10 percent of the cost of conversion, not to exceed $2,500.00 per converted vehicle.

(d) A tax credit is allowed against the tax imposed under this article to any business enterprise for the purchase or lease of each electric vehicle charger that is located in the State of Georgia. The amount of the credit shall be 10 percent of the cost of the charger or $2,500.00, whichever is less.

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

(1) All claims for any credit provided by subsection (b) of this Code section shall be:

(A) Accompanied by a certification approved by the Environmental Protection Division of the Department of Natural Resources; and

(B) Made only by a taxpayer who is the owner of a new clean fueled vehicle, as evidenced by the certificate of title issued for such vehicle; provided, however, that, if a new clean fueled vehicle is leased to a taxpayer at retail, the taxpayer who is the lessee shall be entitled to claim the credit; provided, further, that only one taxpayer shall be eligible to claim any credit provided by subsection (b) of this Code section;

(2) All claims for any credit provided by subsection (c) of this Code section must be accompanied by a certification issued by the Environmental Protection Division of the Department of Natural Resources;

(3) All claims for any credit provided by subsection (d) of this Code section shall be:

(A) Accompanied by a certification issued by the seller where the new electric vehicle charger was purchased or leased; and

(B) Made only by a taxpayer who is the ultimate purchaser or lessee of a new electric vehicle charger at retail;

(4) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which a new clean fueled vehicle was purchased or leased or a conventionally fueled vehicle was changed into a converted vehicle, provided that the applicable certification required in paragraph (1) or (2) of this subsection accompanies any such claim;

(5) In no event shall the amount of any tax credit provided in this Code section exceed the taxpayer's income tax liability; and

(6) Tax credits authorized in this Code section shall be granted to a taxpayer who purchased or leased and placed in service in Georgia a new low-emission vehicle or zero emission vehicle, which also is a low-speed vehicle, but only if such low-speed vehicle was placed in service during the taxable year ending December 31, 2001. For purposes of this paragraph, the term "low-speed vehicle" means a low-speed vehicle as defined in paragraph (25.1) of Code Section 40-1-1. Any claim for such credit must be accompanied by a manufacturer's statement of origin issued to a dealer registered in Georgia which certifies that the low-speed vehicle was manufactured in compliance with those federal motor vehicle safety standards set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001, as well as any other documentation deemed necessary by the commissioner to establish the date that delivery was made and such vehicle was placed in service. A taxpayer shall only be eligible to claim such credit with respect to a single low-speed vehicle.

(f) The state revenue commissioner shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section.

(g) The Board of Natural Resources shall be authorized to adopt rules and regulations to provide for:

(1) The specific standards and requirements for low-emission vehicles, zero emission vehicles, and converted vehicles and electric vehicle chargers which shall be consistent with the terms of this Code section;

(2) An approved certification form which certifies the purchase or lease of a new clean fueled vehicle that is qualified for a tax credit provided by this Code section;

(3) The certification of any converted vehicle that is qualified to claim a tax credit provided by this Code section; and

(4) An approved certification form which shall be issued by the seller which certifies the purchase or lease of a new electric vehicle charger that is qualified for a tax credit provided by this Code section.

**History.**

Code 1981, § 48-7-40.16, enacted by Ga. L. 1998, p. 1576, § 1; Ga. L. 2000, p. 1090, § 1; Ga. L. 2001, p. 109, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 506, § 1; Ga. L. 2002, p. 512, §§ 14, 15; Ga. L. 2003, p. 665, § 6; Ga. L. 2005, p. 334, § 29-5/HB 501; Ga. L. 2015, p. 236, § 5-1/HB 170; Ga. L. 2024, p. 1052, § 5(41)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.16 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (e)(1)(B).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1998, Code Section 48-7-40.15 as enacted by Ga. L. 1998, p. 1576, § 1, was redesignated as Code Section 48-7-40.16.

The amendment of this Code section by Ga. L. 2002, p. 415, § 48, and Ga. L. 2002, p. 506, § 1, irreconcilably conflicted with and were treated as superseded by Ga. L. 2002, p. 512, § 15. See County of Butts v. Strahan, 151 Ga. 417 (1921).

**Editor's notes.**

Ga. L. 1998, p. 1576, § 2, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2000, p. 1090, § 3, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 109, § 2, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Administrative rules and regulations.**

Low Emission Vehicle Certification, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Natural Resources, Environmental Protection, Subject 391-3-25.

**Law reviews.**

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article on the 2015 amendment of

this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

**48-7-40.16. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for alternative fuel, low-emission, and zero-emission vehicles and electric vehicle chargers.**

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

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; and electricity, including electricity from solar energy.

(2) "Clean fueled vehicle" means a motor vehicle which has been certified by the Environmental Protection Agency to meet, for any model year, a set of emission standards that classifies it as a low-emission vehicle or zero emission vehicle.

(3) "Conventionally fueled vehicle" means a motor vehicle which is fueled solely by a petroleum based fuel such as gasoline or diesel.

(4) "Converted vehicle" means a motor vehicle that is retrofitted so that it is fueled solely by an alternative fuel and which meets the emission standards set forth for that class of low-emission vehicles as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, when operating on such alternative fuel, or which meets the emission standards set forth for zero emission vehicles as defined under rules and regulations of the Board of Natural Resources.

(5) "Low-emission vehicle" means a motor vehicle which is fueled solely by an alternative fuel and which meets emission standards as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles classified as low-emission vehicles, as amended, when operating on such alternative fuel.

(6) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that is registered by the Department of Revenue, except vehicles that are defined as "low-speed vehicles" in paragraph (25.1) of Code Section 40-1-1.

(7) "Zero emission vehicle" means a motor vehicle which has zero tailpipe and evaporative emissions as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, and shall include an electric vehicle

whose drive train is powered solely by electricity, provided said electricity is not provided by any on-board combustion device.

(b)(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the purchase or lease of a new low-emission vehicle or new zero emission vehicle that is registered in the State of Georgia. The amount of the credit shall be:

(A) For any new low-emission vehicle, 10 percent of the cost of such vehicle or $2,500.00, whichever is less; and

(B) For any new zero emission vehicle, 20 percent of the cost of such vehicle or $5,000.00, whichever is less.

(2) For any new low-emission vehicle or new zero emission vehicle purchased or leased on or after July 1, 2015, the amount of the credit shall be $0.00.

(c) A tax credit is allowed against the tax imposed under this article to a taxpayer for the conversion of a conventionally fueled vehicle to a converted vehicle that is registered in the State of Georgia. The amount of the credit shall be equal to 10 percent of the cost of conversion, not to exceed $2,500.00 per converted vehicle.

(d) A tax credit is allowed against the tax imposed under this article to any business enterprise for the purchase or lease of each electric vehicle charger that is located in the State of Georgia. The amount of the credit shall be 10 percent of the cost of the charger or $2,500.00, whichever is less.

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

(1) All claims for any credit provided by subsection (b) of this Code section shall be:

(A) Accompanied by a certification approved by the Environmental Protection Division of the Department of Natural Resources; and

(B) Made only by a taxpayer who is the owner of a new clean fueled vehicle, as evidenced by the certificate of title issued for such vehicle; provided, however, that, if a new clean fueled vehicle is leased to a taxpayer at retail, the taxpayer who is the lessee shall be entitled to claim the credit; provided, further, that only one taxpayer shall be eligible to claim any credit provided by subsection (b) of this Code section;

(2) All claims for any credit provided by subsection (c) of this Code section must be accompanied by a certification issued by the Environmental Protection Division of the Department of Natural Resources;

(3) All claims for any credit provided by subsection (d) of this Code section shall be:

(A) Accompanied by a certification issued by the seller where the new electric vehicle charger was purchased or leased; and

(B) Made only by a taxpayer who is the ultimate purchaser or lessee of a new electric vehicle charger at retail;

(4) Any credit claimed under this Code section but not used in any taxable year may be carried forward for three years from the close of the taxable year in which a new clean fueled vehicle was purchased or leased or a conventionally fueled vehicle was changed into a converted vehicle, provided that the applicable certification required in paragraph (1) or (2) of this subsection accompanies any such claim;

(5) In no event shall the amount of any tax credit provided in this Code section exceed the taxpayer's income tax liability; and

(6) Tax credits authorized in this Code section shall be granted to a taxpayer who purchased or leased and placed in service in Georgia a new low-emission vehicle or zero emission vehicle, which also is a low-speed vehicle, but only if such low-speed vehicle was placed in service during the taxable year ending December 31, 2001. For purposes of this paragraph, the term "low-speed vehicle" means a low-speed vehicle as defined in paragraph (25.1) of Code Section 40-1-1. Any claim for such credit must be accompanied by a manufacturer's statement of origin issued to a dealer registered in Georgia which certifies that the low-speed vehicle was manufactured in compliance with those federal motor vehicle safety standards set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001, as well as any other documentation deemed necessary by the commissioner to establish the date that delivery was made and such vehicle was placed in service. A taxpayer shall only be eligible to claim such credit with respect to a single low-speed vehicle.

(f) The state revenue commissioner shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section.

(g) The Board of Natural Resources shall be authorized to adopt rules and regulations to provide for:

(1) The specific standards and requirements for low-emission vehicles, zero emission vehicles, and converted vehicles and electric vehicle chargers which shall be consistent with the terms of this Code section;

(2) An approved certification form which certifies the purchase or lease of a new clean fueled vehicle that is qualified for a tax credit provided by this Code section;

(3) The certification of any converted vehicle that is qualified to claim a tax credit provided by this Code section; and

(4) An approved certification form which shall be issued by the seller which certifies the purchase or lease of a new electric vehicle charger that is qualified for a tax credit provided by this Code section.

(h) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-40.16, enacted by Ga. L. 1998, p. 1576, § 1; Ga. L. 2000, p. 1090, § 1; Ga. L. 2001, p. 109, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 506, § 1; Ga. L. 2002, p. 512, §§ 14, 15; Ga. L. 2003, p. 665, § 6; Ga. L. 2005, p. 334, § 29-5/HB 501; Ga. L. 2015, p. 236, § 5-1/HB 170; Ga. L. 2024, p. 794, §§ 1-26, 2-2/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(41)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.16 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, substituted "three years" for "five years" in paragraph (e)(4); and added subsection (h). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (e)(1)(B).

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.17. Tax credits for establishing or relocating quality jobs.

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

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

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

(A) Is located in this state;

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

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

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

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified

project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and any personal property to be used in the facility or facilities. Any lease for a period of three years or longer of any real or personal property used in a new or expanded facility or facilities which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

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

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

(6) "Rural county" means a county that has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the commissioner of the Department of Community Affairs shall publish a list of such counties.

(7) "Taxpayer" means any person required by law to file a return or to pay taxes, except that any taxpayer may elect to consider the jobs within its disregarded entities, as defined in the Internal Revenue Code, for purposes of calculating the number of new quality jobs created by the taxpayer under this Code section. Organizations exempt from tax pursuant to Code Section 48-7-25 shall be defined as "taxpayers" only to the extent that a trade or business operated by such organization generates unrelated business income as defined in Section 512 of the Internal Revenue Code. For such organizations, eligibility for the credit allowed by this Code section shall be based only on the projects and investments, which are related primarily to such trade or business, and the jobs that qualify solely based on such trade or business.

(b) A taxpayer establishing new quality jobs in this state or relocat-

ing quality jobs into this state, which elects not to receive the tax credits provided for by Code Sections 48-7-40, 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 jobs and investments created by, arising from, related to, or connected in any way with the same project, that creates:

(1) At least ten new quality jobs within a single rural county within one year of the first date on which the taxpayer withholds wages for employees in this state pursuant to the provisions of Code Section 48-7-101, provided that such county is designated as a tier 1 county by the commissioner of community affairs in accordance with Code Section 48-7-40;

(2) At least 25 new quality jobs within a single rural county within one year of the first date on which the taxpayer withholds wages for employees in this state pursuant to the provisions of Code Section 48-7-101, provided that such county is designated as a tier 2 county by the commissioner of community affairs in accordance with Code Section 48-7-40; or

(3) At least 50 new quality jobs in this state within two years of the first date on which the taxpayer pursuant to the provisions of Code Section 48-7-101 withholds wages for employees in this state

shall be allowed a credit for taxes imposed under this article as provided in subsection (b.1) of this Code section.

(b.1) The value of the credit allowed pursuant to this Code section shall be:

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

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

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

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

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

(b.2)(1) If the amount of the tax credit allowed pursuant to this Code

section exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 but shall not exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of subsection (b.1) of this Code section for each new quality job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a 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 Code section. 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 subsection shall not constitute income to the taxpayer.

(2)(A) For each new quality job created, the credit allowed pursuant to this Code section may be taken for the first taxable year in which the new quality job is created and for the four immediately succeeding taxable years; provided, however, that such new quality jobs must be created within seven years from the close of the taxable year in which the taxpayer first becomes eligible for such credit.

(B) A credit shall not be allowed during a year if the net employment increase falls below the number of new quality jobs required by subsection (b) of this Code section. Any credit received for years prior to the year in which the net employment increase falls below the number of new quality jobs required by subsection (b) of this Code section shall not be affected except as provided in subsection (g) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the number of new quality jobs required by subsection (b) of this Code section.

(c) Only a taxpayer that completes the creation of a qualified project in a taxable year beginning on or after January 1, 2017, shall be eligible to begin a subsequent seven-year job creation period for the qualified project, provided that the taxpayer creates 50 or more new quality jobs, at the site or sites of a qualified project or the facility or facilities resulting therefrom, above its single previous high yearly average number of new quality jobs during any prior seven-year job creation period. A subsequent seven-year job creation period is subject to all the requirements of this Code section. A taxpayer must notify the commissioner of its intent to begin a subsequent seven-year job creation period. The commissioner shall provide by regulation the time in which such

notification shall occur. New quality jobs generated under previous seven-year job creation periods shall continue to be eligible for the credit as provided by this Code section. No new quality jobs may be generated under previous periods of eligibility after a subsequent period of eligibility has begun. New quality jobs created in a subsequent seven-year job creation period shall not be counted as additional new quality jobs under a previous seven-year job creation period; instead those new quality jobs shall count toward the subsequent period. For purposes of determining the number of new quality jobs in a particular year that are attributable to each seven-year job creation period, the taxpayer shall begin with the first seven-year job creation period and then attribute the remainder to each subsequent seven-year job creation period from the oldest to the newest. Such attributions shall be made up to the single high yearly average number of new quality jobs for each seven-year job creation period. A taxpayer may create more than one subsequent seven-year job creation period. If at the time a taxpayer begins a subsequent seven-year job creation period, the taxpayer had a year or years in the prior seven-year job creation period where the number of new quality jobs was below the single high yearly average number of new quality jobs, the taxpayer shall be allowed to make an irrevocable election to use the average number of new quality jobs for the completed years in the prior seven-year job creation period instead of the single high yearly average number of new quality jobs for all purposes of this subsection. If such election is made, the number of new quality jobs in the years subsequent to the completed years for the prior seven-year job creation period shall be deemed to not exceed the average number of new quality jobs for the completed years in the prior seven-year job creation period. New quality jobs over such average number shall be attributed to the subsequent seven-year job creation period as provided in this subsection.

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

(e) 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 new quality jobs were established.

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

(g) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2020, shall be

governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim.

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

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

**History.**

Code 1981, § 48-7-40.17, enacted by Ga. L. 2000, p. 605, § 6; Ga. L. 2001, p. 984, § 9; Ga. L. 2003, p. 665, § 7; Ga. L. 2009, p. 654, § 6/HB 439; Ga. L. 2012, p. 1309, § 5/HB 868; Ga. L. 2016, p. 854, § 1/HB 922; Ga. L. 2017, p. 46, § 1/HB 265; Ga. L. 2019, p. 661, § 2-1/HB 224; Ga. L. 2020, p. 184, § 3-3/HB 846; Ga. L. 2023, p. 142, § 1/HB 482, effective May 1, 2023.

**Amendments.**

**The 2023 amendment,** effective May 1, 2023, added the second and third sentences in paragraph (a)(7). See Editor's notes for applicability.

**Code Commission notes.**

Ga. L. 2000, p. 605, § 6, Ga. L. 2000, p. 1090, § 2, and Ga. L. 2000, p. 1447, § 1 each enacted a Code Section 48-7-40.17. Pursuant to Code Section 28-9-5, in 2000, the Code section enacted by Ga. L. 2000, p. 1090, § 2 was redesignated as Code Section 48-7-40.19, and the Code section enacted by Ga. L. 2000, p. 1447, § 1 was redesignated as Code Section 48-7-40.20.

**Editor's notes.**

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2003.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2016, p. 854, § 2/HB 922, not codified by the General Assembly, makes paragraph (a)(3) of this Code section applicable to all taxable years beginning on or after January 1, 2016.

Ga. L. 2017, p. 46, § 3/HB 265, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2017.

Ga. L. 2019, p. 661, § 4-1/HB 224, not codified by the General Assembly, provides that Parts II and III of this Act "shall be applicable to taxable years beginning on or after January 1, 2020."

Ga. L. 2023, p. 142, § 2/HB 482, not codified by the General Assembly, provides, in part, that the Act shall be applicable for all taxable years beginning on or after January 1, 2023.

**Administrative rules and regulations.**

Headquarters Job Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.14.

**Law reviews.**

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

## 48-7-40.18. Tax credits for businesses headquartered in state; full-time jobs.

(a) Any business enterprise, as defined in Code Section 48-7-40, executing an agreement pursuant to subsection (a) of Code Section 48-7-31.1 for purposes of paragraph (1) of subsection (d) of Code Section 48-7-31 shall be allowed, beginning in the taxable year in which it establishes its headquarters in this state or relocates its headquarters to this state, a tax credit calculated in the same amounts and under the same principles as the credit established by Code Section 48-7-40.17. Except as otherwise provided in this Code section, the credit established by the Code section shall be subject to the same definitions, limitations, and carry-forward provisions as the credit established by Code Section 48-7-40.17; provided, however, that the term "headquarters" means the principal central administrative office of such business enterprise; and provided, further, that for the first taxable year in which it is claimed, all or part of the credit established by this Code section may be applied against taxes imposed under this article for the taxable year immediately preceding that taxable year by amendment to a return or returns for such year.

(b) The credit established by this Code section may be claimed by such business enterprise for new full-time jobs created in taxable years prior to the taxable year in which it establishes its headquarters in this state or relocates its headquarters to this state, where such jobs are in excess of those contained in such agreement and are located at such headquarters. Such jobs shall be deemed for purposes of such credit to have been created on the first day of the taxable year in which such business enterprise establishes its headquarters in this state or relocates its headquarters to this state. No credit in excess of $25 million may be claimed pursuant to the terms of this subsection.

(c) The number of new full-time jobs to which this Code section shall be applicable shall be determined by comparing the monthly average of full-time jobs subject to Georgia income tax withholding for the taxable year with the corresponding average for the prior taxable year.

**History.**
Code 1981, § 48-7-40.18, enacted by Ga. L. 2000, p. 1294, § 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 60, § 48/HB 95.
**Editor's notes.**
Ga. L. 2000, p. 1294, § 3, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.
**Administrative rules and regulations.**
Headquarters Job Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.14.

## 48-7-40.19. [Repealed] Diesel particulate emission reduction technology equipment; tax credit.

**History.**
Ga. L. 2000, p. 1090, § 2; Ga. L. 2018, p. 113, § 4/SB 328; repealed by Ga. L. 2018, p. 113, § 3/SB 328, effective December 31, 2018.

## 48-7-40.20. (Effective until January 1, 2025.) Tax credits for businesses engaged in manufacturing cigarettes for exportation.

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

(1) "Base year exportation volume" means the number of cigarettes manufactured and exported by a business enterprise during the calendar year 1999.

(2) "Business enterprise" means any business or the headquarters of any business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research and development industries. Such term shall not include retail businesses.

(3) "Exportation" means the shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(b) A business enterprise engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this article. The amount of credit allowed under this Code section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

| Current Year's Exportation Volume Compared to its Base Year's Exportation Volume | Amount of Credit per Thousand Cigarettes Exported |
|---|---|
| 120 percent or more | 40¢ |
| 119 percent — 100 percent | 35¢ |
| 99 percent — 80 percent | 30¢ |
| 79 percent — 60 percent | 25¢ |
| 59 percent — 50 percent | 20¢ |
| Less than 50 percent | None |

(c) The credit allowed under this Code section may not exceed the lesser of $6 million or 50 percent of the amount of tax imposed by this article for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carry forwards claimed by the taxpayer under this Code section for previous tax years. Any unused portion of a credit allowed in this Code section may be carried forward for the next succeeding five years.

(d) A business enterprise that claims the credit under this Code section must include the following with its tax return:

(1) A statement of the base year exportation volume;

(2) A statement of the exportation volume on which the credit is based; and

(3) A list of the business enterprise's export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury for the months in the tax year for which the credit is claimed.

**History.**
Code 1981, § 48-7-40.20, enacted by Ga. L. 2000, p. 1447, § 1.

**Delayed effective date.**
Code Section 48-7-40.20 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-40.17, was redesignated as Code Section 48-7-40.20.

**Editor's notes.**
Ga. L. 2000, p. 1447, § 2, not codified by the General Assembly, provides that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2000."

Ga. L. 2000, p. 1447, § 3, not codified by the General Assembly, provides that: "This Act shall be repealed for cigarettes exported on or after January 1, 2006."

**48-7-40.20. (Effective January 1, 2025.) Tax credits for businesses engaged in manufacturing cigarettes for exportation.**

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

(1) "Base year exportation volume" means the number of cigarettes manufactured and exported by a business enterprise during the calendar year 1999.

(2) "Business enterprise" means any business or the headquarters of any business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research and development industries. Such term shall not include retail businesses.

(3) "Exportation" means the shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(b) A business enterprise engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this article. The amount of credit allowed under this Code section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

| Current Year's Exportation Volume Compared to its Base Year's Exportation Volume | Amount of Credit per Thousand Cigarettes Exported |
|---|---|
| 120 percent or more | 40¢ |
| 119 percent — 100 percent | 35¢ |
| 99 percent — 80 percent | 30¢ |
| 79 percent — 60 percent | 25¢ |
| 59 percent — 50 percent | 20¢ |
| Less than 50 percent | None |

(c) The credit allowed under this Code section may not exceed the lesser of $6 million or percent of the amount of tax imposed by this article for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carry forwards claimed by the taxpayer under this Code section for previous tax years. Any unused portion of a credit allowed in this Code section may be carried forward for the next succeeding three years.

(d) A business enterprise that claims the credit under this Code section must include the following with its tax return:

(1) A statement of the base year exportation volume;

(2) A statement of the exportation volume on which the credit is based; and

(3) A list of the business enterprise's export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury for the months in the tax year for which the credit is claimed.

**History.**

Code 1981, § 48-7-40.20, enacted by Ga. L. 2000, p. 1447, § 1; Ga. L. 2024, p. 794, § 1-27/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.20 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years" for "five years" at the end of the third sentence in subsection (c). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.21. Tax credits for existing business enterprises undergoing qualified business expansion.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Existing business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries that has been in operation in this state for at least five years. Such term shall not include retail businesses.

(3) "Qualified business expansion" means the creation of at least 500 new full-time jobs within a taxable year.

(b) An existing business enterprise undergoing a qualified business

expansion shall be eligible to make application to the commissioner to take tax credits established by Code Section 48-7-40 against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 subject to the following limitations:

(1) Such application may be made only where the amount of such credit exceeds 50 percent of an existing business enterprise's liability for taxes imposed under this article in a taxable year. In such cases where the existing business enterprise has claimed and not used credits established by Code Section 48-7-40 prior to April 4, 2001, and such credits have been carried forward pursuant to subsection (h) of Code Section 48-7-40, the taxpayer may also include in the application a request to take such credits against such taxpayer's quarterly or monthly payment under Code Section 48-7-103;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the expansion will have a beneficial economic effect on the region for which it is planned;

(3) The credit shall apply to not more than five taxable years;

(4) Credit shall not be allowed during a year if the net employment increase falls below the 500 new full-time jobs required; and

(5) No credit in excess of $5 million may be claimed pursuant to the terms of this Code section.

(c) Notwithstanding any other provision of law to the contrary, any credit claimed pursuant to this Code section shall be subject to recapture if the minimum job requirement is not met.

(d) Each employee whose employer receives credit against such taxpayer'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 Code section. 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 Code section shall not constitute income to the taxpayer.

**History.**

Code 1981, § 48-7-40.21, enacted by Ga. L. 2001, p. 105, § 2; Ga. L. 2002, p. 415, § 48; Ga. L. 2004, p. 690, § 19; Ga. L. 2008, p. 874, § 5/HB 1246; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 1052, § 5(42)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the

beginning of the second sentence, and revised capitalization.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2001, Code Section 48-7-40.21, as enacted by Ga. L. 2001, p. 984, § 10, was redesignated as Code Section 48-7-40.23.

**Editor's notes.**

Ga. L. 2001, p. 105, § 4, not codified by the General Assembly, provides that this Code section is applicable to all taxable years ending on or after January 1, 2001.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

**Law reviews.**

For note on the 2001 enactment of this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

## 48-7-40.22. (Effective until January 1, 2025.) Tax credits for business enterprises that purchase or lease a motor vehicle to provide transportation for employees.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, child care businesses, or retail businesses.

(3) "Headquarters" means the principal central administrative office of a taxpayer.

(4) "Tier" means a tier as designated pursuant to Code Section 48-7-40, as amended.

(b) A business enterprise which is located in a tier 1 or tier 2 county which purchases or leases a new motor vehicle as defined in paragraph (34) of Code Section 40-1-1 in this state which is used for the exclusive purpose of providing transportation for its employees shall be allowed a credit for taxes imposed under this article as follows:

| Tier | Credit amount per vehicle |
|---|---|
| 1 | $ 3,000.00 |
| 2 | 2000.00 |

(c) In order to qualify for the tax credit under this Code section, a

business enterprise must certify that each vehicle for which a credit is claimed carries an average daily ridership of not less than four employees for an entire taxable year.

(d) In no event shall the aggregate amount of the tax credit provided by this Code section exceed the income tax liability of the business enterprise. Any unused tax credit shall be allowed to be carried forward to apply to the succeeding years' tax liability of such business enterprise. No such credit shall be allowed the business enterprise against prior years' tax liability.

(e) No business enterprise shall be authorized to claim on a tax return the credit provided for in this Code section with respect to a vehicle if such business enterprise claims any of the credits authorized under subsection (b) of Code Section 48-7-40.16 with respect to such vehicle.

(f)(1) If a business enterprise sells a new motor vehicle within three years of receiving the credit, the business enterprise shall recapture the credit as follows:

(A) If the motor vehicle is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit from the sale;

(B) If the motor vehicle is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit from the sale; and

(C) If the motor vehicle is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit from the sale.

(2) The recapture provisions of this subsection shall not apply to:

(A) Any sale by reason of death;

(B) Any sale between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code of 1986 applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer the Code section.

**History.**

Code 1981, § 48-7-40.22, enacted by Ga. L. 2001, p. 105, § 3; Ga. L. 2002, p. 372, § 6; Ga. L. 2008, p. 874, § 6/HB 1246; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 1052, § 5(43)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.22 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 2001, p. 105, § 4, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

## 48-7-40.22. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for business enterprises that purchase or lease a motor vehicle to provide transportation for employees.

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

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the internet or IP and includes motion picture and sound recording, editing, production, postproduction, and distribution. Such term is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, child care businesses, or retail businesses.

(3) "Headquarters" means the principal central administrative office of a taxpayer.

(4) "Tier" means a tier as designated pursuant to Code Section 48-7-40, as amended.

(b) A business enterprise which is located in a tier 1 or tier 2 county which purchases or leases a new motor vehicle as defined in paragraph (34) of Code Section 40-1-1 in this state which is used for the exclusive

purpose of providing transportation for its employees shall be allowed a credit for taxes imposed under this article as follows:

| Tier | Credit amount per vehicle |
|---|---|
| 1 | $ 3,000.00 |
| 2 | 2000.00 |

(c) In order to qualify for the tax credit under this Code section, a business enterprise must certify that each vehicle for which a credit is claimed carries an average daily ridership of not less than four employees for an entire taxable year.

(d) In no event shall the aggregate amount of the tax credit provided by this Code section exceed the income tax liability of the business enterprise. Any unused tax credit shall be allowed to be carried forward to apply to the three succeeding years' tax liability of such business enterprise. No such credit shall be allowed the business enterprise against prior years' tax liability.

(e) No business enterprise shall be authorized to claim on a tax return the credit provided for in this Code section with respect to a vehicle if such business enterprise claims any of the credits authorized under subsection (b) of Code Section 48-7-40.16 with respect to such vehicle.

(f)(1) If a business enterprise sells a new motor vehicle within three years of receiving the credit, the business enterprise shall recapture the credit as follows:

(A) If the motor vehicle is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit from the sale;

(B) If the motor vehicle is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit from the sale; and

(C) If the motor vehicle is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit from the sale.

(2) The recapture provisions of this subsection shall not apply to:

(A) Any sale by reason of death;

(B) Any sale between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code of 1986 applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or

business and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer the Code section.

(h) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-40.22, enacted by Ga. L. 2001, p. 105, § 3; Ga. L. 2002, p. 372, § 6; Ga. L. 2008, p. 874, § 6/HB 1246; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 794, §§ 1-28, 2-3/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(43)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.22 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective January 1, 2025, inserted "three" preceding "succeeding years' tax" in the second sentence in subsection (d); and added subsection (h). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "IP" for "Internet Protocol" in the first sentence, substituted "Such term" for "'Broadcasting'" at the beginning of the second sentence, and revised capitalization.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.23. Election to count new jobs on calendar year basis.

Notwithstanding any provision to the contrary of Code Sections 48-7-40 and 48-7-40.1, business enterprises may apply to the commissioner to make a one-time election to calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs created during calendar year 2001. Such one-time election may be made by claiming job tax credits calculated on the basis set forth in Code Sections 48-7-40 and 48-7-40.1 in connection with any 2002 state income tax return filed after the effective date of this Code section. Such election will not change the taxable year of the business enterprise.

**History.**

Code 1981, § 48-7-40.23, enacted by Ga. L. 2001, p. 984, § 10.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2001, Code Section 48-7-40.21, as enacted by Ga. L. 2001, p. 984, § 10, was redesignated as Code Section 48-7-40.23.

## 48-7-40.24. Tax credits for jobs associated with large-scale projects.

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

(.1) "Affiliate" means the members of a business enterprise's affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code and also means any entity, notwithstanding its form of organization, that would otherwise qualify as a member of such affiliated group.

(1) "Business enterprise" or "taxpayer" means any enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization, and its affiliates, which are registered and authorized to use the federal employment verification system known as "E-Verify" or any successor federal employment verification system and are engaged in or carrying on any business activities within this state, except that such term shall not include retail businesses.

(2) "Eligible full-time employee" means an individual holding a full-time employee job created by a qualified project who:

(A) Possesses a valid Georgia driver's license or identification card issued by the Department of Driver Services; or

(B) Submits a notarized affidavit swearing to be a United States citizen or lawfully present alien authorized to work in the United States.

(3) "Force majeure" means any:

(A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances;

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites of a qualified project or any part thereof; or

(G) Pandemic which is an outbreak of a disease that occurs over a wide geographic area, affects a significant proportion of the population, causes a substantial and unforeseeable threat to the public health, and materially impacts the ability to conduct business, provided that this subparagraph shall only apply with

respect to a qualified project first certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2023;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(4)(A) "Full-time employee job" and "full-time job" mean employment of an individual which:

(i) Is located in this state at the site or sites of a qualified project or the facility or facilities resulting therefrom;

(ii) Involves a regular work week of 35 hours or more;

(iii) Has no predetermined end date; and

(iv) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For purposes of this paragraph:

(i) Leased employees shall be considered employees of the company using their services and such persons may be counted in determining the company's job tax credits under this Code section if their employment otherwise satisfies subparagraph (A) of this paragraph;

(ii) An individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year; and

(iii) When there is a merger or acquisition of another company by a business enterprise whose application for a qualified project has been approved, the existing jobs in this state shall not be counted in calculating the job creation requirement and the credit calculation necessary to qualify for the tax credit under this Code section. Only additional jobs added in this state that meet the requirements of this Code section shall be

counted for purposes of calculating the job creation requirement and the credit calculation.

(5) "Job creation requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of 1,800 eligible full-time employees. If at the close of the sixth taxable year following the withholding start date a minimum of $600 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional two-year period. If at the close of the eighth taxable year following the withholding start date a minimum of $800 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional four-year period after the sixth taxable year following the withholding start date.

(6) "Job maintenance requirement" means the requirement that, with respect to each year in the recapture period, the monthly average number of eligible full-time employees employed by the business enterprise, determined as prescribed by subsection (l) of this Code section, must equal or exceed 1,800.

(7) "Payroll maintenance requirement" means the requirement that, with respect to each year in the recapture period, the total annual Georgia W-2 reported payroll with respect to a qualified project must equal or exceed $150 million.

(8) "Payroll requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of $150 million in total annual Georgia W-2 reported payroll with respect to a qualified project.

(9) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and any personal property to be used in the facility or facilities.

(10) "Qualified investment property requirement" means the requirement that by the close of the sixth taxable year following the withholding start date, a minimum of $450 million in qualified investment property will have been purchased or acquired by the business enterprise to be used with respect to a qualified project.

(11) "Qualified project" means a project which meets the job creation requirement and either the payroll requirement or qualified

investment property requirement. If the taxpayer selects the qualified investment property requirement as one of the conditions for its project, the property shall involve the construction of one or more new facilities in this state or the expansion of one or more existing facilities in this state. For purposes of this paragraph, the term "facilities" means all facilities comprising a single project, including noncontiguous parcels of land, improvements to such land, buildings, building improvements, and any personal property that is used in the facility or facilities.

(12) "Recapture period" means the period of five consecutive taxable years that commences after the first taxable year in which a business enterprise has satisfied the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer.

(13) "Withholding start date" means the date on which the business enterprise begins to withhold Georgia income tax from the wages of its employees located at the site or sites of a qualified project.

(b) A business enterprise that is planning a qualified project shall be allowed to take the job tax credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence and the expected withholding start date;

(B) Certifies that such project will meet the job creation requirement and either the payroll requirement or the qualified investment property requirement prescribed by this Code section; and

(C) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance requirement and, if applicable, the payroll maintenance requirement prescribed by this Code section;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, the panel, after reviewing the application, certifies that the new or expanded facility or facilities will have a significant beneficial economic effect on the region for which they are planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certifica-

tion may be based upon other criteria, a project that meets the minimum job creation requirement and either the payroll requirement or qualified investment property requirement, as applicable, specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The project will create new full-time employee jobs with average wages that are, as determined by the Department of Labor, for all jobs for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new or expanded facility or facilities which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a tax credit for taxes imposed under this article equal to $5,250.00 annually per new eligible full-time employee job for five years beginning with the year in which such job is created through year five after such creation; provided, however, that, where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such

quarterly or monthly payments. For any one taxable year the amounts taken as a credit against taxes imposed under this article and against the business enterprise's quarterly or monthly payments under Code Section 48-7-103 may not in the aggregate exceed $5,250.00 per eligible full-time employee job. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive a 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 subsection. 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 subsection shall not constitute income to the taxpayer. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees.

(e) The number of new full-time jobs to which this Code section shall be applicable shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period for the prior taxable year.

(f) Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise.

(g) To qualify for the credit provided by this Code section, a new full-time job must be created by the close of the seventh taxable year following the business enterprise's withholding start date, unless the purchase or acquisition of qualified investment property is made as provided in paragraph (5) of subsection (a) of this Code section, in which case a new full-time job must be created by the close of the eighth taxable year following the business enterprise's withholding start date based on a $600 million qualified investment or the end of the tenth taxable year based on an $800 million qualified investment.

(h) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for ten years from the close of the taxable year in which the qualified job was established.

(i)(1) Except as provided in subsection (g) of this Code section and

paragraph (2) of this subsection, a taxpayer who is entitled to and takes credits provided by this Code section for a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.15, 48-7-40.17, or 48-7-40.18 for jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Provided such taxpayer otherwise qualifies, such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the costs of retraining an employee located at the site or sites of such project or the facility or facilities resulting therefrom, but only for costs incurred more than five years after the date the facility or facilities first become operational.

(2) On and after July 1, 2021, a taxpayer who is entitled to and takes credits authorized by this Code section for a high-impact aerospace defense project as such term is defined in Code Section 48-7-40.25 may also take the credits authorized by Code Section 48-7-40.17 for such project; provided, however, that the taxpayer may not take the credits authorized by this Code section and Code Section 48-7-40.17 with respect to such project in the same taxable year.

(j) Except under those circumstances described in subsection (k) of this Code section, the taxpayer shall, not more than 60 days after the close of the sixth taxable year following its withholding start date, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to determine whether the taxpayer has met the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer, for such project. If the taxpayer has failed to meet any applicable job creation, payroll, or qualified investment property requirement, the taxpayer shall forfeit the right to claim any credits provided by this Code section for such project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification from the commissioner that any applicable job creation, payroll, or qualified investment property requirement was not met, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by

Code Section 48-2-40. On such amended returns the taxpayer may claim any credit to which it would have been entitled under this article but for having taken the credit provided by this Code section.

(k) If the recapture period applicable to a qualified project begins with or before the sixth taxable year following the taxpayer's withholding start date, or with or before the eighth taxable year following the taxpayer's withholding start date if the project falls within the $600 million in qualified investment property category, or within the tenth taxable year following the taxpayer's withholding start date if the project falls within the $800 million in qualified investment property category, the taxpayer shall, not later than 60 days after the close of the taxable year immediately preceding the recapture period, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to verify that the taxpayer met the job creation requirement and either the payroll requirement or the qualified investment property requirement in such preceding year.

(l) Not more than 60 days after the close of each taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement and, if applicable, the payroll maintenance requirement for such year. For purposes of this subsection, whether such job maintenance requirement has been satisfied shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with 1,800. For purposes of this subsection, whether such payroll maintenance requirement has been satisfied shall be determined by comparing the total annual Georgia W-2 reported payroll with respect to a qualified project for the taxable year with $150 million. If the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall forfeit the right to 20 percent of all credits provided by this Code section for such project. A taxpayer that forfeits such right is liable for 20 percent of all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those

liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by Code Section 48-2-40.

(m) A taxpayer that fails to meet the job maintenance requirement or payroll maintenance requirement, or both, for any taxable year within the recapture period because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (l) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, but that the portion of the year so affected was six months or less, for purposes of the job maintenance requirement the commissioner shall calculate the taxpayer's monthly average number of eligible full-time employees for purposes of subsection (l) of this Code section by disregarding the affected months and for purposes of the payroll maintenance requirement the commissioner shall annualize the total Georgia W-2 reported payroll with respect to a qualified project for the portion of the year not so affected. If the commissioner determines that the affected portion of the year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement or payroll maintenance requirement, or both, and the recapture period applicable to the qualified project shall be extended for an additional year.

(n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsection (j) or (l) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsection (j) or (l) of this Code section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(o) Projects certified by the panel pursuant to paragraph (2) of subsection (b) of this Code section before January 1, 2009, shall be governed by this Code section as it was in effect for the taxable year the project was certified.

(p) Any taxpayer whose qualified project is certified on or after June 30, 2021, pursuant to paragraph (2) of subsection (b) of this Code section that subsequently claims the tax credit available under subsection (d) of this Code section in connection with the qualified project shall report annually to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, the total number of such taxpayer's

full-time employees working at the qualified project and the total amount of qualified investment property made into the qualified project. Such reports shall be due by December 31 of each year. This annual reporting requirement will extend through the end of the recapture period as defined in paragraph (13) of subsection (a) of this Code section.

(q) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, such panel shall compile the annual reports provided pursuant to paragraph (p) of this Code section, and beginning June 30, 2026, and every two years thereafter, shall furnish a compiled report to the chairperson of the House Committee on Ways and Means and the chairperson of the Senate Finance Committee. Such compiled report shall aggregate the annual reports supplied by taxpayers whose qualified projects are subject to the reporting requirement in subsection (p) of this Code section.

(r) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.24, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 20; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2009, p. 806, § 1/HB 438; Ga. L. 2012, p. 976, § 1/HB 1027; Ga. L. 2012, p. 1309, § 6/HB 868; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2021, p. 289, § 2-3/SB 6; Ga. L. 2023, p. 335, § 2-7/SB 56, effective July 1, 2023; Ga. L. 2024, p. 1052, § 5(44)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2023 amendment,** effective July 1, 2023, in subsection (a), deleted "or" at the end of subparagraph (a)(3)(E), added "or" at the end of subparagraph (a)(3)(F), and added subparagraph (a)(3)(G). See Editor's notes for applicability.

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

**Editor's notes.**

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2009, p. 806, § 2/HB 438, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 976, § 3(b)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2012.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Parts II through IV of this Act shall be known and may be cited as the 'Georgia Economic Renewal Act of 2021.'"

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall become effective on July 1, 2023.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior

taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

**Law reviews.**

For note on the 2003 enactment of this Code section, see 20 Georgia St. U.L. Rev. 233 (2003).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

**RESEARCH REFERENCES**

**ALR.**

State income tax treatment of intangible holding companies, 11 A.L.R.6th 543.

## 48-7-40.25. (Effective until January 1, 2025.) Tax credits for investment in expanding existing manufacturing facilities; enhancements for high-impact aerospace defense projects.

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

(1) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing. Such term shall not include retail businesses.

(2) "Force majeure" means any:

(A) Explosions, implosions, fire, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(3) "Full-time employee" means an individual holding a full-time employee job.

(4) "Full-time employee job" and "full-time job" mean employment of an individual which:

(A)(i) With respect to a qualified project, is located in this state at the manufacturing facility resulting from such qualified project; and

(ii) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, is located in this state and results from such project;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and

(D) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

For purposes of this paragraph, leased employees will be considered employees of the company using their services, and such persons may be counted in determining the company's credits under this Code section if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

(4.1) "High-impact aerospace defense project" means a qualified project with the additional limitations that it is:

(A) To be constructed by a business enterprise that is a prime aerospace defense contractor with greater than 40 percent of its revenues derived from sales to the United States government in its most recently completed tax year; and

(B) Certified by the commissioner of economic development as materially supportive of the mission of the Georgia Joint Defense Commission and the Governor's Defense Initiative. In making such a certification, the commissioner shall consider whether the project will support the goals of the Georgia Joint Defense Commission set forth in paragraphs (2), (3), and (4) of Code Section 20-4-121.

(5) "Investment requirement" means the requirement that:

(A) With respect to a qualified project, a minimum of $800 million in qualified investment property shall have been purchased or acquired for use in such qualified project and be in service; or

(B) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, a minimum of $500 million in qualified investment property shall have been purchased or acquired for use in such project and be in service.

(6) "Job maintenance requirement" means the requirement that the monthly average number of full-time employees employed by the business enterprise during the first 60 months of the recapture period must equal or exceed 90 percent of the job requirement.

(7) "Job requirement" means the requirement that:

(A) With respect to a qualified project, the number of full-time employees must equal or exceed 1,800; or

(B) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, the number of full-time employees must equal or exceed 1,000.

(8) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing facility.

(9) "Qualified project" means the construction of a new manufacturing facility in this state. For purposes of this paragraph, the term "manufacturing facility" means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment that is used in the process of making, fabricating, constructing, forming, or assembling a product from components or from raw, unfinished, or semifinished materials, and any support facility. For purposes of this paragraph, the term "support facility" means any warehouses, distribution centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, corporate offices, sales or marketing offices, computer operations facilities, or administrative offices that are contiguous to the manufacturing facility that results from a qualified project, constructed or expanded as part of the same such project, and designed primarily for activities supporting the manufacturing operations at such manufacturing facility.

(10) "Recapture period" means the period of ten consecutive taxable years that commences after the taxable year in which the taxpayer has met both the investment requirement and the job requirement.

(b) A business enterprise that has operated an existing manufacturing facility in this state for the immediately three preceding years and that is planning a qualified project shall be allowed to take the credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence;

(B) Certifies that such project will meet the investment requirement and the job requirement prescribed by this Code section, stating when the business enterprise expects to meet such requirements;

(C) With respect to a high-impact aerospace defense project, certifies that the taxpayer will purchase or acquire a minimum of $800 million in qualified investment property and will employ at least 1,800 full-time employees, stating when the business enterprise expects to meet such requirements; and

(D) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance requirement prescribed by this Code section; and

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the new facility will have a significant beneficial economic effect on the region for which it is planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum job and investment requirements specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The full-time employee jobs resulting from such project will pay average wages that are, as determined by the Georgia Department of Labor for all jobs, for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new manufacturing facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a credit against the tax imposed under this article in an amount equal to 6 percent of the cost of all qualified investment property purchased or acquired by the business enterprise in such year, subject to the conditions and limitations set forth in this Code section. Where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. Each employee whose employer receives credit against such business enterprise'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 subsection. 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 subsection shall not constitute income to the taxpayer.

(e) The credit granted under subsection (d) 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 the date of application by the taxpayer for the qualified project pursuant to paragraph (1) of subsection (b) of this Code section. The credit may be taken beginning with the taxable year in which the taxpayer has met both the investment requirement and the job requirement, and for such first year the credit may include qualified investment property purchased or acquired in prior years but after the date of application by the taxpayer for the qualified project pursuant to paragraph (1) of subsection (b) of this Code section. For each 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 qualified 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 previously taken by the taxpayer against Georgia income tax liabilities or the taxpayer's quarterly or monthly payments under Code Section 48-7-103;

(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;

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

(I) The monthly average number of full-time jobs during the taxable year;

(2) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for 15 years from the close of the later of:

(A) The taxable year in which the qualified investment property was acquired; or

(B) The taxable year in which both the job requirement and investment requirement are satisfied.

The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity but any unused investment tax credit may be transferred and continued by any transferee of the business enterprise;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (d) 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 taxpayer has met both the investment requirement and the job requirement during such year; and

(4) The utilization of the credit granted in subsection (d) 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.

(f)(1) Except as provided in paragraph (2) of this subsection, in no event may credits exceeding $50 million in the aggregate be claimed under this Code section with respect to any one project.

(2) In no event shall a taxpayer claim credits exceeding $100 million in the aggregate under this Code section with respect to a high-impact aerospace defense project.

(g)(1) Except as provided in paragraph (2) of this subsection, a taxpayer who is entitled to and takes credits provided by this Code section with respect to a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.15, 48-7-40.17, 48-7-40.18, or 48-7-40.24 with respect to jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the cost of retraining an employee located at the site of such project or the manufacturing facility resulting therefrom, but only with respect to costs incurred more than five years after the date the manufacturing facility first becomes operational.

(2) A taxpayer who is entitled to and takes credits authorized by this Code section for a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, may also take the credits authorized by Code Sections 48-7-40.17 and 48-7-40.24 for such project.

(h)(1) With respect to each qualified project, not more than 60 days after the close of the fifth taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement. If the taxpayer fails to meet the job maintenance requirement, such taxpayer shall forfeit its right to all credits provided by this Code section for such project.

(2) Within 60 days after the close of the tenth taxable year within the recapture period, any taxpayer that takes a credit allowed under this Code section with respect to a high-impact aerospace defense project shall file a report, using such form and providing such information as the commissioner may reasonably require, which establishes that the taxpayer purchased or acquired at least $800 million in qualified investment property and employs at least 1,800 full-time employees with respect to such high-impact aerospace defense project. If the taxpayer fails to establish that such objectives were met by the close of the tenth taxable year within the recapture period, such taxpayer shall forfeit its right to all credits provided by this Code section for such project.

(3) A taxpayer that forfeits its right as provided in paragraph (1) or (2) of this subsection is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or the objectives required of a high-impact aerospace defense project, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(i) A taxpayer who fails to meet the job maintenance requirement or the objectives required of a high-impact aerospace defense project because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (h) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement, but that the portion of any year so affected was six months or less, the commissioner shall calculate the taxpayer's monthly average number of full-time employees for purposes of subsection (h) of this Code section by disregarding the affected months. If the commissioner determines that the affected portion of any such year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement and the recapture period applicable to the qualified project shall be extended for an additional year.

(j) If the manufacturing facility resulting from a qualified project is abandoned at any time during the recapture period, the taxpayer will forfeit the right to all credits provided by this Code section for such

project. A taxpayer that forfeits such right is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. For purposes of this subsection, a manufacturing facility will be considered abandoned if there is, for any reason other than force majeure, a complete cessation of manufacturing operations for a period of 12 consecutive months or more during the recapture period. Not more than 60 days after the close of the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may require, concerning whether such an abandonment occurred. No later than 90 days after notification by the commissioner that an abandonment occurred, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(k) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsections (h) and (j) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsections (h) and (j) of this Code section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(l) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.25, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 21; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2021, p. 289, § 2-4/SB 6.

**Delayed effective date.**

Code Section 48-7-40.25 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Parts II through IV of this Act shall be known and may be cited as the 'Georgia Economic Renewal Act of 2021.'"

**Law reviews.**

For note on the 2003 enactment of this Code section, see 20 Georgia St. U.L. Rev. 233 (2003).

For article, "SB 6: The Review, Cre-

ation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

**RESEARCH REFERENCES**

**ALR.**

State income tax treatment of intangible holding companies, 11 A.L.R.6th 543.

## 48-7-40.25. (Effective January 1, 2025.) Tax credits for investment in expanding existing manufacturing facilities; enhancements for high-impact aerospace defense projects.

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

(1) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing. Such term shall not include retail businesses.

(2) "Force majeure" means any:

(A) Explosions, implosions, fire, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(3) "Full-time employee" means an individual holding a full-time employee job.

(4) "Full-time employee job" and "full-time job" mean employment of an individual which:

(A)(i) With respect to a qualified project, is located in this state at the manufacturing facility resulting from such qualified project; and

(ii) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, is located in this state and results from such project;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and

(D) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

For purposes of this paragraph, leased employees will be considered employees of the company using their services, and such persons may be counted in determining the company's credits under this Code section if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

(4.1) "High-impact aerospace defense project" means a qualified project with the additional limitations that it is:

(A) To be constructed by a business enterprise that is a prime aerospace defense contractor with greater than 40 percent of its revenues derived from sales to the United States government in its most recently completed tax year; and

(B) Certified by the commissioner of economic development as materially supportive of the mission of the Georgia Joint Defense Commission and the Governor's Defense Initiative. In making such a certification, the commissioner shall consider whether the project will support the goals of the Georgia Joint Defense Commission set forth in paragraphs (2), (3), and (4) of Code Section 20-4-121.

(5) "Investment requirement" means the requirement that:

(A) With respect to a qualified project, a minimum of $800 million in qualified investment property shall have been purchased or acquired for use in such qualified project and be in service; or

(B) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, a minimum of $500 million in qualified investment property shall have been purchased or acquired for use in such project and be in service.

(6) "Job maintenance requirement" means the requirement that the monthly average number of full-time employees employed by the business enterprise during the first 60 months of the recapture period must equal or exceed 90 percent of the job requirement.

(7) "Job requirement" means the requirement that:

(A) With respect to a qualified project, the number of full-time employees must equal or exceed 1,800; or

(B) With respect to a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, the number of full-time employees must equal or exceed 1,000.

(8) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing facility.

(9) "Qualified project" means the construction of a new manufacturing facility in this state. For purposes of this paragraph, the term "manufacturing facility" means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment that is used in the process of making, fabricating, constructing, forming, or assembling a product from components or from raw, unfinished, or semifinished materials, and any support facility. For purposes of this paragraph, the term "support facility" means any warehouses, distribution centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, corporate offices, sales or marketing offices, computer operations facilities, or administrative offices that are contiguous to the manufacturing facility that results from a qualified project, constructed or expanded as part of the same such project, and designed primarily for activities supporting the manufacturing operations at such manufacturing facility.

(10) "Recapture period" means the period of ten consecutive taxable years that commences after the taxable year in which the

taxpayer has met both the investment requirement and the job requirement.

(b) A business enterprise that has operated an existing manufacturing facility in this state for the immediately three preceding years and that is planning a qualified project shall be allowed to take the credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence;

(B) Certifies that such project will meet the investment requirement and the job requirement prescribed by this Code section, stating when the business enterprise expects to meet such requirements;

(C) With respect to a high-impact aerospace defense project, certifies that the taxpayer will purchase or acquire a minimum of $800 million in qualified investment property and will employ at least 1,800 full-time employees, stating when the business enterprise expects to meet such requirements; and

(D) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance requirement prescribed by this Code section; and

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the new facility will have a significant beneficial economic effect on the region for which it is planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum job and investment requirements specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The full-time employee jobs resulting from such project will pay average wages that are, as determined by the Georgia Department of Labor for all jobs, for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new manufacturing facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a credit against the tax imposed under this article in an amount equal to 6 percent of the cost of all qualified investment property purchased or acquired by the business enterprise in such year, subject to the conditions and limitations set forth in this Code section. Where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. Each employee whose employer receives credit against such business enterprise'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 subsection. 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 subsection shall not constitute income to the taxpayer.

(e) The credit granted under subsection (d) 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 the date of

application by the taxpayer for the qualified project pursuant to paragraph (1) of subsection (b) of this Code section. The credit may be taken beginning with the taxable year in which the taxpayer has met both the investment requirement and the job requirement, and for such first year the credit may include qualified investment property purchased or acquired in prior years but after the date of application by the taxpayer for the qualified project pursuant to paragraph (1) of subsection (b) of this Code section. For each 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 qualified 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 previously taken by the taxpayer against Georgia income tax liabilities or the taxpayer's quarterly or monthly payments under Code Section 48-7-103;

(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;

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

(I) The monthly average number of full-time jobs during the taxable year;

(2) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for ten years from the close of the later of:

(A) The taxable year in which the qualified investment property was acquired; or

(B) The taxable year in which both the job requirement and investment requirement are satisfied.

The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity but any unused investment tax credit may be transferred and continued by any transferee of the business enterprise;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (d) 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 taxpayer has met both the investment requirement and the job requirement during such year; and

(4) The utilization of the credit granted in subsection (d) 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.

(f)(1) Except as provided in paragraph (2) of this subsection, in no event may credits exceeding $50 million in the aggregate be claimed under this Code section with respect to any one project.

(2) In no event shall a taxpayer claim credits exceeding $100 million in the aggregate under this Code section with respect to a high-impact aerospace defense project.

(g)(1) Except as provided in paragraph (2) of this subsection, a taxpayer who is entitled to and takes credits provided by this Code section with respect to a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.15, 48-7-40.17, 48-7-40.18, or 48-7-40.24 with respect to jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the cost of retraining an employee located at the site of such project or the manufacturing facility resulting therefrom, but only with respect to costs incurred more than five years after the date the manufacturing facility first becomes operational.

(2) A taxpayer who is entitled to and takes credits authorized by this Code section for a high-impact aerospace defense project certified pursuant to paragraph (2) of subsection (b) of this Code section on or after July 1, 2021, may also take the credits authorized by Code Sections 48-7-40.17 and 48-7-40.24 for such project.

(h)(1) With respect to each qualified project, not more than 60 days after the close of the fifth taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement. If the taxpayer fails to meet the job maintenance requirement, such taxpayer shall forfeit its right to all credits provided by this Code section for such project.

(2) Within 60 days after the close of the tenth taxable year within the recapture period, any taxpayer that takes a credit allowed under

this Code section with respect to a high-impact aerospace defense project shall file a report, using such form and providing such information as the commissioner may reasonably require, which establishes that the taxpayer purchased or acquired at least $800 million in qualified investment property and employs at least 1,800 full-time employees with respect to such high-impact aerospace defense project. If the taxpayer fails to establish that such objectives were met by the close of the tenth taxable year within the recapture period, such taxpayer shall forfeit its right to all credits provided by this Code section for such project.

(3) A taxpayer that forfeits its right as provided in paragraph (1) or (2) of this subsection is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or the objectives required of a high-impact aerospace defense project, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(i) A taxpayer who fails to meet the job maintenance requirement or the objectives required of a high-impact aerospace defense project because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (h) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement, but that the portion of any year so affected was six months or less, the commissioner shall calculate the taxpayer's monthly average number of full-time employees for purposes of subsection (h) of this Code section by disregarding the affected months. If the commissioner determines that the affected portion of any such year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement and the recapture period applicable to the qualified project shall be extended for an additional year.

(j) If the manufacturing facility resulting from a qualified project is abandoned at any time during the recapture period, the taxpayer will forfeit the right to all credits provided by this Code section for such project. A taxpayer that forfeits such right is liable for all past taxes imposed by this article and all past payments under Code Section

48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. For purposes of this subsection, a manufacturing facility will be considered abandoned if there is, for any reason other than force majeure, a complete cessation of manufacturing operations for a period of 12 consecutive months or more during the recapture period. Not more than 60 days after the close of the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may require, concerning whether such an abandonment occurred. No later than 90 days after notification by the commissioner that an abandonment occurred, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(k) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsections (h) and (j) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsections (h) and (j) of this Code section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(l) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.25, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 21; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2021, p. 289, § 2-4/SB 6; Ga. L. 2024, p. 794, § 1-29/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.25 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "ten years" for "15 years" in paragraph (e)(2). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.26. (Effective until January 1, 2025.) Tax credits for film, gaming, video, or digital production.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Investment Act."

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

(1) "Affiliates" means those entities that are included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Base investment" means the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) "Game platform" means the electronic delivery system used to launch or play an interactive game.

(4) "Game sequel" means an interactive game which builds upon the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from the original game.

(5) "Multimarket commercial distribution" means paid commercial distribution with media buys which extend to markets outside the State of Georgia.

(6) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production, which may be available to individuals for testing purposes but is not generally made available or distributed to consumers or to the general public.

(7) "Production company" means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(8) "Production expenditures" means:

(A) Preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including, but not limited to, the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization; expenditures excluding license fees in-

curred with Georgia companies for sound recordings and musical compositions; sound recording projects used in feature films, series, pilots, or movies; lighting and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing; film processing; transfers of film to tape or digital format; sound mixing; computer graphics services; special effects services; animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices.

(B) This term shall not include:

(i) Postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor. Expenditures for services conducted or rendered both in Georgia and outside Georgia shall only qualify to the extent the service is conducted or rendered in Georgia;

(iii) Expenditures for goods that were not purchased or rented or leased in this state from a Georgia vendor. Expenditures for goods shall only qualify to the extent such goods are used in this state. A vendor that acts as a conduit to enable purchases or rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases, rentals, or leases; or

(iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for which taxes have not been demonstrably paid.

(C) This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding the exclusion provided

in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of this chapter and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

(D) Production expenditures by a production company shall be subject to any limitations or reductions imposed by subsection (l) of this Code section.

(9) "Qualified Georgia promotion" means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

(B) Qualified TV production which includes an embedded five-second long Georgia promotion during each broadcast worldwide for the life of the project and which includes a link to Georgia on the project's web page;

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(10) "Qualified interactive entertainment production company" means a company that:

(A) Maintains a business location physically located in Georgia;

(B)(i) Through December 31, 2017, in the calendar year directly preceding the start of the taxable year of the qualified

interactive entertainment production company, had a total aggregate payroll of $500,000.00 or more for employees working within the state; or

(ii) On or after January 1, 2018, had a total aggregate payroll of $250,000.00 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the tax credits;

(C) Has gross income less than $100 million for the taxable year; and

(D) Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(11) "Qualified production activities" means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development as state certified productions, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or prereleased interactive games. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news or athletic events, local interest programming, instructional videos, corporate videos, any project that is not intended for multimarket commercial distribution, or any project not shot, recorded, or originally created in Georgia.

(12) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

(13) "State certified production" means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a

"work for hire" in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(14) "Total aggregate payroll" means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds $500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds $500,000.00 for qualified production activities, except that any qualified interactive entertainment production company shall be allowed the tax credit under this subsection if the base investment in this state equals or exceeds $250,000.00 for qualified production activities on or after January 1, 2018, and shall be calculated as follows:

(1) The production company or qualified interactive entertainment production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

(2)(A) The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. Such additional tax credit shall be allowed for any qualified production that includes a qualified Georgia promotion upon its release to the general public. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive

entertainment production company may offer alternative marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia. The Department of Economic Development shall electronically certify to the Department of Revenue when the requirements of this paragraph and paragraph (2) of subsection (d) of this Code section have been met.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development and Tourism Committee, the House Committee on Economic Development and Tourism, and the Governor.

(C) The additional percentage of tax credit allowed by this paragraph and by paragraph (2) of subsection (d) of this Code section shall not be allowed to a production company for any qualified production activity or state certified production that has not been commercially distributed in multiple markets.

(D) The additional percentage of tax credit that is allowed by this paragraph and by paragraph (2) of subsection (d) of this Code section shall not be issued final certification pursuant to subsection (l) of this Code section unless and until the state certified production has been commercially distributed in multiple markets within five years of the date that the project was first certified by the Department of Economic Development.

(3) The base investment and the amount of the credit allowed by this subsection and by subsection (d) of this Code section with respect

to a production company shall be subject to the limitations of and any reductions required by subsection (l) of this Code section.

(d) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds $500,000.00, or $250,000.00 for qualified interactive entertainment production activities on or after January 1, 2018, the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. Such additional tax credit shall be allowed for any qualified production that includes a qualified Georgia promotion upon its release to the general public. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved

alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development and Tourism Committee, the House Committee on Economic Development and Tourism, and the Governor.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates exceed $25 million for taxable years beginning on or after January 1, 2013, and before January 1, 2014. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be $5 million for such taxable year. When the $25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire for such taxable years.

(2) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(4) For taxable years beginning on or after January 1, 2016, and before January 1, 2018, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year.

(5)(A) For taxable years beginning on or after January 1, 2018, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year.

(B) Beginning on or after January 1, 2018, qualified interactive entertainment production companies are eligible for tax credits for prereleased interactive game production; provided, however, that such credits shall not be available for a period which exceeds three years.

(6) The maximum allowable credit claimed for any qualified

interactive entertainment production company and its affiliates shall not exceed $1.5 million in any single year.

(7) Qualified interactive entertainment production companies seeking to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The commissioner shall be authorized to promulgate any rules and regulations and forms necessary to implement and administer the provisions of this Code section. The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(8) No qualified interactive entertainment production company shall be allowed to claim an amount of tax credits under this Code section for any single year in excess of its total aggregate payroll expended to employees working within this state for the calendar year that the qualified interactive entertainment production company claims the tax credits. Any amount in excess of such limit shall not be eligible for carry forward to the succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(9) Before the Department of Economic Development issues its approval to the qualified interactive entertainment production company for the qualified production activities related to interactive entertainment, the qualified interactive entertainment production company must certify to the department that:

(A) The qualified interactive entertainment production company maintains a business location physically located in this state; and

(B) The qualified interactive entertainment production company had expended a total aggregate payroll of $500,000.00 or more, or $250,000.00 or more on or after January 1, 2018, for employees working within this state during the taxable year of the qualified interactive entertainment production company.

The department shall issue a certification that the qualified interactive entertainment production company meets the requirements of this paragraph; provided, however, that the department shall not issue any certifications before July 1, 2014. The qualified interactive entertainment production company shall provide such certification to the De-

partment of Economic Development. The Department of Economic Development shall not issue its approval until it receives such certification.

(10)(A) For taxable years beginning on or after January 1, 2016, the qualified interactive entertainment production company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment production company shall report such number for such taxable year and separately for each of the prior two taxable years.

(C) For taxable years beginning on or after January 1, 2017, the qualified interactive entertainment production company shall report such number for each respective taxable year.

(D) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company. The first report shall be submitted by June 30, 2016, and each year thereafter by June 30.

(f)(1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's or qualified interactive entertainment production company'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 subsection. 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 subsection shall not constitute income to the production company or qualified interactive entertainment production company.

(2) If a production company and its affiliates, or a qualified interactive entertainment production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the

disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned or for a tax credit subject to the provisions of subsection (l) of this Code section, the date on which the final certification for such tax credit was issued pursuant to said subsection;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee; provided, however, that the Department of Revenue shall not recapture a tax credit from the transferee if the tax credit was issued a valid final certification pursuant to subsection (l) of this Code section. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(h) The credit granted under this Code section shall be subject to the following conditions and limitations; provided, however, that this subsection shall not apply to a production company subject to the requirements of subsection (h.1) or (l) of this Code section:

(1) The credit may be taken beginning with the taxable year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

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

(D) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Georgia income tax liabilities or the production company's or qualified interactive entertainment production company's quarterly or monthly payments under Code Section 48-7-103;

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

(F) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current taxable year; and

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

(2) In the initial year in which the production company or qualified interactive entertainment production company claims the credit granted in this Code section, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed $500,000.00 during such year, or $250,000.00 on or after January 1, 2018, for qualified interactive entertainment production companies; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.

(h.1)(1) For any projects certified by the Department of Economic Development on or after January 1, 2021, the tax credit provided for in this Code section if covered under the schedule provided in paragraph (1) of subsection (l) of this Code section shall not be allowed, claimed, assigned, sold, transferred, or utilized in any manner by a production company until final certification is issued pursuant to subsection (l) of this Code section and except under the following conditions and limitations of this subsection.

(2) A production company seeking the tax credit allowed by this

Code section shall apply for the tax credit in the manner provided by the Department of Revenue within one year from the date that it completes a state certified production. The following information shall be submitted with the application or prior to the commencement of an audit required by subsection (l) of this Code section:

(A) A description of the state certified production, along with its certification as a state certified production by the Department of Economic Development;

(B) A detailed accounting of all qualified production activities and the attendant production expenditures included in the base investment for the state certified production;

(C) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(D) Receipts for tangible personal property included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(E) Contracts for goods or services included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(F) An Internal Revenue Service Form W-9 completed and issued by each vendor for which expenditures are included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(G) Notification as provided for in paragraph (7) of subsection (l) of this Code section of any intent to utilize an eligible auditor;

(H) A description of the status of the distribution of the state certified production and information related to any qualified Georgia promotion connected with such production;

(I) The total amount of the tax credit sought for the state certified production; and

(J) A statement affirming that the contents of the application are true and correct.

(3) If a production company is issued final certification of a tax credit pursuant to subsection (l) of this Code section, such tax credit shall be considered earned in the taxable year in which it is issued final certification.

(4) For each year in which the production company either claims or transfers the tax credit, the production company shall attach a schedule to the production company's Georgia income tax return which will set forth the following information, as a minimum:

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

(B) Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company's quarterly or monthly payments under Code Section 48-7-103;

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

(D) The amount of tax credit utilized by the production company in the current taxable year; and

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

(5) In no event shall the amount of the tax credit subject to subsection (l) of this Code section for a taxable year exceed the production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for three years from the close of the taxable year in which the tax credit was issued its final certification pursuant to subsection (l) of this Code section. No such credit shall be allowed the production company against prior years' tax liability.

(6) This subsection shall not apply to qualified interactive entertainment production companies.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(j) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(k) Any production company, except as provided in subsection (l) of this Code section, or qualified interactive entertainment production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section.

(l)(1)(A) For any project certified by the Department of Economic Development on or after January 1, 2021, a tax credit allowed by this Code section to a production company shall not be claimed,

assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection if the total amount of such tax credit sought for the project exceeds $2.5 million.

(B) For any project certified by the Department of Economic Development on or after January 1, 2022, a tax credit allowed by this Code section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection if the total amount of such tax credit sought for the project exceeds $1.25 million.

(C) For any project certified by the Department of Economic Development on or after January 1, 2023, a tax credit allowed by this Code section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection.

(2) In accordance with the schedule provided in paragraph (1) of this subsection, prior to certifying a tax credit pursuant to this Code section, the Department of Revenue shall conduct or cause to be conducted an audit of each tax credit allowed by this Code section by either the department or an independent third party certified by the department in accordance with paragraph (3) of this subsection as an eligible auditor.

(3)(A) The Department of Revenue shall provide for the certification and decertification of certified public accountants as eligible auditors.

(B) To obtain certification as an eligible auditor, an accountant shall:

(i) Register with the department;

(ii) Maintain its registration with the Georgia State Board of Accountancy;

(iii) Agree to and be capable of completing audits related to this Code section in accordance with this Code section and procedures developed by the department;

(iv) Successfully complete all training required by the department;

(v) Pay to the department a registration fee that the department shall set in an amount that reflects the expenses incurred by the department as a result of this paragraph; and

(vi) Post and maintain any bond that the department establishes for each eligible auditor.

(C) The Department of Revenue shall decertify an eligible auditor if such auditor:

(i) Fails to meet the conditions or comply with the provisions of subparagraph (B) of this paragraph; or

(ii) Completes an audit and violates the requirements of subparagraph (E) of paragraph (4) of this subsection.

(D) The Department of Revenue may decertify an eligible auditor if such auditor fails to complete an audit in accordance with subparagraph (A), (B), (C), (D), (F), or (G) of paragraph (4) of this subsection or meets any other grounds for decertification as provided in regulations promulgated by the department.

(4) Each audit shall:

(A) Be completed in accordance with this Code section and procedures developed by the department;

(B) Utilize sampling methods that the department may adopt;

(C) Follow regulations that shall be published by the department regarding expenditures incurred with related persons or related members as such terms are defined in Code Section 48-7-28.3;

(D) Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the conditions of this Code section;

(E) Exclude any expenditure not submitted with or that was incurred after the application required by subsection (h.1) of this Code section was submitted;

(F) Not be performed by an eligible accounting entity that is not determined to be independent as provided in the American Institute of Certified Public Accountants Code of Professional Conduct with respect to the production company or any of its related persons or related members as such terms are defined in Code Section 48-7-28.3 or as otherwise provided by the Department of Revenue; and

(G) Be submitted to the department which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.

(5) The Department of Revenue shall:

(A) Promulgate rules and regulations and implement this subsection;

(B) Publish and regularly update a list of all eligible auditors that a production company may hire to conduct the audit required by this subsection;

(C) Publish on its website the application for certification of eligible auditors as well as all requirements related to certification and conducting an audit pursuant to this subsection;

(D) Publish the registration fee required by division (3)(B)(v) of this subsection and any bond required pursuant to division (3)(B)(vi) of this subsection;

(E) Determine whether a sampling method shall be used for the audits required by this subsection, the appropriate sample method and size, and if a sampling method is used, ensure that it accurately captures a truly representative sample of all ineligible expenditures across all submitted expenditures and projects the type, rate, and amount of ineligible expenditures across all submitted expenditures;

(F) Perform the audit of expenditures when, due to confidentiality of information, the eligible auditor is unable to access necessary information that the department is able access;

(G) Review each audit conducted by an eligible auditor, conduct the portions of the audit described in subparagraph (F) of this paragraph, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the taxpayer; and

(H) For an audit that it conducts without an eligible auditor, complete the audit, adjust the value of the tax credit as necessary, and issue the final certification of the tax credit to the taxpayer.

(6) The production company applying for a final certification of a tax credit pursuant to this subsection shall agree and be required to reimburse the department for all costs incurred by the performance of a related audit, or any portion thereof, including for review of an audit conducted by an eligible auditor, prior to the issuance of such final certification.

(7) The cost of any such audit whether conducted in whole or in part by the department, an eligible auditor, or a combination of the two shall be borne by the production company and shall not be included as an expenditure claimed pursuant to this Code section.

(8) This subsection shall not apply to qualified interactive entertainment production companies.

**History.**

Code 1981, § 48-7-40.26, enacted by Ga. L. 2005, p. 1125, § 2/HB 539; Ga. L. 2006, p. 242, § 2/HB 194; Ga. L. 2008, p. 317, § 1/HB 1100; Ga. L. 2012, p. 976, § 2/HB 1027; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 51, § 1/HB 958; Ga. L. 2015, p. 125, § 1/HB 339; Ga. L. 2017, p. 59, § 1/HB 199; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 630, § 1/HB 1037.

**Delayed effective date.**

Code Section 48-7-40.26 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2008, a semicolon was inserted in paragraph (c)(1).

**Editor's notes.**

Ga. L. 2005, p. 1125, § 3(a)/HB 539, not codified by the General Assembly, provides that this Code section shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2008, p. 317, § 2/HB 1100, not codified by the General Assembly, provides, in part, that the 2008 amendment shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2012, p. 976, § 3(c)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2013.

Ga. L. 2014, p. 51, § 3(b)/HB 958, not codified by the General Assembly, provides, in part, that this Code section shall apply to all taxable years beginning on or after January 1, 2014.

Ga. L. 2015, p. 125, § 2/HB 339, not codified by the General Assembly, provides, in part, that the amendment by this Act shall be applicable to tax years beginning on or after January 1, 2016.

Ga. L. 2017, p. 59, § 3/HB 199, not codified by the General Assembly, provides, in part, that this Act shall apply to taxable years beginning on or after January 1, 2018.

**U.S. Code.**

Section 1504 of the Internal Revenue Code, referred to in this Code section, is codified as 26 U.S.C. § 1504.

**Administrative rules and regulations.**

Film Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.45.

**Law reviews.**

For comment, "An Examination of Georgia's Film Tax Incentive: Is There No Business Like Show Business in Georgia?," see 70 Mercer L. Rev. 749 (2019).

## 48-7-40.26. (Effective January 1, 2025.) Tax credits for film, gaming, video, or digital production.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Investment Act."

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

(1) "Affiliates" means those entities that are included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Base investment" means the aggregate funds actually in-

vested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) "Game platform" means the electronic delivery system used to launch or play an interactive game.

(4) "Game sequel" means an interactive game which builds upon the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from the original game.

(5) "Multimarket commercial distribution" means paid commercial distribution with media buys which extend to markets outside the State of Georgia.

(6) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production, which may be available to individuals for testing purposes but is not generally made available or distributed to consumers or to the general public.

(7) "Production company" means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(8) "Production expenditures" means:

(A) Preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including, but not limited to, the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization; expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions; sound recording projects used in feature films, series, pilots, or movies; lighting and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing; film processing; transfers of film to tape or digital format; sound mixing; computer graphics services; special effects services; animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company;

insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices.

(B) This term shall not include:

(i) Postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor. Expenditures for services conducted or rendered both in Georgia and outside Georgia shall only qualify to the extent the service is conducted or rendered in Georgia;

(iii) Expenditures for goods that were not purchased or rented or leased in this state from a Georgia vendor. Expenditures for goods shall only qualify to the extent such goods are used in this state. A vendor that acts as a conduit to enable purchases or rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases, rentals, or leases; or

(iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for which taxes have not been demonstrably paid.

(C) This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia,

notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of this chapter and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

(D) Production expenditures by a production company shall be subject to any limitations or reductions imposed by subsection (l) of this Code section.

(9) "Qualified Georgia promotion" means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

(B) Qualified TV production which includes an embedded five-second long Georgia promotion during each broadcast worldwide for the life of the project and which includes a link to Georgia on the project's web page;

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(10) "Qualified interactive entertainment production company" means a company that:

(A) Maintains a business location physically located in Georgia;

(B)(i) Through December 31, 2017, in the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of $500,000.00 or more for employees working within the state; or

(ii) On or after January 1, 2018, had a total aggregate payroll of $250,000.00 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the tax credits;

(C) Has gross income less than $100 million for the taxable year; and

(D) Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(11) "Qualified production activities" means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development as state certified productions, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or prereleased interactive games. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news or athletic events, local interest programming, instructional videos, corporate videos, any project that is not intended for multimarket commercial distribution, or any project not shot, recorded, or originally created in Georgia.

(12) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

(13) "State certified production" means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a "work for hire" in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(14) "Total aggregate payroll" means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state

in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds $500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds $500,000.00 for qualified production activities, except that any qualified interactive entertainment production company shall be allowed the tax credit under this subsection if the base investment in this state equals or exceeds $250,000.00 for qualified production activities on or after January 1, 2018, and shall be calculated as follows:

(1) The production company or qualified interactive entertainment production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

(2)(A) The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. Such additional tax credit shall be allowed for any qualified production that includes a qualified Georgia promotion upon its release to the general public. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer alternative marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia. The Department of Economic Development shall electronically certify to the Department of Revenue when the requirements of this paragraph and paragraph (2) of subsection (d) of this Code section have been met.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development and Tourism Committee, the House Committee on Economic Development and Tourism, and the Governor.

(C) The additional percentage of tax credit allowed by this paragraph and by paragraph (2) of subsection (d) of this Code section shall not be allowed to a production company for any qualified production activity or state certified production that has not been commercially distributed in multiple markets.

(D) The additional percentage of tax credit that is allowed by this paragraph and by paragraph (2) of subsection (d) of this Code section shall not be issued final certification pursuant to subsection (l) of this Code section unless and until the state certified production has been commercially distributed in multiple markets within five years of the date that the project was first certified by the Department of Economic Development.

(3) The base investment and the amount of the credit allowed by this subsection and by subsection (d) of this Code section with respect to a production company shall be subject to the limitations of and any reductions required by subsection (l) of this Code section.

(d) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual

total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds $500,000.00, or $250,000.00 for qualified interactive entertainment production activities on or after January 1, 2018, the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. Such additional tax credit shall be allowed for any qualified production that includes a qualified Georgia promotion upon its release to the general public. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development and Tourism Committee, the House Committee on Economic Development and Tourism, and the Governor.

(e)(1) In no event shall the aggregate amount of tax credits allowed

under this Code section for qualified interactive entertainment production companies and affiliates exceed $25 million for taxable years beginning on or after January 1, 2013, and before January 1, 2014. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be $5 million for such taxable year. When the $25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire for such taxable years.

(2) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(4) For taxable years beginning on or after January 1, 2016, and before January 1, 2018, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year.

(5)(A) For taxable years beginning on or after January 1, 2018, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year.

(B) Beginning on or after January 1, 2018, qualified interactive entertainment production companies are eligible for tax credits for prereleased interactive game production; provided, however, that such credits shall not be available for a period which exceeds three years.

(6) The maximum allowable credit claimed for any qualified interactive entertainment production company and its affiliates shall not exceed $1.5 million in any single year.

(7) Qualified interactive entertainment production companies seeking to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The commissioner shall be authorized to promulgate any rules and regulations and forms necessary to implement and administer the provisions of this Code section. The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of

funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(8) No qualified interactive entertainment production company shall be allowed to claim an amount of tax credits under this Code section for any single year in excess of its total aggregate payroll expended to employees working within this state for the calendar year that the qualified interactive entertainment production company claims the tax credits. Any amount in excess of such limit shall not be eligible for carry forward to the succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(9) Before the Department of Economic Development issues its approval to the qualified interactive entertainment production company for the qualified production activities related to interactive entertainment, the qualified interactive entertainment production company must certify to the department that:

(A) The qualified interactive entertainment production company maintains a business location physically located in this state; and

(B) The qualified interactive entertainment production company had expended a total aggregate payroll of $500,000.00 or more, or $250,000.00 or more on or after January 1, 2018, for employees working within this state during the taxable year of the qualified interactive entertainment production company.

The department shall issue a certification that the qualified interactive entertainment production company meets the requirements of this paragraph; provided, however, that the department shall not issue any certifications before July 1, 2014. The qualified interactive entertainment production company shall provide such certification to the Department of Economic Development. The Department of Economic Development shall not issue its approval until it receives such certification.

(10)(A) For taxable years beginning on or after January 1, 2016, the qualified interactive entertainment production company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours

a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment production company shall report such number for such taxable year and separately for each of the prior two taxable years.

(C) For taxable years beginning on or after January 1, 2017, the qualified interactive entertainment production company shall report such number for each respective taxable year.

(D) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company. The first report shall be submitted by June 30, 2016, and each year thereafter by June 30.

(f)(1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's or qualified interactive entertainment production company'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 subsection. 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 subsection shall not constitute income to the production company or qualified interactive entertainment production company.

(2) If a production company and its affiliates, or a qualified interactive entertainment production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its affiliates, or the qualified interactive entertainment production

company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned or for a tax credit subject to the provisions of subsection (l) of this Code section, the date on which the final certification for such tax credit was issued pursuant to said subsection;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee; provided, however, that the Department of Revenue shall not recapture a tax credit from the transferee if the tax credit was issued a valid final certification pursuant to subsection (l) of this Code section. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(h) The credit granted under this Code section shall be subject to the following conditions and limitations; provided, however, that this subsection shall not apply to a production company subject to the requirements of subsection (h.1) or (l) of this Code section:

(1) The credit may be taken beginning with the taxable year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

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

(D) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Georgia income tax liabilities or the production company's or qualified interactive entertainment production company's quarterly or monthly payments under Code Section 48-7-103;

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

(F) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current taxable year; and

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

(2) In the initial year in which the production company or qualified interactive entertainment production company claims the credit granted in this Code section, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed $500,000.00 during such year, or $250,000.00 on or after January 1, 2018, for qualified interactive entertainment production companies; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for three years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.

(h.1)(1) For any projects certified by the Department of Economic Development on or after January 1, 2021, the tax credit provided for in this Code section if covered under the schedule provided in paragraph (1) of subsection (l) of this Code section shall not be allowed, claimed, assigned, sold, transferred, or utilized in any manner by a production company until final certification is issued pursuant to subsection (l) of this Code section and except under the following conditions and limitations of this subsection.

(2) A production company seeking the tax credit allowed by this Code section shall apply for the tax credit in the manner provided by the Department of Revenue within one year from the date that it completes a state certified production. The following information shall be submitted with the application or prior to the commencement of an audit required by subsection (l) of this Code section:

(A) A description of the state certified production, along with its certification as a state certified production by the Department of Economic Development;

(B) A detailed accounting of all qualified production activities

and the attendant production expenditures included in the base investment for the state certified production;

(C) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(D) Receipts for tangible personal property included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(E) Contracts for goods or services included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(F) An Internal Revenue Service Form W-9 completed and issued by each vendor for which expenditures are included in the base investment as requested by the Department of Revenue or the eligible auditor hired to conduct the audit for the state certified production;

(G) Notification as provided for in paragraph (7) of subsection (l) of this Code section of any intent to utilize an eligible auditor;

(H) A description of the status of the distribution of the state certified production and information related to any qualified Georgia promotion connected with such production;

(I) The total amount of the tax credit sought for the state certified production; and

(J) A statement affirming that the contents of the application are true and correct.

(3) If a production company is issued final certification of a tax credit pursuant to subsection (l) of this Code section, such tax credit shall be considered earned in the taxable year in which it is issued final certification.

(4) For each year in which the production company either claims or transfers the tax credit, the production company shall attach a schedule to the production company's Georgia income tax return which will set forth the following information, as a minimum:

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

(B) Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company's quarterly or monthly payments under Code Section 48-7-103;

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

(D) The amount of tax credit utilized by the production company in the current taxable year; and

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

(5) In no event shall the amount of the tax credit subject to subsection (l) of this Code section for a taxable year exceed the production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for three years from the close of the taxable year in which the tax credit was issued its final certification pursuant to subsection (l) of this Code section. No such credit shall be allowed the production company against prior years' tax liability.

(6) This subsection shall not apply to qualified interactive entertainment production companies.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(j) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(k) Any production company, except as provided in subsection (l) of this Code section, or qualified interactive entertainment production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section.

(l)(1)(A) For any project certified by the Department of Economic Development on or after January 1, 2021, a tax credit allowed by this Code section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection if the total amount of such tax credit sought for the project exceeds $2.5 million.

(B) For any project certified by the Department of Economic Development on or after January 1, 2022, a tax credit allowed by this Code section to a production company shall not be claimed,

assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection if the total amount of such tax credit sought for the project exceeds $1.25 million.

(C) For any project certified by the Department of Economic Development on or after January 1, 2023, a tax credit allowed by this Code section to a production company shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for the tax credit as provided in subsection (h.1) of this Code section and the department issues a final certification of the tax credit pursuant to this subsection.

(2) In accordance with the schedule provided in paragraph (1) of this subsection, prior to certifying a tax credit pursuant to this Code section, the Department of Revenue shall conduct or cause to be conducted an audit of each tax credit allowed by this Code section by either the department or an independent third party certified by the department in accordance with paragraph (3) of this subsection as an eligible auditor.

(3)(A) The Department of Revenue shall provide for the certification and decertification of certified public accountants as eligible auditors.

(B) To obtain certification as an eligible auditor, an accountant shall:

(i) Register with the department;

(ii) Maintain its registration with the Georgia State Board of Accountancy;

(iii) Agree to and be capable of completing audits related to this Code section in accordance with this Code section and procedures developed by the department;

(iv) Successfully complete all training required by the department;

(v) Pay to the department a registration fee that the department shall set in an amount that reflects the expenses incurred by the department as a result of this paragraph; and

(vi) Post and maintain any bond that the department establishes for each eligible auditor.

(C) The Department of Revenue shall decertify an eligible auditor if such auditor:

(i) Fails to meet the conditions or comply with the provisions of subparagraph (B) of this paragraph; or

(ii) Completes an audit and violates the requirements of subparagraph (E) of paragraph (4) of this subsection.

(D) The Department of Revenue may decertify an eligible auditor if such auditor fails to complete an audit in accordance with subparagraph (A), (B), (C), (D), (F), or (G) of paragraph (4) of this subsection or meets any other grounds for decertification as provided in regulations promulgated by the department.

(4) Each audit shall:

(A) Be completed in accordance with this Code section and procedures developed by the department;

(B) Utilize sampling methods that the department may adopt;

(C) Follow regulations that shall be published by the department regarding expenditures incurred with related persons or related members as such terms are defined in Code Section 48-7-28.3;

(D) Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the conditions of this Code section;

(E) Exclude any expenditure not submitted with or that was incurred after the application required by subsection (h.1) of this Code section was submitted;

(F) Not be performed by an eligible accounting entity that is not determined to be independent as provided in the American Institute of Certified Public Accountants Code of Professional Conduct with respect to the production company or any of its related persons or related members as such terms are defined in Code Section 48-7-28.3 or as otherwise provided by the Department of Revenue; and

(G) Be submitted to the department which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.

(5) The Department of Revenue shall:

(A) Promulgate rules and regulations and implement this subsection;

(B) Publish and regularly update a list of all eligible auditors that a production company may hire to conduct the audit required by this subsection;

(C) Publish on its website the application for certification of eligible auditors as well as all requirements related to certification and conducting an audit pursuant to this subsection;

(D) Publish the registration fee required by division (3)(B)(v) of this subsection and any bond required pursuant to division (3)(B)(vi) of this subsection;

(E) Determine whether a sampling method shall be used for the audits required by this subsection, the appropriate sample method and size, and if a sampling method is used, ensure that it accurately captures a truly representative sample of all ineligible expenditures across all submitted expenditures and projects the type, rate, and amount of ineligible expenditures across all submitted expenditures;

(F) Perform the audit of expenditures when, due to confidentiality of information, the eligible auditor is unable to access necessary information that the department is able access;

(G) Review each audit conducted by an eligible auditor, conduct the portions of the audit described in subparagraph (F) of this paragraph, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the taxpayer; and

(H) For an audit that it conducts without an eligible auditor, complete the audit, adjust the value of the tax credit as necessary, and issue the final certification of the tax credit to the taxpayer.

(6) The production company applying for a final certification of a tax credit pursuant to this subsection shall agree and be required to reimburse the department for all costs incurred by the performance of a related audit, or any portion thereof, including for review of an audit conducted by an eligible auditor, prior to the issuance of such final certification.

(7) The cost of any such audit whether conducted in whole or in part by the department, an eligible auditor, or a combination of the two shall be borne by the production company and shall not be included as an expenditure claimed pursuant to this Code section.

(8) This subsection shall not apply to qualified interactive entertainment production companies.

**History.**

Code 1981, § 48-7-40.26, enacted by Ga. L. 2005, p. 1125, § 2/HB 539; Ga. L. 2006, p. 242, § 2/HB 194; Ga. L. 2008, p. 317, § 1/HB 1100; Ga. L. 2012, p. 976, § 2/HB 1027; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 51, § 1/HB 958; Ga. L. 2015, p. 125, § 1/HB 339; Ga. L. 2017, p. 59, § 1/HB 199; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 630, § 1/HB 1037; Ga. L. 2024, p. 794, § 1-30/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.26 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years" for "five years" in the second sentence in paragraph (h)(3). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.26A. (Effective until January 1, 2025.) Tax credits for postproduction expenditures.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Postproduction Investment Act."

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

(1) "Affiliates" means those entities that are included in the postproduction company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Multimarket commercial distribution" means paid commercial distribution media buys which extend to markets outside the State of Georgia.

(3) "Postproduction company" means a company that:

(A) Maintains a business location physically located in this state;

(B) Has a total aggregate payroll of $250,000.00 or more for employees working within the state in the taxable year the postproduction company claims the tax credits;

(C) Is engaged in qualified postproduction activities; and

(D) Has been approved by the Department of Revenue.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state. In the instance of a "work for hire" in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired company shall be considered a service provider for the hiring company and the hiring company shall be entitled to the postproduction tax credit only if the Department of Revenue certifies that the hired company is a Georgia company employing workers in this state and that the work is done solely in this state.

(4) "Qualified postproduction activities" means the activities performed on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(5) "Qualified postproduction expenditures" means expenditures incurred in this state directly in qualified postproduction activities, including without limitation the following:

(A) Costs associated with photography and sound synchronization;

(B) Expenditures, excluding license fees, incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials;

(C) Editing and related services;

(D) Rental of facilities and equipment;

(E) Leasing of vehicles;

(F) Costs of food and lodging;

(G) Digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services;

(H) Total aggregate payroll;

(I) Airfare, if purchased through a Georgia travel agency or travel company;

(J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and

(K) Other direct postproduction costs for the project in accordance with generally accepted entertainment industry practices.

This term includes expenditures incurred in this state for footage shot inside or outside this state.

(6) "Qualified production" means a film, video, or digital project, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or sound recording projects used in feature films, series, pilots, or movies for television. This term shall include projects shot, recorded, or originally created in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any

element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, and corporate videos.

(7) "Total aggregate payroll" means the total sum expended by a postproduction company on salaries paid to employees working within this state on qualified postproduction activities.

(c)(1) A postproduction company that has incurred qualified postproduction expenditures of at least $500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the conditions and limitations set forth in this Code section.

(2)(A) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.

(B) An additional tax credit equal to 10 percent of the qualified postproduction expenditures shall be allowed if the qualified production expenditures, as defined in Code Section 48-7-40.26, were incurred in this state.

(C) An additional tax credit equal to 5 percent of the qualified production expenditures shall be allowed if the qualified production expenditures were incurred in a tier 1 or tier 2 county as designated by the commissioner of community affairs pursuant to Code Section 48-7-40.

(3) The amount of tax credits allowed to a postproduction company under this Code section for any single taxable year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the taxable year the postproduction company claims the tax credit.

(c.1)(1) A postproduction company that has incurred qualified postproduction expenditures of at least $100,000.00 but less than $500,000.00 and has a total aggregate payroll in this state of at least $100,000.00 but less than $500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the additional limitations set forth in this subsection.

(2) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.

(3) The aggregate amount of tax credits allowed under this subsection for smaller postproduction companies shall not exceed $1 million per taxable year. This $1 million aggregate amount of tax credits is separate from, and shall not be included in, the aggregate amount of tax credits under subsection (d) of this Code section.

(d) The tax credits allowed under this Code section for all postproduction companies shall be subject to the following aggregate annual caps:

(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2019, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;

(2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;

(3) For taxable years beginning on or after January 1, 2020, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million per year;

(4) The tax credits allowed under this Code section shall not be available for taxable years beginning on or after January 1, 2023; and

(5) If the aggregate amount of tax credits claimed by taxpayers under this Code section during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.

(e)(1) The maximum allowable tax credit under this Code section claimed by a single postproduction company and its affiliates shall not exceed, in any single taxable year, 20 percent of the aggregate amount of tax credits available for such taxable year under subsection (d) of this Code section, including the amount of any aggregate annual caps rolled over from prior years.

(2) Postproduction companies seeking to claim a tax credit under this Code section shall submit an application to the Department of Revenue for preapproval of such tax credit. The Department of Revenue shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the Department of Revenue shall prorate the available funds between or among the applicants.

(f) For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the postproduction company shall report to the

Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. For purposes of this subsection, the term "full-time employee" shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall annually report to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(g)(1) Any qualified postproduction expenditures for which a production company claims a tax credit under Code Section 48-7-40.26 shall not be eligible for postproduction expenditures for purposes of the credit authorized under this Code section.

(2) If a postproduction company and its affiliates claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the postproduction company and its affiliates will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the postproduction company and its affiliates on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

(1) The credit may be taken beginning with the taxable year in which the postproduction company has incurred the qualified postproduction expenditures. For each year in which such postproduction company either claims or transfers the credit, the postproduction company shall attach a schedule to the postproduction company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified postproduction activities;

(B) A certification that the postproduction company maintains a business location physically located in this state;

(C) A certification that the postproduction company expended a total aggregate payroll of $250,000.00 or more for employees

working within this state during the taxable year of the postproduction company;

(D) In the initial year in which the postproduction company claims the credit granted in this Code section only, information demonstrating that the qualified postproduction expenditures equal or exceed $500,000.00 during such year;

(E) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the qualified postproduction expenditures;

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

(G) Any tax credit previously taken by the postproduction company against Georgia income tax liabilities or the postproduction company's quarterly or monthly payments under Code Section 48-7-103;

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

(I) The amount of tax credit utilized by the postproduction company in the current taxable year; and

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

The postproduction company shall file a copy of the schedule with the Department of Economic Development within 30 days after the schedule is filed with its income tax return;

(2) Where the amount of tax credits under this Code section exceeds the postproduction company's income tax liability in a taxable year, any unused credit amount:

(A) May be carried forward for five years from the close of the taxable year in which the investment occurred; or

(B) May be taken as a credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such postproduction company'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 subparagraph. 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 postproduction company.

No such credit shall be allowed the postproduction company against prior years' tax liability; and

(3) Any tax credits earned by a postproduction company under this Code section and previously claimed but not used by such postproduction company against its income tax or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole or in part by such postproduction company to another Georgia taxpayer, subject to the following conditions:

(A) Such postproduction company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(B) Such postproduction company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such postproduction company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(C) Failure to comply with this paragraph shall result in the disallowance of the tax credit until the postproduction company is in full compliance;

(D) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(E) A transferee shall have only such rights to claim and use the tax credit that was available to such postproduction company at the time of the transfer, except for the use of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that such postproduction company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and

(F) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subparagraph shall not apply to routine tax

audits of a taxpayer that may include the review of the credit provided in this Code section.

(i) The Department of Revenue and the Department of Economic Development shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-40.26A, enacted by Ga. L. 2017, p. 59, § 2/HB 199.
**Delayed effective date.**
Code Section 48-7-40.26A is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Editor's notes.**
Ga. L. 2017, p. 59, § 3/HB 199, not codified by the General Assembly, provides, in part, that this Act shall apply to taxable years beginning on or after January 1, 2018.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2017, "was" was substituted for "were" in subparagraph (h)(3)(E).

## 48-7-40.26A. (Effective January 1, 2025.) Tax credits for postproduction expenditures.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Postproduction Investment Act."

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

(1) "Affiliates" means those entities that are included in the postproduction company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Multimarket commercial distribution" means paid commercial distribution media buys which extend to markets outside the State of Georgia.

(3) "Postproduction company" means a company that:

(A) Maintains a business location physically located in this state;

(B) Has a total aggregate payroll of $250,000.00 or more for employees working within the state in the taxable year the postproduction company claims the tax credits;

(C) Is engaged in qualified postproduction activities; and

(D) Has been approved by the Department of Revenue.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made

by the state or a loan guaranteed by the state. In the instance of a "work for hire" in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired company shall be considered a service provider for the hiring company and the hiring company shall be entitled to the postproduction tax credit only if the Department of Revenue certifies that the hired company is a Georgia company employing workers in this state and that the work is done solely in this state.

(4) "Qualified postproduction activities" means the activities performed on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(5) "Qualified postproduction expenditures" means expenditures incurred in this state directly in qualified postproduction activities, including without limitation the following:

(A) Costs associated with photography and sound synchronization;

(B) Expenditures, excluding license fees, incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials;

(C) Editing and related services;

(D) Rental of facilities and equipment;

(E) Leasing of vehicles;

(F) Costs of food and lodging;

(G) Digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services;

(H) Total aggregate payroll;

(I) Airfare, if purchased through a Georgia travel agency or travel company;

(J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and

(K) Other direct postproduction costs for the project in accordance with generally accepted entertainment industry practices.

This term includes expenditures incurred in this state for footage shot inside or outside this state.

(6) "Qualified production" means a film, video, or digital project, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or sound recording projects used in feature films, series, pilots, or movies for television. This term shall include projects shot, recorded, or originally created in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, and corporate videos.

(7) "Total aggregate payroll" means the total sum expended by a postproduction company on salaries paid to employees working within this state on qualified postproduction activities.

(c)(1) A postproduction company that has incurred qualified postproduction expenditures of at least $500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the conditions and limitations set forth in this Code section.

(2)(A) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.

(B) An additional tax credit equal to 10 percent of the qualified postproduction expenditures shall be allowed if the qualified production expenditures, as defined in Code Section 48-7-40.26, were incurred in this state.

(C) An additional tax credit equal to 5 percent of the qualified production expenditures shall be allowed if the qualified production expenditures were incurred in a tier 1 or tier 2 county as designated by the commissioner of community affairs pursuant to Code Section 48-7-40.

(3) The amount of tax credits allowed to a postproduction company under this Code section for any single taxable year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the taxable year the postproduction company claims the tax credit.

(c.1)(1) A postproduction company that has incurred qualified postproduction expenditures of at least $100,000.00 but less than

$500,000.00 and has a total aggregate payroll in this state of at least $100,000.00 but less than $500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the additional limitations set forth in this subsection.

(2) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.

(3) The aggregate amount of tax credits allowed under this subsection for smaller postproduction companies shall not exceed $1 million per taxable year. This $1 million aggregate amount of tax credits is separate from, and shall not be included in, the aggregate amount of tax credits under subsection (d) of this Code section.

(d) The tax credits allowed under this Code section for all postproduction companies shall be subject to the following aggregate annual caps:

(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2019, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;

(2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;

(3) For taxable years beginning on or after January 1, 2020, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million per year;

(4) The tax credits allowed under this Code section shall not be available for taxable years beginning on or after January 1, 2023; and

(5) If the aggregate amount of tax credits claimed by taxpayers under this Code section during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.

(e)(1) The maximum allowable tax credit under this Code section claimed by a single postproduction company and its affiliates shall not exceed, in any single taxable year, 20 percent of the aggregate amount of tax credits available for such taxable year under subsection (d) of this Code section, including the amount of any aggregate annual caps rolled over from prior years.

(2) Postproduction companies seeking to claim a tax credit under this Code section shall submit an application to the Department of Revenue for preapproval of such tax credit. The Department of

Revenue shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the Department of Revenue shall prorate the available funds between or among the applicants.

(f) For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the postproduction company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. For purposes of this subsection, the term "full-time employee" shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall annually report to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(g)(1) Any qualified postproduction expenditures for which a production company claims a tax credit under Code Section 48-7-40.26 shall not be eligible for postproduction expenditures for purposes of the credit authorized under this Code section.

(2) If a postproduction company and its affiliates claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the postproduction company and its affiliates will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the postproduction company and its affiliates on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

(1) The credit may be taken beginning with the taxable year in which the postproduction company has incurred the qualified postproduction expenditures. For each year in which such postproduction company either claims or transfers the credit, the postproduction

company shall attach a schedule to the postproduction company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified postproduction activities;

(B) A certification that the postproduction company maintains a business location physically located in this state;

(C) A certification that the postproduction company expended a total aggregate payroll of $250,000.00 or more for employees working within this state during the taxable year of the postproduction company;

(D) In the initial year in which the postproduction company claims the credit granted in this Code section only, information demonstrating that the qualified postproduction expenditures equal or exceed $500,000.00 during such year;

(E) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the qualified postproduction expenditures;

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

(G) Any tax credit previously taken by the postproduction company against Georgia income tax liabilities or the postproduction company's quarterly or monthly payments under Code Section 48-7-103;

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

(I) The amount of tax credit utilized by the postproduction company in the current taxable year; and

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

The postproduction company shall file a copy of the schedule with the Department of Economic Development within 30 days after the schedule is filed with its income tax return;

(2) Where the amount of tax credits under this Code section exceeds the postproduction company's income tax liability in a taxable year, any unused credit amount:

(A) May be carried forward for three years from the close of the taxable year in which the investment occurred; or

(B) May be taken as a credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such postproduction company'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 subparagraph. 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 postproduction company.

No such credit shall be allowed the postproduction company against prior years' tax liability; and

(3) Any tax credits earned by a postproduction company under this Code section and previously claimed but not used by such postproduction company against its income tax or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole or in part by such postproduction company to another Georgia taxpayer, subject to the following conditions:

(A) Such postproduction company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(B) Such postproduction company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such postproduction company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(C) Failure to comply with this paragraph shall result in the disallowance of the tax credit until the postproduction company is in full compliance;

(D) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(E) A transferee shall have only such rights to claim and use the tax credit that was available to such postproduction company at the time of the transfer, except for the use of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that such postproduction company did not have rights to

claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and

(F) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subparagraph shall not apply to routine tax audits of a taxpayer that may include the review of the credit provided in this Code section.

(i) The Department of Revenue and the Department of Economic Development shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.26A, enacted by Ga. L. 2017, p. 59, § 2/HB 199; Ga. L. 2024, p. 794, § 1-31/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.26A is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years" for "five years" in subparagraph (h)(2)(A). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.27. (Effective until January 1, 2025.) Tax credits for qualified investments in a research fund.

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

(1) "Credit" means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 25 percent of the taxpayer's qualified investment.

(2) "Qualified investment" means a cash investment in the research fund that is not a cash investment made by the state or on behalf of the state.

(3) "Research fund" means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code

section. Once the research fund reaches $30 million in total qualified investments, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

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

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of tax credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this Code section for a cash investment if they claim the tax credit provided in Code Section 48-7-40.28 for such cash investment.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) In the event that the research fund liquidates prior to the investment of all of the cash received from taxpayers, the credit claimed

with respect to such uninvested cash shall be recaptured. Such recapture shall be equal to the amount of the credit attributable to the qualified investment not invested by the research fund and returned to the taxpayer by the research fund. The recaptured amount shall be treated as taxes payable to the state for the taxable year in which such return of such investment occurs.

(f) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section.

**History.**
Code 1981, § 48-7-40.27, enacted by Ga. L. 2008, p. 938, § 1/HB 1196.

**Delayed effective date.**
Code Section 48-7-40.27 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**
Ga. L. 2008, p. 938, § 3/HB 1196, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to investments made on or after July 1, 2008.

## 48-7-40.27. (Effective January 1, 2025. Reserved effective December 31, 2029.) Tax credits for qualified investments in a research fund.

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

(1) "Credit" means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 25 percent of the taxpayer's qualified investment.

(2) "Qualified investment" means a cash investment in the research fund that is not a cash investment made by the state or on behalf of the state.

(3) "Research fund" means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the research fund reaches $30 million in total qualified investments, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

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

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall

be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent five years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of tax credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this Code section for a cash investment if they claim the tax credit provided in Code Section 48-7-40.28 for such cash investment.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) In the event that the research fund liquidates prior to the investment of all of the cash received from taxpayers, the credit claimed with respect to such uninvested cash shall be recaptured. Such recapture shall be equal to the amount of the credit attributable to the qualified investment not invested by the research fund and returned to the taxpayer by the research fund. The recaptured amount shall be treated as taxes payable to the state for the taxable year in which such return of such investment occurs.

(f) The commissioner may require such reports, promulgate such

regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section.

(g) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-40.27, enacted by Ga. L. 2008, p. 938, § 1/HB 1196; Ga. L. 2024, p. 794, §§ 1-32, 2-4/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.27 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" at the end of the second sentence in paragraph (c)(1) and added subsection (g). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.28. (Effective until January 1, 2025.) Limitation on the aggregate amount of tax credits allowed for qualified investments in a research fund.

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

(1) "Credit" means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 10 percent of the taxpayer's qualified investment.

(2) "Qualified investment" means a cash investment in a legal entity in which the research fund has invested; provided, however, that such investment has been made by the taxpayer at the invitation of the research fund with the express intention of permitting the taxpayer making such qualified investment to qualify for the credit.

(3) "Research fund" means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the total amount of qualified investments reaches $75 million, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

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

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall

be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of the credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section for a cash investment into the research fund.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section.

**History.**

Code 1981, § 48-7-40.28, enacted by Ga. L. 2008, p. 938, § 1/HB 1196.

**Delayed effective date.**

Code Section 48-7-40.28 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Editor's notes.**

Ga. L. 2008, p. 938, § 3/HB 1196, not codified by the General Assembly, provides that this Code section shall be applicable to investments made on or after July 1, 2008.

**48-7-40.28. (Effective January 1, 2025. Reserved effective December 31, 2029.) Limitation on the aggregate amount of tax credits allowed for qualified investments in a research fund.**

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

(1) "Credit" means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 10 percent of the taxpayer's qualified investment.

(2) "Qualified investment" means a cash investment in a legal entity in which the research fund has invested; provided, however, that such investment has been made by the taxpayer at the invitation of the research fund with the express intention of permitting the taxpayer making such qualified investment to qualify for the credit.

(3) "Research fund" means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the total amount of qualified investments reaches $75 million, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

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

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent five years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of the credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a

partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section for a cash investment into the research fund.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section.

(f) This Code section shall stand repealed and reserved on December 31, 2029.

**History.**

Code 1981, § 48-7-40.28, enacted by Ga. L. 2008, p. 938, § 1/HB 1196; Ga. L. 2024, p. 794, §§ 1-33, 2-5/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.28 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "five years" for "ten years" at the end of the second sentence in paragraph (c)(1) and added subsection (f). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.29. (For effective date until January 1, 2025, see note.) Tax credits for certain qualified equipment that reduces business or domestic energy or water usage.

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

(1) "Cost" means the aggregate funds actually invested and expended by a taxpayer to put into service the qualified equipment.

(2) "Energy efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources, as effective in reducing business or domestic energy usage. Such certifications may include, by way of example and not limitation, any dishwasher, clothes washer, furnace, air conditioner, central heating and air conditioning system, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, energy efficient water heater, skylighting system, whole house fan, energy use meter, light-emitting diode lighting system, geothermal heating system, door, window, or window film which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(3) "Qualified equipment" means energy efficient equipment or water efficient equipment.

(4) "Water efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources as effective in reducing business or domestic water usage. Such certifications shall include, by way of example and not limitation, water conservation systems capable of storing rain water or gray water for future use and reusing the collected water for the same residential or commercial property and other products used for the conservation or efficient use of water which have been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency requirements or which have been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(b) Rules and regulations of the commissioner of natural resources shall establish classifications or categories of qualified equipment, and no item of such qualified equipment shall be included in more than one classification or category for purposes of claiming a tax credit under this Code section. The commissioner of natural resources may take all reasonable and necessary steps to identify qualified equipment and to bring such equipment to the attention of taxpayers in this state qualified to install such equipment.

(c) After the effective date of this Code section, any taxpayer who is the ultimate purchaser of an item of qualified equipment for installation as part of new construction or for retrofit in this state shall be allowed a credit against the tax imposed under this article in the taxable year in which such qualified equipment was placed in service.

The amount of the credit allowed under this Code section shall be 25 percent of the cost of the qualified equipment or $2,500.00, whichever is less.

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

(1) The aggregate amount of credit which shall be claimed and allowed by taxpayers in any taxable year under this Code section shall be limited solely and exclusively to the amount of federal funds granted to the state for purposes of this Code section. In any tax year in which no federal funds are available for such purposes, no credit shall be claimed and allowed under this Code section;

(2) A taxpayer that claims a credit allowed under this Code section shall not be eligible to claim such qualified equipment for the clean energy property credit provided in Code Section 48-7-29.14; and

(3) To claim a credit allowed by this Code section, the taxpayer shall provide any information required by the Department of Natural Resources or the department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the Department of Natural Resources or the department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) In no event shall the amount of the tax credit allowed by this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified equipment was placed in service. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) After the qualified equipment is placed in service, a taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(g) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section exceed the amount of federal funds granted to the state for purposes of this Code section.

(h) The Department of Natural Resources and the department shall be authorized to adopt rules and regulations to provide for the administration of the tax credit provided by this Code section. Specifically, the Department of Natural Resources and the department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

**History.**

Code 1981, § 48-7-40.29, enacted by Ga. L. 2010, p. 1163, § 1/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79.

**Delayed effective date.**

Code Section 48-7-40.29 is set out twice in this Code. This version as enacted has not yet become effective due to the contingency described in the Editor's note to Ga. L. 2010, p. 1163, § 7/HB 1069. For the version incorporating the amendments by Ga. L. 2024, p. 794, § 4-1/HB 1181, see the following version.

**Editor's notes.**

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides, in part: "(c) Section 1 of this Act shall become effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by Section 1 of this Act and in which the state auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of Section 1 of this Act." As of May 2024, this condition had not been met.

**Law reviews.**

For article, "The Greens' Dilemma: Building Tomorrow's Climate Infrastructure Today," see 73 Emory L.J. 1 (2023).

## 48-7-40.29. (For effective date as of January 1, 2025, see note.) Tax credits for certain qualified equipment that reduces business or domestic energy or water usage.

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

(1) "Cost" means the aggregate funds actually invested and expended by a taxpayer to put into service the qualified equipment.

(2) "Energy efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources, as effective in reducing business or domestic energy usage. Such certifications may include, by way of example and not limitation, any dishwasher, clothes washer, furnace, air conditioner, central heating and air conditioning system, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, energy efficient water heater, skylighting system, whole house fan, energy use meter, light-emitting diode lighting system, geothermal heating system, door, window, or window film which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been

designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(3) "Qualified equipment" means energy efficient equipment or water efficient equipment.

(4) "Water efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources as effective in reducing business or domestic water usage. Such certifications shall include, by way of example and not limitation, water conservation systems capable of storing rain water or gray water for future use and reusing the collected water for the same residential or commercial property and other products used for the conservation or efficient use of water which have been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency requirements or which have been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(b) Rules and regulations of the commissioner of natural resources shall establish classifications or categories of qualified equipment, and no item of such qualified equipment shall be included in more than one classification or category for purposes of claiming a tax credit under this Code section. The commissioner of natural resources may take all reasonable and necessary steps to identify qualified equipment and to bring such equipment to the attention of taxpayers in this state qualified to install such equipment.

(c) After the effective date of this Code section, any taxpayer who is the ultimate purchaser of an item of qualified equipment for installation as part of new construction or for retrofit in this state shall be allowed a credit against the tax imposed under this article in the taxable year in which such qualified equipment was placed in service. The amount of the credit allowed under this Code section shall be 25 percent of the cost of the qualified equipment or $2,500.00, whichever is less.

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

(1) The aggregate amount of credit which shall be claimed and allowed by taxpayers in any taxable year under this Code section shall be limited solely and exclusively to the amount of federal funds granted to the state for purposes of this Code section. In any tax year in which no federal funds are available for such purposes, no credit shall be claimed and allowed under this Code section;

(2) A taxpayer that claims a credit allowed under this Code

section shall not be eligible to claim such qualified equipment for the clean energy property credit provided in Code Section 48-7-29.14; and

(3) To claim a credit allowed by this Code section, the taxpayer shall provide any information required by the Department of Natural Resources or the department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the Department of Natural Resources or the department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) In no event shall the amount of the tax credit allowed by this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall be allowed to be carried forward for three years from the close of the taxable year in which the qualified equipment was placed in service. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) After the qualified equipment is placed in service, a taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(g) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section exceed the amount of federal funds granted to the state for purposes of this Code section.

(h) The Department of Natural Resources and the department shall be authorized to adopt rules and regulations to provide for the administration of the tax credit provided by this Code section. Specifically, the Department of Natural Resources and the department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

**History.**

Code 1981, § 48-7-40.29, enacted by Ga. L. 2010, p. 1163, § 1/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2024, p. 794, § 1-34/HB 1181, see notes for effective date.

**Delayed effective date.**

Code Section 48-7-40.29 is set out twice in this Code. This version incorporates the amendments by Ga. L. 2024, p. 794, § 4-1/HB 1181. For the version as enacted but not yet effective due to the

contingency described in the Editor's note to Ga. L. 2010, p. 1163, § 7/HB 1069, see the preceding version.

**Amendments.**

**The 2024 amendment,** substituted "three years" for "five years" near the middle of the second sentence in subsection (e). See Editor's notes for effective date and applicability.

**Editor's notes.**

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides, in part: "(c) Section 1 of this Act shall become effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by Section 1 of this Act and in which the state auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of Section 1 of this Act." As of May 2024, this condition had not been met.

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025. However, see the Editor's note to Ga. L. 2010, p. 1163, § 7/HB 1069.

## 48-7-40.30. (Effective until January 1, 2025.) Tax credits for certain qualified investments for limited period of time.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of this state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within this state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

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

(1) "Allowable credit" means the credit as it may be reduced pursuant to paragraph (3) of subsection (i) of this Code section.

(2) "Headquarters" means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) "Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

(4) "Pass-through entity" means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) "Professional services" means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) "Qualified business" means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of $500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, or research and development or is a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance; or

(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage in such activity as one of its primary purposes.

(7) "Qualified investment" means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) "Qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than $5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) "Qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) "Registered" or "registration" means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor shall not be eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this Code section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed $50,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit; and

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business, whether as an officer, a member of the board of directors or managers or otherwise, or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under this Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section shall submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on

which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed $10 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed $10 million in such year;

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed $10 million in such year;

(D) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2014 calendar year and claimed and allowed in the 2016 taxable year shall not exceed $5 million in such year;

(E) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2015 calendar year and claimed and allowed in the 2017 taxable year shall not exceed $5 million in such year;

(F) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2016 calendar year and claimed and allowed in the 2018 taxable year shall not exceed $5 million in such year;

(G) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2017 calendar year and claimed and allowed in the 2019 taxable year shall not exceed $5 million in such year; and

(H) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2018 calendar year and claimed and allowed in the 2020 taxable year shall not exceed $5 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.30, enacted by Ga. L. 2010, p. 1163, § 2/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 243, § 6/HB 318; Ga. L. 2015, p. 371, § 1/HB 237.

**Delayed effective date.**

Code Section 48-7-40.30 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Administrative rules and regulations.**

Qualified Investor Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.52.

## 48-7-40.30. (Effective January 1, 2025.) Tax credits for certain qualified investments for limited period of time.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of this state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within this state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

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

(1) "Allowable credit" means the credit as it may be reduced pursuant to paragraph (3) of subsection (i) of this Code section.

(2) "Headquarters" means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) "Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

(4) "Pass-through entity" means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) "Professional services" means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) "Qualified business" means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of $500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, or research and development or is a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance; or

(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage in such activity as one of its primary purposes.

(7) "Qualified investment" means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) "Qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than $5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) "Qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred

stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) "Registered" or "registration" means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor shall not be eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this

Code section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed $50,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for three years from the close of the taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit; and

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in

the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business, whether as an officer, a member of the board of directors or managers or otherwise, or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under this

Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section shall submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed $10 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed $10 million in such year;

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed $10 million in such year;

(D) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2014 calendar year and claimed and allowed in the 2016 taxable year shall not exceed $5 million in such year;

(E) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2015 calendar year and claimed and allowed in the 2017 taxable year shall not exceed $5 million in such year;

(F) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2016 calendar year and claimed and allowed in the 2018 taxable year shall not exceed $5 million in such year;

(G) The total aggregate amount of all tax credits allowed to

qualified investors or pass-through entities for investments made in the 2017 calendar year and claimed and allowed in the 2019 taxable year shall not exceed $5 million in such year; and

(H) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2018 calendar year and claimed and allowed in the 2020 taxable year shall not exceed $5 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**

Code 1981, § 48-7-40.30, enacted by Ga. L. 2010, p. 1163, § 2/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 243, § 6/HB 318; Ga. L. 2015, p. 371, § 1/HB 237; Ga. L. 2024, p. 794, § 1-35/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.30 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, substituted "three years" for "five years" in the middle of the second sentence in paragraph (f)(3). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.31. Tax credits for employing qualified parolees.

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

(1) "Employer" means an enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization, and its affiliates, which is registered and authorized to use the federal employment verification system known as "E-Verify" or any successor federal employment verification system and is engaged in or carrying on any business activities within this state.

(2) "Full-time job" means employment which:

(A) Is located in this state;

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

(C) Has no predetermined end date; and

(D) Pays at or above the average hourly wage of the county with the lowest average hourly wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(3) "Qualified parolee" means an individual who has been granted parole in accordance with Code Section 42-9-45 within 12 months preceding his or her date of hire for a full-time job.

(b)(1) For the period beginning on or after January 1, 2017, and before January 1, 2020, an employer that employs a qualified parolee in a full-time job for at least 40 weeks during a 12 month period shall be eligible for an income tax credit in the amount of $2,500.00 for each qualified parolee so employed against the tax imposed under this article during such 12 month period; provided, however, that a qualified parolee first employed in a full-time job by such employer before January 1, 2017, shall not qualify.

(2) An employer shall only be eligible to receive credits provided by this subsection in an amount up to $50,000.00 per taxable year.

(3) An employer shall only be eligible to receive the credit provided by this subsection once per individual.

(c) In no event shall the credit provided by subsection (b) of this Code section for a taxable year exceed the employer's income tax liability. Any unused portion of the credit provided by subsection (b) of this Code section shall be permitted to be carried forward and applied to the employer's tax liability for the subsequent three years. The credit provided by subsection (b) of this Code section shall not be applied against the employer's prior years' tax liabilities.

(d) On or before September 1 of 2018, 2019, and 2020, the commissioner shall issue a report to the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means concerning the tax credit created by this Code section, which shall include the following statistics for the preceding taxable year:

(1) The total number of employers that claimed a credit provided by this Code section; and

(2) The number and total value of all credits earned and all credits applied during such tax year pursuant to this Code section.

(e) The commissioner shall promulgate rules and regulations and

forms necessary to implement and administer the provisions of this Code section.

**History.**
Code 1981, § 48-7-40.31, enacted by Ga. L. 2016, p. 553, § 3/HB 936.

**Editor's notes.**
Ga. L. 2016, p. 553, § 4(b)/HB 936, not codified by the General Assembly, provides that: "Section 3 of this Act shall be applicable to taxable years beginning on or after January 1, 2017."

**Administrative rules and regulations.**
Qualified Parolee Jobs Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.58.

## 48-7-40.32. (Effective until January 1, 2025.) Tax credits for certain expenditures in revitalization zones.

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

(1) "Certified entity" means any eligible business which establishes a new location within a revitalization zone on or after January 1, 2018, or any existing eligible business located within a revitalization zone that expands its operations, and which:

(A) Has created at least two new full-time equivalent jobs in a taxable year; and

(B) Has been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on established criteria in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(2) "Certified investor" means an investor or investors who:

(A) Acquire and develop real estate within a designated revitalization zone; and

(B) Have been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on criteria established in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(3) "Eligible business" means any establishment that is primarily engaged in providing professional services or in retailing merchandise and rendering services incidental to the sale of merchandise, including but not limited to the North American Industry Classification System Codes 31, 44-45, 54, and 72.

(4) "Full-time equivalent" means an aggregate of employee hours

worked totaling 40 hours per week, the equivalent of one full-time job.

(5) "Local government" means a county, municipality, or consolidated local government created pursuant to Article IX, Sections I, II, or III of the Constitution; applicable general state statutes; a local Act of the General Assembly; or such other method as was valid at the time of its creation.

(6) "Qualified rehabilitation expenditure" means labor and material costs associated with the rehabilitation of a certified investor property which:

(A) Complies with the state minimum standard codes and any applicable local codes; and

(B) Has been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on established criteria in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(7) "Revitalization zone" means a specified geographic region that meets all criteria provided by this Code section and has been designated by the commissioner of community affairs and the commissioner of economic development to be in need of economic revitalization.

(b) The commissioner of community affairs and the commissioner of economic development are authorized to designate a specified area as a revitalization zone, enabling new and established businesses and new business investments in the zone to qualify for revitalization zone tax credits. The commissioner of community affairs and the commissioner of economic development may designate up to ten revitalization zones in any given year; provided, however, that there shall not be more than 50 revitalization zones in existence at the same time. This designation shall last for five consecutive years upon approval of the commissioners. To be eligible to apply for revitalization zone status, local governments must have a population of fewer than 15,000 residents. In addition, local governments must prove economic distress based on poverty rate, vacancy of the downtown area, or blight and shall meet the three following characteristics:

(1) A concentration of historic commercial structures at least 50 years old within the targeted area;

(2) A feasibility study or market analysis identifying the business activities which can be supported in the targeted area; and

(3) A master plan or strategic plan designed to assist private and public investment.

(c)(1) Certified entities shall receive the revitalization zone tax credit for five years beginning with the first taxable year in which new full-time equivalent jobs are created in a revitalization zone and for years two, three, four, and five of the taxable years immediately following, provided that the new full-time equivalent jobs are maintained for each year the tax credit is claimed.

(2) Each new full-time equivalent job created will be eligible for a $2,000.00 annual income tax credit. The amount of credit claimed by each certified entity shall not exceed $40,000.00 per taxable year.

(3) The number of new full-time equivalent jobs shall be determined by comparing the monthly average of full-time equivalent jobs subject to Georgia income tax withholding for a given taxable year with the corresponding period of the prior taxable year; provided, however, that a certified entity which begins operations during the taxable year may be certified by the commissioner of community affairs to base initial eligibility on a period of less than 12 months.

(4) This income tax credit shall not be allowed during a year if the net employment increase falls below the number required by subparagraph (a)(1)(A) of this Code section.

(5) Any credit generated and utilized in years prior to the year in which the net employment increase falls below the number required by subparagraph (a)(1)(A) of this Code section shall not be affected.

(d) Certified investors who acquire and develop property in a revitalization zone on or after January 1, 2018, shall receive the revitalization zone tax credit, subject to the following:

(1) Certified investors shall demonstrate a property's ongoing commercial benefit as follows:

(A) An eligible business is located in the investment property and qualifies to receive the tax credit pursuant to subsection (c) of this Code section; or

(B) An eligible business is located in the investment property and maintains a minimum of two full-time equivalent jobs for each year the tax credit is claimed;

(2) The amount of the tax credit per project shall be 25 percent of the purchase price and shall not exceed $125,000.00; provided, however, that the entire credit shall not be taken in the year in which the property is placed in commercial service but shall be prorated equally in five installments over five taxable years, beginning with the taxable year in which the property is placed in service; and

(3) A certified investor shall be allowed to preserve the revitalization zone tax credit for up to seven years from the date of initial eligibility in the event the commercial requirement in paragraph (1) of this subsection is not satisfied in consecutive years.

(e)(1) A certified investor or certified entity with qualified rehabilitation expenditures on or after January 1, 2018, shall receive the revitalization zone tax credit for three years beginning with the year the property is placed in service. The amount of the tax credit per project shall be 30 percent of the qualified rehabilitation expenditures and shall not exceed $150,000.00; provided, however, that the entire credit shall not be taken in the year in which the property is placed in commercial service but shall be prorated equally in three installments over three taxable years, beginning with the taxable year in which the property is placed in service. The business shall maintain a minimum of two full-time equivalent jobs for each year the tax credit is claimed.

(2) A certified investor or certified entity shall meet minimum historic preservation standards in order to be qualified to receive the revitalization zone tax credit. The standards shall be identified with the assistance of the Department of Community Affairs.

(3) A taxpayer who is entitled to and takes credits provided by this Code section for a project shall not be allowed to utilize the same qualified rehabilitation expenditures to generate any additional state income tax credits, including, but not limited to, the state income tax credit for rehabilitated historic property administered by the Department of Community Affairs. Jobs created by, arising from, or connected in any way with the same project are not eligible to be used toward other job related tax credits.

(f) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed a certified entity's or certified investor's state income tax liability. Any credit claimed under this Code section by a certified entity or certified investor but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the credit is claimed. No such credit shall be allowed by the taxpayer against prior years' tax liability.

(g) Any tax credits earned under this Code section are nontransferable.

(h) A certified entity shall report to the revenue commissioner the qualifying net job increases or decreases each year. A certified investor shall report to the revenue commissioner the investment amount in the initial qualifying year. The revenue commissioner and the commissioner of community affairs shall have the authority to require reports and promulgate regulations as needed in order to perform their duties under this Code section.

(i) This Code section shall stand automatically repealed and reserved on December 31, 2032.

**History.**

Code 1981, § 48-7-40.32, enacted by Ga. L. 2017, p. 526, § 1/HB 73; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2020, p. 38, § 11/SB 473; Ga. L. 2024, p. 14, § 2/SB 496, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-7-40.32 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, in subsection (i), inserted "and reserved", substituted "December 31, 2032" for "December 31, 2027", and deleted ", unless reauthorized by the General Assembly prior to such date" from the end.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2017, Code Section 48-7-40.32, as enacted by Ga. L. 2017, p. 574, § 1/HB 155, was redesignated as Code Section 48-7-40.33.

Pursuant to Code Section 28-9-5, in 2020, "Department of Community Affairs" was substituted for "Department of Natural Resources' Historic Preservation Division" at the end of the second sentence of paragraph (e)(2) and at the end of the first sentence of paragraph (e)(3).

**Editor's notes.**

Ga. L. 2017, p. 526, § 2/HB 73, not codified by the General Assembly, provides, in part, that this Code section "shall be applicable to all taxable years beginning on or after January 1, 2018."

**Administrative rules and regulations.**

Rural Zone Tax Credits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Community Affairs, Rural Zone Program, Rural Zones, Rule 110-34-1-.06.

Rural Zone Tax Credits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.62.

## 48-7-40.32. (Effective January 1, 2025. Reserved effective December 31, 2032.) Tax credits for certain expenditures in revitalization zones.

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

(1) "Certified entity" means any eligible business which establishes a new location within a revitalization zone on or after January 1, 2018, or any existing eligible business located within a revitalization zone that expands its operations, and which:

(A) Has created at least two new full-time equivalent jobs in a taxable year; and

(B) Has been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on established criteria in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(2) "Certified investor" means an investor or investors who:

(A) Acquire and develop real estate within a designated revitalization zone; and

(B) Have been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on criteria established in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(3) "Eligible business" means any establishment that is primarily engaged in providing professional services or in retailing merchandise and rendering services incidental to the sale of merchandise, including but not limited to the North American Industry Classification System Codes 31, 44-45, 54, and 72.

(4) "Full-time equivalent" means an aggregate of employee hours worked totaling 40 hours per week, the equivalent of one full-time job.

(5) "Local government" means a county, municipality, or consolidated local government created pursuant to Article IX, Sections I, II, or III of the Constitution; applicable general state statutes; a local Act of the General Assembly; or such other method as was valid at the time of its creation.

(6) "Qualified rehabilitation expenditure" means labor and material costs associated with the rehabilitation of a certified investor property which:

(A) Complies with the state minimum standard codes and any applicable local codes; and

(B) Has been certified by the commissioner of community affairs as eligible to receive the revitalization zone tax credit based on established criteria in this Code section and promulgated in regulations by the commissioner of community affairs. Such certification shall be attached to the income tax return when the credit is claimed.

(7) "Revitalization zone" means a specified geographic region that meets all criteria provided by this Code section and has been designated by the commissioner of community affairs and the commissioner of economic development to be in need of economic revitalization.

(b) The commissioner of community affairs and the commissioner of economic development are authorized to designate a specified area as a revitalization zone, enabling new and established businesses and new business investments in the zone to qualify for revitalization zone tax credits. The commissioner of community affairs and the commissioner of economic development may designate up to ten revitalization zones in any given year; provided, however, that there shall not be more than

50 revitalization zones in existence at the same time. This designation shall last for five consecutive years upon approval of the commissioners. To be eligible to apply for revitalization zone status, local governments must have a population of fewer than 15,000 residents. In addition, local governments must prove economic distress based on poverty rate, vacancy of the downtown area, or blight and shall meet the three following characteristics:

(1) A concentration of historic commercial structures at least 50 years old within the targeted area;

(2) A feasibility study or market analysis identifying the business activities which can be supported in the targeted area; and

(3) A master plan or strategic plan designed to assist private and public investment.

(c)(1) Certified entities shall receive the revitalization zone tax credit for five years beginning with the first taxable year in which new full-time equivalent jobs are created in a revitalization zone and for years two, three, four, and five of the taxable years immediately following, provided that the new full-time equivalent jobs are maintained for each year the tax credit is claimed.

(2) Each new full-time equivalent job created will be eligible for a $2,000.00 annual income tax credit. The amount of credit claimed by each certified entity shall not exceed $40,000.00 per taxable year.

(3) The number of new full-time equivalent jobs shall be determined by comparing the monthly average of full-time equivalent jobs subject to Georgia income tax withholding for a given taxable year with the corresponding period of the prior taxable year; provided, however, that a certified entity which begins operations during the taxable year may be certified by the commissioner of community affairs to base initial eligibility on a period of less than 12 months.

(4) This income tax credit shall not be allowed during a year if the net employment increase falls below the number required by subparagraph (a)(1)(A) of this Code section.

(5) Any credit generated and utilized in years prior to the year in which the net employment increase falls below the number required by subparagraph (a)(1)(A) of this Code section shall not be affected.

(d) Certified investors who acquire and develop property in a revitalization zone on or after January 1, 2018, shall receive the revitalization zone tax credit, subject to the following:

(1) Certified investors shall demonstrate a property's ongoing commercial benefit as follows:

(A) An eligible business is located in the investment property

and qualifies to receive the tax credit pursuant to subsection (c) of this Code section; or

(B) An eligible business is located in the investment property and maintains a minimum of two full-time equivalent jobs for each year the tax credit is claimed;

(2) The amount of the tax credit per project shall be 25 percent of the purchase price and shall not exceed $125,000.00; provided, however, that the entire credit shall not be taken in the year in which the property is placed in commercial service but shall be prorated equally in three installments over three taxable years, beginning with the taxable year in which the property is placed in service; and

(3) A certified investor shall be allowed to preserve the revitalization zone tax credit for up to seven years from the date of initial eligibility in the event the commercial requirement in paragraph (1) of this subsection is not satisfied in consecutive years.

(e)(1) A certified investor or certified entity with qualified rehabilitation expenditures on or after January 1, 2018, shall receive the revitalization zone tax credit for three years beginning with the year the property is placed in service. The amount of the tax credit per project shall be 30 percent of the qualified rehabilitation expenditures and shall not exceed $150,000.00; provided, however, that the entire credit shall not be taken in the year in which the property is placed in commercial service but shall be prorated equally in three installments over three taxable years, beginning with the taxable year in which the property is placed in service. The business shall maintain a minimum of two full-time equivalent jobs for each year the tax credit is claimed.

(2) A certified investor or certified entity shall meet minimum historic preservation standards in order to be qualified to receive the revitalization zone tax credit. The standards shall be identified with the assistance of the Department of Community Affairs.

(3) A taxpayer who is entitled to and takes credits provided by this Code section for a project shall not be allowed to utilize the same qualified rehabilitation expenditures to generate any additional state income tax credits, including, but not limited to, the state income tax credit for rehabilitated historic property administered by the Department of Community Affairs. Jobs created by, arising from, or connected in any way with the same project are not eligible to be used toward other job related tax credits.

(f) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed a certified entity's or certified investor's state income tax liability. Any credit claimed under this Code

section by a certified entity or certified investor but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the credit is claimed. No such credit shall be allowed by the taxpayer against prior years' tax liability.

(g) Any tax credits earned under this Code section are nontransferable.

(h) A certified entity shall report to the revenue commissioner the qualifying net job increases or decreases each year. A certified investor shall report to the revenue commissioner the investment amount in the initial qualifying year. The revenue commissioner and the commissioner of community affairs shall have the authority to require reports and promulgate regulations as needed in order to perform their duties under this Code section.

(i) This Code section shall stand automatically repealed and reserved on December 31, 2032.

**History.**

Code 1981, § 48-7-40.32, enacted by Ga. L. 2017, p. 526, § 1/HB 73; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2020, p. 38, § 11/SB 473; Ga. L. 2024, p. 14, § 2/SB 496, effective July 1, 2024; Ga. L. 2024, p. 794, § 1-36/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.32 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective July 1, 2024, in subsection (i), inserted "and reserved", substituted "December 31, 2032" for "December 31, 2027", and deleted ", unless reauthorized by the General Assembly prior to such date" from the end.

**The second 2024 amendment,** effective January 1, 2025, substituted "three installments over three taxable years" for "five installments over five taxable years" in paragraph (d)(2), and substituted "five years" for "ten years" in the middle of the second sentence in subsection (f). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.33. [Reserved] Tax credits for musical or theatrical performances.

**History.**

Code 1981, § 48-7-40.33, enacted by Ga. L. 2017, p. 574, § 1/HB 155; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2019, p. 1056, § 48/SB 52; repealed by Ga. L. 2017, p. 574, § 2/HB 155, effective January 1, 2023.

**Editor's notes.**

Ga. L. 2023, p. 730, § 7(14)/HB 475, reserved the designation of this Code section.

**48-7-40.34. (Effective until January 1, 2025.) Tax credits for Class III railroads; reporting.**

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

(1) "Class III railroad" means a rail carrier classified as a Class III railroad by the United States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201, as it existed on January 1, 2018.

(2) "Qualified railroad track maintenance expenditures" means gross expenditures for maintaining railroad track, including roadbed, bridges, and related track structures, owned or leased as of January 1, 2018, by a Class III railroad.

(b) A Class III railroad shall be given a credit against the tax imposed under this article for a taxable year in the amount of 50 percent of the qualified railroad track maintenance expenditures paid or incurred by such Class III railroad during the taxable year, provided that such credit shall not exceed $3,500.00 multiplied by each mile of railroad track owned or leased in this state as of the close of the taxable year by such Class III railroad.

(c)(1) The credit given under this Code section shall only be allowed once for each mile of railroad track in each taxable year.

(2) Such credit shall be given for each taxable year beginning on or after January 1, 2019, and ending on or before December 30, 2026, in which the conditions of this Code section have been met.

(d) If a credit is given under this Code section with respect to any railroad track, the basis of such railroad track shall be reduced by the amount of the credit so allowed.

(e) The tax credits given to a Class III railroad by this Code section that are not used by such Class III railroad shall be freely assignable one time between January 1, 2019, and January 1, 2027, by written agreement to a taxpayer subject to the tax imposed by this chapter.

(f) On or before September 1 of 2020 and annually thereafter until 2027, the commissioner shall issue a report to the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means concerning the tax credit created by this Code section, which shall include the following statistics for the preceding taxable year:

(1) The total number of taxpayers that claimed a credit provided by this Code section; and

(2) The number and total value of all credits earned and all credits applied during such tax year pursuant to this Code section.

(g) The commissioner shall promulgate such forms, rules, and regu-

lations as are necessary to implement and administer the provisions of this Code section.

(h) This Code section shall be automatically repealed on January 1, 2027.

**History.**
Code 1981, § 48-7-40.34, enacted by Ga. L. 2018, p. 944, § 2/HB 735; Ga. L. 2021, p. 289, § 4-1/SB 6.
**Delayed effective date.**
Code Section 48-7-40.34 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.
**Editor's notes.**
Ga. L. 2018, p. 944, § 5(a)/HB 735, not codified by the General Assembly, provides, in part, that the enactment of this Code section by that Act "shall be applicable to taxable years beginning on or after January 1, 2019, and ending on or before December 31, 2023."
Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Parts II through IV of this Act shall be known and may be cited as the 'Georgia Economic Renewal Act of 2021.'"
**Administrative rules and regulations.**
Railroad Track Maintenance Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.64.
**Law reviews**
For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## 48-7-40.34. (Effective January 1, 2025. Repealed effective January 1, 2027.) Tax credits for Class III railroads; reporting.

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

(1) "Class III railroad" means a rail carrier classified as a Class III railroad by the United States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201, as it existed on January 1, 2018.

(2) "Qualified railroad track maintenance expenditures" means gross expenditures for maintaining railroad track, including roadbed, bridges, and related track structures, owned or leased as of January 1, 2018, by a Class III railroad.

(b) A Class III railroad shall be given a credit against the tax imposed under this article for a taxable year in the amount of 50 percent of the qualified railroad track maintenance expenditures paid or incurred by such Class III railroad during the taxable year, provided that such credit shall not exceed $3,500.00 multiplied by each mile of railroad track owned or leased in this state as of the close of the taxable year by such Class III railroad.

(c)(1) The credit given under this Code section shall only be allowed once for each mile of railroad track in each taxable year.

(2) Such credit shall be given for each taxable year beginning on

or after January 1, 2019, and ending on or before December 30, 2026, in which the conditions of this Code section have been met.

(d) If a credit is given under this Code section with respect to any railroad track, the basis of such railroad track shall be reduced by the amount of the credit so allowed.

(e)(1) The tax credits given to a Class III railroad by this Code section that are not used by such Class III railroad shall be freely assignable one time between January 1, 2019, and January 1, 2027, by written agreement to a taxpayer subject to the tax imposed by this chapter.

(2) In no event shall tax credits allowed under this Code section for a taxable year exceed any taxpayer's state income tax liability. Any credit allowed to any taxpayer under this Code section but not used in a taxable year may be carried forward for up to three years from the close of the taxable year in which the credit was first claimed. No such tax credit shall be allowed by the taxpayer against prior years' tax liability.

(f) On or before September 1 of 2020 and annually thereafter until 2027, the commissioner shall issue a report to the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means concerning the tax credit created by this Code section, which shall include the following statistics for the preceding taxable year:

(1) The total number of taxpayers that claimed a credit provided by this Code section; and

(2) The number and total value of all credits earned and all credits applied during such tax year pursuant to this Code section.

(g) The commissioner shall promulgate such forms, rules, and regulations as are necessary to implement and administer the provisions of this Code section.

(h) This Code section shall be automatically repealed on January 1, 2027.

**History.**

Code 1981, § 48-7-40.34, enacted by Ga. L. 2018, p. 944, § 2/HB 735; Ga. L. 2021, p. 289, § 4-1/SB 6; Ga. L. 2024, p. 794, § 1-37/HB 1181, effective January 1, 2025.

**Delayed effective date.**

Code Section 48-7-40.34 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The 2024 amendment,** effective January 1, 2025, designated the existing provisions of subsection (e) as paragraph (e)(1) and added paragraph (e)(2). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 794, § 4-1/HB 1181, not codified by the General Assembly, makes the amendments to this Code section by Part I applicable only to the unused tax

credits generated during the taxable years beginning on or after January 1, 2025.

## 48-7-40.35. [Reserved] Tax credits for certain post-consumer waste material recycling facilities.

**History.**
Code 1981, § 48-7-40.35, enacted by Ga. L. 2018, p. 944, § 3/HB 735; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 493, § 48/SB 429; repealed by Ga. L. 2018, p. 944, § 3/HB 735, effective December 31, 2023.

**Editor's notes.**
Ga. L. 2024, p. 1052, § 5(45)/SB 448, reserved the designation of this Code section, effective July 1, 2024.

## 48-7-40.36. Tax credits for timber producers incurring losses from Hurricane Michael.

(a)(1) The General Assembly finds and determines that Hurricane Michael has had a catastrophic impact on the citizens and the economy of southwest Georgia, has particularly devastated the timber industry on which the citizens of southwest Georgia are heavily dependent for their livelihood, and has created both a public fire hazard and a danger of insect infestations due to the massive amounts of downed timber caused by the severity of this natural disaster.

(2) The General Assembly further finds and declares that it is appropriate and advisable to provide relief to the timber industry in the form of a tax credit targeted to those taxpayers that have suffered substantial economic losses and that will have to incur significant expenses for salvaging downed timber, site clearance, restoration, and reforestation of timber over the coming years.

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

(1) "Disaster area" means the real property encompassed by the borders of the 28 counties included in the renewal of the State of Emergency pronounced in the Executive Order of the Governor dated November 6, 2018, and filed in the official records of the office of the Governor as Executive Order 11.06.18.01.

(2) "Eligible timber property" means timber which on October 8, 2018, was being grown by a taxpayer in a disaster area as part of a trade or business or a transaction entered into for profit.

(3) "Timber" means trees grown for the primary purpose of commercial production of food or wood or wood fiber products.

(4) "Timber casualty loss" means the amount of the diminution of value included in the computation of the casualty loss deduction for such casualty losses claimed and allowed pursuant to Section 165 of

the Internal Revenue Code of 1986 as casualty losses incurred by a taxpayer between October 9, 2018, and December 31, 2018, as a result of damage to or destruction of eligible timber property caused by Hurricane Michael.

(c)(1) A taxpayer shall be allowed tax credits against the tax imposed by this article in an amount equal to 100 percent of such taxpayer's timber casualty loss; provided, however, that the credit amount shall not exceed the number of the taxpayer's affected acres of eligible timber property in such disaster areas multiplied by $400.00.

(2) To claim such tax credits, a taxpayer shall submit an application for preapproval of such credits based on timber casualty losses incurred by such taxpayer. A taxpayer shall either submit its preapproval application between January 1, 2019, and May 31, 2019, for a first round of preapprovals or between July 1, 2019, and December 31, 2019, for a second round of preapprovals, if applicable.

(d)(1) The commissioner shall require preapproval applications to contain such information as is necessary to substantiate a taxpayer's eligibility for tax credits allowed pursuant to this Code section.

(2) The commissioner is authorized to require electronic submission of preapproval applications in the manner specified by the commissioner.

(3) The commissioner shall review completed preapproval applications in the order in which such applications were submitted and shall provide notice to each taxpayer that submitted an application within 30 days of receipt stating whether such taxpayer's application is complete or incomplete.

(4) In no event shall the commissioner preapprove tax credits pursuant to this Code section in an amount that exceeds $200 million in aggregate.

(5) In the event that properly completed and timely submitted preapproval applications are submitted for an amount that exceeds the amount of funds available to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(6) The commissioner shall approve properly completed and timely submitted preapproval applications and issue a preapproval certificate to the taxpayer by June 30, 2019, certifying the amount of credits such taxpayer is eligible to claim if the taxpayer meets the conditions of this Code section.

(d.1)(1) If, on July 1, 2019, the commissioner has not preapproved tax credits in the amount of $200 million in aggregate pursuant to

this Code section, a second round of preapproval applications shall be reviewed by the commissioner. Preapproval applications for the second round shall be submitted on or after July 1, 2019, and on or before December 31, 2019.

(2) In the event that properly completed and timely submitted preapproval applications are submitted during the second round for an amount that exceeds the amount of funds available to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(3) The commissioner shall approve all properly completed and timely submitted preapproval applications during the second round and issue a preapproval certificate to the taxpayer by January 31, 2020, certifying the amount of credits such taxpayer is eligible to claim if the taxpayer meets the conditions of this Code section.

(e) In no event shall the amount of the tax credits allowed pursuant to this Code section exceed $200 million in aggregate.

(f)(1)(A) Tax credits allowed pursuant to this Code section shall be eligible to be claimed only by the taxpayer to which a preapproval certificate was issued by the commissioner.

(B) Tax credits allowed under paragraph (1) of subsection (c) of this Code section shall only be claimed in the taxable year in which the taxpayer first completes:

(i) The restoration of each acre for which timber casualty losses were incurred to a condition that has an adequately stocked stand that is expected to result in forest products or ecological services in the foreseeable future; or

(ii) The replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed. Such timber shall be planted within the same county in which the eligible timber property was being grown when the timber casualty loss was incurred. Timber market conditions as of October 8, 2018, shall be used for the purposes of establishing projected value.

(2) In order to claim such tax credits, a taxpayer shall attach to such taxpayer's state tax return certification from the taxpayer that the requirements of this Code section have been met and any other information required by the commissioner, including information which demonstrates that it has completed the replanting of timber or the salvaging, management, removal, or clearance of downed or destroyed timber required pursuant to paragraph (1) of this subsection.

(3) Any tax credits allowed pursuant to this Code section shall be claimed on or before December 31, 2024.

(g)(1) The total amount of the tax credits allowed pursuant to this Code section for a taxable year may exceed the taxpayer's income tax liability. Such tax credits allowed in excess of a taxpayer's income tax liability shall be refundable to such taxpayer, provided that such taxpayer is the same taxpayer that incurred the timber casualty loss.

(2) Tax credits claimed pursuant to 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 credits are claimed.

(h) Tax credits claimed pursuant to this Code section but not used by the taxpayer against its income tax or refunded may be transferred or sold one time to a single other Georgia taxpayer, subject to the following conditions:

(1) Only the taxpayer that claimed tax credits allowed pursuant to this Code section shall make the transfer or sale of such tax credits;

(2) The taxpayer that claimed the tax credits allowed pursuant to this Code section shall submit to the commissioner written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include:

(A) Such taxpayer's credit balance prior to transfer;

(B) The credit certificate number;

(C) The remaining balance of credits after transfer;

(D) The tax identification numbers for the transferee;

(E) The date of transfer;

(F) The amount of credits transferred; and

(G) Other information as may be required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credits allowed pursuant to this Code section until the taxpayer that claimed the credits is in full compliance;

(4) The transfer or sale of the tax credits does not extend the time during which such tax credits can be used. The carry-forward period for tax credits that are transferred or sold shall begin on the date on which such tax credits were originally claimed;

(5) A transferee shall have only such rights to claim and use the tax credits that were available to the transferor at the time of the transfer, provided that a transferee shall not be eligible to transfer or receive a refund of such tax credits. To the extent that the transferor

did not have rights to claim or use the tax credits at the time of the transfer, the commissioner shall disallow the tax credits claimed by the transferee or recapture the tax credits from the transferee or transferor. The transferee's recourse shall not be against the commissioner; and

(6) The transferee must acquire the tax credits allowed pursuant to this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(i)(1) A taxpayer claiming, transferring, or selling tax credits allowed pursuant to this Code section shall be required to reimburse the department for any department initiated audits relating to the tax credits, provided that such amount shall not exceed the value of the credits claimed by the taxpayer. This paragraph shall not apply to routine tax audits of such taxpayer that may include the review of the tax credits provided in this Code section.

(2) The commissioner shall have access to timber property for the purpose of determining eligibility for both the preapproval and claiming of tax credits allowed and conducting audits pursuant to this Code section, provided that prior notice is given to any taxpayer that submitted an application for the preapproval of tax credits or that transferred or claimed such tax credits and the owner of the underlying real property.

(3) The commissioner may pursue all remedies available by law as necessary to recapture tax credits wrongfully preapproved, allowed, or claimed by a taxpayer or a taxpayer's transferee.

(4) The commissioner shall be authorized to consult with the Georgia Forestry Commission as necessary to administer and enforce this Code section.

(j) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section.

**History.**
Code 1981, § 48-7-40.36, enacted by Ga. L. 2018, Ex. Sess., p. ES3, § 1/HB 4EX; Ga. L. 2019, p. 86, § 1/HB 446.

**Cross references.**
Timber products, § 2-14-80 et seq.

**Administrative rules and regulations.**
Timber Tax Credit, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.65.

## 48-7-41. [Reserved] Basic skills education program credits.

**History.**
Code 1981, § 48-7-41, enacted by Ga. L. 2015, p. 214, § 2/HB 63; repealed by Ga. L. 2015, p. 214, § 2/HB 63, effective January 1, 2020.

**Editor's notes.**
Ga. L. 2023, p. 730, § 7(15)/HB 475, reserved the designation of this Code section.

## 48-7-42. Affiliated entities; assignment of corporate income tax credits; carryover of unused credits; joint and severable liability.

(a) As used in this Code section, the term "affiliated entity" means:

(1) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of Section 1504(a) of the Internal Revenue Code; or

(2) An entity affiliated with a corporation, business, partnership, or limited liability company taxpayer, which entity:

(A) Owns or leases the land on which a project is constructed;

(B) Provides capital for construction of the project; and

(C) Is the grantor or owner under a management agreement with a managing company of the project.

(b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is eligible for the taxable year (such eligibility being determined for this purpose without regard to any limitation imposed by reason of the taxpayer's precredit income tax liability), the taxpayer may elect to assign such credit in whole or in part to one or more affiliated entities for such taxable year by attaching a statement to the taxpayer's return for the taxable year; provided, however, that no carryover attributable to the unused portion of any previously claimed or assigned credit may be assigned or reassigned, except as provided in subsection (d) of this Code section. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted. In the case of any credit that must be claimed in installments in more than one taxable year, the election under this subsection may be made on an annual basis with respect to each such installment, provided that the taxpayer shall notify the commissioner with respect to the assignment of each such installment by filing a separate copy of the election statement for such installment no later than the due date for filing the applicable income tax return, including any extensions which have been granted. Once made, an election under this subsection shall be irrevocable.

(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its return identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit. With

the exception of the transferable credits in Code Sections 48-7-29.8, 48-7-29.12, 48-7-40.26, and 48-7-40.26A, the recipient of a tax credit assigned under subsection (b) of this Code section shall also be eligible to take any credit against payments due under Code Section 48-7-103, subject to the same requirements as the assignor of such credit at the time of the assignment.

(d) If the assignor and the recipient of a tax credit assigned under subsection (b) of this Code section cease to be affiliated entities, any carryover attributable to the unused portion of such credit shall be transferred back to the assignor of the credit. Such assignor shall be permitted to use any such carryover itself, and also shall be permitted to assign such carryover to one or more affiliated entities, as if such carryover were an income tax credit for which the assignor became eligible in the taxable year in which the carryover was transferred back to the assignor.

(e) The assignor and recipient of a tax credit assigned under subsection (b) of this Code section shall be jointly and severally liable for any tax (plus interest and penalties, if any) attributable to the disallowance or recapture of the assigned credit.

(f) Notwithstanding the subsequent occurrence of any transaction, corporations that were treated as affiliated entities on December 31, 2001, shall continue to be so treated with respect to each other for purposes of this Code section for the taxable year during which they otherwise would cease to be affiliated entities (but for the modification contained in this subsection) and for the succeeding ten taxable years, but only if either the assignor or the recipient of the credit in question is a corporation as described in subparagraph (d)(2.2)(B) of Code Section 48-7-31 as it existed on December 31, 2001.

(g) For the purposes of all credits provided for by this chapter, the sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the succeeding transferee in such transaction or event, but any unused credit eligible to be applied against income tax liability under this article may be transferred and continued by such transferee and applied against the transferee's income tax liability under this article.

**History.**

Code 1981, § 48-7-42, enacted by Ga. L. 1999, p. 9, § 1; Ga. L. 2000, p. 1339, § 1; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 11; Ga. L. 2002, p. 954, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159, § 17/HB 488; Ga. L. 2018, p. 8, § 1-9/HB 918.

**Editor's notes.**

The former provisions of this Code section, relating to tax credits for AFDC recipients, was based on Code 1981, § 48-7-42, enacted by Ga. L. 1995, p. 1155, § 1 and was repealed by Ga. L. 1997, p. 1021, § 9, effective April 22, 1997.

Ga. L. 1999, p. 9, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

Ga. L. 2000, p. 1339, § 2, not codified by

the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2018, p. 8, § 3-1(e)/HB 918, not codified by the General Assembly, provides, in part, that this Act "shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval. The revisions to subsection (c) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to tax credits that are assigned in taxable years beginning on or after January 1, 2018. New subsection (g) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to sales, mergers, acquisitions, or bankruptcies occurring in taxable years beginning on or after January 1, 2018." This Act was signed by the Governor on March 2, 2018.

Ga. L. 2022, p. 114, § 4-1/HB 1437, not codified by the General Assembly, revises subsection (e) of Ga. L. 2018, p. 8, § 3-1/HB 918 to read: "(e) Section 1-9 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval; provided, however, that:

"(1) The revisions to subsection (c) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to tax credits that are assigned in taxable years beginning on or after January 1, 2018; provided, however, that such revisions shall be subject to the revisions made by Acts approved by the Governor or that became or become law without such approval after March 2, 2018, and became or become applicable to tax years beginning on or after January 1, 2018; and

"(2) The revisions to subsection (g) of Code Section 48-7-42 contained in Section 1-9 of this Act shall be applicable to sales, mergers, acquisitions, or bankruptcies occurring in taxable years beginning on or after January 1, 2018; provided, however, that such revisions shall be subject to the revisions made by Acts approved by the Governor or that became or become law without such approval after March 2, 2018, and became or become applicable to tax years beginning on or after January 1, 2018."

**Law reviews.**

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

## ARTICLE 3

## RETURNS AND FURNISHING OF INFORMATION

### RESEARCH REFERENCES

**ALR.**

Income tax: right to deduction in respect of obligations voluntarily assumed or paid, 79 A.L.R. 977.

Right of taxpayer to relief from his own errors in assessing his income tax or making out his income tax return, 80 A.L.R. 377.

Income tax: right of surviving spouse to make joint return where husband or wife dies during tax year, 99 A.L.R. 587.

### 48-7-50. Persons required to file returns; filing of copies of all or part of taxpayers' federal tax returns.

(a) An income tax return with respect to the tax imposed by this chapter shall be filed with the commissioner by every:

(1) Resident who is required to file a federal income tax return for the taxable year;

(2) Nonresident who has federal gross income from sources within this state;

(3) Resident estate or trust that is required to file a federal income tax return;

(4) Nonresident estate or trust that has federal gross income from sources within this state; and

(5) Resident or nonresident who has taxable income subject to Georgia income tax for the taxable year who does not have taxable income subject to federal income tax for the same taxable year.

(b) The commissioner may require each taxpayer by regulation to file with the return required by this chapter a copy of all or any part of the taxpayer's federal income tax return for the corresponding period.

**History.**

Code 1933, § 92-3201, enacted by Ga. L. 1971, p. 605, § 7; Code 1933, § 91A-3701, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 71; Ga. L. 1987, p. 191, § 3.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 469.

**C.J.S.**

85 C.J.S., Taxation, § 1763 et seq.

## 48-7-51. Corporation returns; contents; consolidated returns of two or more corporations; returns by receivers, trustees, and assignees; collection.

Every corporation subject to taxation under this chapter shall make a return stating specifically the items of its gross income and the deductions and credits allowed by this chapter. The income of two or more corporations shall not be included in a single return except pursuant to an election made under Code Section 48-7-21 or with the express consent of the commissioner. When a receiver, trustee in bankruptcy, or assignee is operating the property or business of a corporation, the receiver, trustee, or assignee shall make returns for the corporation in the same manner and form as the corporation is required to make returns. Any tax due on the basis of returns made by a receiver,

trustee, or assignee shall be collected in the same manner as if collected from the corporation of whose business or property he or she has custody and control.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 25; Code 1933, § 92-3202; Ga. L. 1941, p. 210, § 9; Ga. L. 1943, p. 109, § 1; Code 1933, § 91A-3702, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2022, p. 571, § 2/HB 1058.

**Amendments.**

**The 2022 amendment,** effective May 5, 2022, inserted "pursuant to an election made under Code Section 48-7-21 or" in the second sentence. See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2022, p. 571, § 3/HB 1058, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2023.

**JUDICIAL DECISIONS**

**Intent of section.** — This section is intended to authorize the commissioner to allow affiliated Georgia corporations to file a single or consolidated state income tax return. Gable Indus., Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328, 1975 Ga. LEXIS 1372 (1975).

**Words "single" and "consolidated" refer to same kind of return in contrast to separate return.** Gable Indus., Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328, 1975 Ga. LEXIS 1372 (1975).

**Notice that consent to file consolidated return might be revoked.** — If the commissioner intends to put the taxpayer on notice that permission to file consolidated returns might be retroactively revoked, the language used in the documents should express this intention in clear terms. Gable Indus., Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328, 1975 Ga. LEXIS 1372 (1975).

**Inequitable to retroactively revoke permission after extensive period of reliance.** — Attempt to retroactively revoke written permission to file single returns after the lapse of an extended period of time, during which the taxpayer is allowed to conduct the taxpayer's businesses in reliance thereon, creates an inequity. Gable Indus., Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328, 1975 Ga. LEXIS 1372 (1975).

**Successor commissioner cannot retroactively revoke permission to file consolidated return** to the detriment of the taxpayer after the taxpayer's reliance thereon. Gable Indus., Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328, 1975 Ga. LEXIS 1372 (1975).

**OPINIONS OF THE ATTORNEY GENERAL**

**No right to file consolidated returns.** — General Assembly does not give to corporate taxpayers, for Georgia income tax purposes, the right to file consolidated income tax returns. 1969 Op. Att'y Gen. No. 69-77.

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1763 et seq.

## 48-7-52. Returns by corporations of information concerning dividend payments; oath; contents.

Every corporation subject to the tax imposed by this chapter shall render a correct return of its payments of dividends. The return shall be

duly verified under oath and shall state with respect to each shareholder who is a resident of this state the name and address of each shareholder, the number of shares owned by the shareholder, and the amount of dividends paid to the shareholder.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 29; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3206; Ga. L. 1935, p. 121, § 8; Code 1933, § 91A-3705, enacted by Ga. L. 1978, p. 309, § 2.

## 48-7-53. Partnership returns; contents; oath; reporting of final federal adjustments; administrative adjustment request; rules and regulations.

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

(1) "Administrative adjustment request" means the same as provided in Code Section 6227 of the Internal Revenue Code of 1986 and the regulations thereunder.

(2) "Audited partnership" means a partnership subject to a final federal adjustment resulting from a partnership level audit.

(3) "Corporate partner" means a C corporation partner that is subject to tax pursuant to Code Section 48-7-21.

(4) "Direct partner" means a person that holds an interest directly in an audited partnership.

(5) "Exempt partner" means a partner that is exempt from taxation pursuant to paragraph (1) of subsection (a) of Code Section 48-7-25.

(6) "Federal adjustment" means a change to an item or amount required to be determined under the Internal Revenue Code of 1986 and the regulations thereunder that is used by a partnership to compute state tax owed for the reviewed year where such change results from a partnership level audit. A federal adjustment is positive to the extent that it increases Georgia taxable net income as determined under this title and is negative to the extent that it decreases Georgia taxable net income as determined under this title.

(7) "Federal adjustments report" means an amended Georgia income tax return that arises directly or indirectly from a partnership level audit and for an audited partnership and tiered partner, identifies all partners that hold an interest directly in such audited partnership or tiered partner, and provides the effect of the final federal adjustments on such partner's Georgia taxable net income. For the audited partnership, the federal adjustments report shall also contain information reasonably necessary to provide the commissioner with an understanding of all adjustments to the audited

partnership's federal taxable income and the amount of such adjustments allocated to each of its partners. For the audited partnership, a copy of the report received from the Internal Revenue Service shall be sufficient if it provides such information. For all tiered partners, the federal adjustments report shall also contain information reasonably necessary to provide the commissioner with an understanding of all adjustments to a tiered partner's federal taxable income and the amount of such adjustments allocated to each of its partners.

(8) "Federal partnership representative" means the person the partnership designates for the taxable year as the partnership's representative, or the person the Internal Revenue Service has appointed to act as the federal partnership representative, pursuant to Section 6223(a) of the Internal Revenue Code of 1986 and the regulations thereunder.

(9) "Fiduciary partner" means a fiduciary that is subject to tax pursuant to Code Sections 48-7-20 and 48-7-22.

(10) "Final determination date" means the following:

(A) If the federal adjustment arises from a partnership level audit, the final determination date is the first day on which no federal adjustments arising from that audit remain to be finally determined, whether by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the Internal Revenue Service and the audited partnership, the final determination date is the date on which the last party signed the agreement; or

(B) If the adjustment results from filing an administrative adjustment request, the final determination date means the day on which the administrative adjustment request was filed.

(11) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(12) "Georgia income tax" means the tax imposed by Code Sections 48-7-20, 48-7-21, and 48-7-25, and as provided in subsection (c) of this Code section.

(13) "Indirect partner" means a partner in a partnership or pass-through entity where such partnership or pass-through entity itself holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.

(14) "Individual partner" means a partner who is a natural person that is subject to tax pursuant to Code Section 48-7-20.

(15) "Internal Revenue Service" means the Internal Revenue Service of the United States Department of the Treasury.

(16) "Nonresident partner" means a partner that is not a resident as defined in this subsection.

(17) "Partner" means a person that holds an interest, directly or indirectly, in a partnership or pass-through entity.

(18) "Partnership" means an entity subject to taxation under Subchapter K of the Internal Revenue Code of 1986 and the regulations thereunder and includes, but is not limited to, a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this chapter, a trust, estate, or corporation.

(19) "Partnership level audit" means an examination or other review by the Internal Revenue Service for taxable years beginning on or after January 1, 2018, at the partnership level pursuant to the Internal Revenue Code of 1986 and the regulations thereunder either of which results in final federal adjustments initiated and made by the Internal Revenue Service.

(20) "Pass-through entity" means an entity, other than a partnership, that is not subject to tax under Code Section 48-7-21 for C corporations but excluding an exempt partner.

(21) "Reallocation adjustment" means a final federal adjustment that changes the shares of items of partnership income, gain, loss, expense, or credit allocated to a partner that holds an interest directly in a partnership or pass-through entity. A positive reallocation adjustment means a reallocation adjustment that would increase Georgia taxable net income for such partners, and a negative reallocation adjustment means a reallocation adjustment that would decrease Georgia taxable net income for such partners.

(22) "Resident partner" means for an individual or fiduciary partner, the same as provided in Code Section 48-7-1 and for all other partners means a partner whose headquarters or principal place of business is located inside this state.

(23) "Reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which final federal adjustments arise.

(24) "State partnership audit" means an examination by the commissioner at the partnership or pass-through entity level which results in adjustments to partnership or pass-through entity related items or reallocations of income, expenses, gains, losses, credits, and other attributes among such partners for the reviewed year.

(25) "Tiered partner" means any partner that is a partnership or pass-through entity.

(26) "Unrelated business income" means the income which is defined in Section 512 of the Internal Revenue Code of 1986 and the regulations thereunder.

(27) "Withholding partner" means a partner in a partnership for whom the partnership was required to withhold tax pursuant to Code Section 48-7-129 for the reviewed year.

(b) Every partnership, including but not limited to a foreign partnership, the individual members of which are subject to taxation under this chapter, shall make a return for each taxable year. The return shall state specifically the items of the partnership's gross income and the deductions allowed by this chapter, shall include the names and addresses of the individuals who would be entitled to share in the net income of the partnership if the net income were distributed, and shall specify the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

(c) Partnerships and their direct partners and indirect partners shall report final federal adjustments, as provided in this subsection, and not as provided in subsection (e) of Code Section 48-7-82.

(1) State Partnership Representative.

(A) With respect to an action required or permitted to be taken by a partnership or pass-through entity under this Code section and a proceeding under Code Section 48-2-59 with respect to final federal adjustments arising from a partnership level audit, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership or pass-through entity, and its direct partners and indirect partners shall be bound by those actions.

(B) The state partnership representative for the reviewed year for a partnership is a partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative as provided in subparagraph (C) of this paragraph. The state partnership representative for the reviewed year for a pass-through entity is the person designated in subparagraph (C) of this paragraph.

(C) The commissioner may establish reasonable qualifications for a person to be the state partnership representative. If a partnership desires to designate a person other than their federal partnership representative, they shall designate such person by attaching a statement to the return filed pursuant to this chapter. A pass-through entity shall designate a person as their state partnership representative by attaching a statement to the return filed pursuant to this chapter. A partnership or pass-through

entity shall be allowed to change such designation by notifying the commissioner at the time the change occurs.

(2) Reporting and payment requirements for audited partnerships subject to final federal adjustments and their partners.

(A) Unless an audited partnership makes the election in paragraph (3) of this subsection, then, for all final federal adjustments, the audited partnership shall no later than 90 days after the final determination date of the audited partnership:

(i) File a completed federal adjustments report;

(ii) Notify each of its direct partners of their distributive share of the adjustments; and

(iii) File an amended composite return under Code Section 48-7-129 if one was originally filed and for withholding partners, file an amended withholding report under Code Section 48-7-129, and pay the additional amount due under this title that would have been due had the final federal adjustments been reported properly as required.

(B) Unless an audited partnership paid an amount on behalf of its direct partners pursuant to paragraph (3) of this subsection, all direct partners of the audited partnership shall no later than 180 days after the final determination date of the audited partnership:

(i) File a completed federal adjustments report reporting their distributive share of the adjustments reported to them under subparagraph (A) of this paragraph;

(ii) If the direct partner is a tiered partner, notify all of the partners, that hold an interest directly in such tiered partner, of their distributive share of the adjustments;

(iii) If the direct partner is a tiered partner and subject to Code Section 48-7-129, file an amended composite return under Code Section 48-7-129 if such return was originally filed and if applicable for withholding partners file an amended withholding report under Code Section 48-7-129 if one was originally required to be filed; and

(iv) Pay any additional amount due under this title, including any penalty and interest that would have been due had the final federal adjustments been reported properly as required and with respect to a composite return, less any withholding tax paid or withheld for such withholding partners pursuant to subparagraph (A) of this paragraph.

(C) Unless a partnership or tiered partner paid an amount on behalf of its partners pursuant to paragraph (3) of this subsection, each indirect partner, shall:

(i) Within 90 days after the time for filing and furnishing statements to tiered partners and their partners as established by Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder, file a completed federal adjustments report;

(ii) If the indirect partner is a tiered partner, within 90 days after the time for filing and furnishing statements to tiered partners and their partners as established by Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder but within sufficient time for all indirect partners to also complete the requirements of this subsection, notify all of the partners, that hold an interest directly in such tiered partner, of their distributive share of the adjustments;

(iii) Within 90 days after the time for filing and furnishing statements to tiered partners and their partners as established by Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder, if the indirect partner is a tiered partner and subject to Code Section 48-7-129, file an amended composite return under Code Section 48-7-129 if such return was originally filed and if applicable for withholding partners file an amended withholding report under Code Section 48-7-129 if one was originally required to be filed; and

(iv) Within 90 days after the time for filing and furnishing statements to tiered partners and their partners as established by Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder, pay any additional amount due under this title, including any penalty and interest that would have been due had the final federal adjustments been reported properly as required and with respect to a composite return, less any withholding tax paid or withheld for such withholding partners pursuant to subparagraph (A) or (B) of this paragraph.

(3) Irrevocable election for partnership or tiered partners to pay. If an audited partnership, or a tiered partner that would receive an amended schedule K-1 under paragraph (2) of this subsection, makes an election under this paragraph, it shall:

(A) File a completed federal adjustments report, notify the commissioner that it is making the election under this paragraph, notify each of its direct partners of their distributive share of the adjustments, and pay an amount as provided in this paragraph,

including any penalty and interest, on behalf of its partners within one of the following time periods:

(i) For the audited partnership, no later than 90 days after the final determination date of the audited partnership;

(ii) For a direct tiered partner, no later than 180 days after the final determination date of the audited partnership; or

(iii) For an indirect tiered partner, within 90 days after the time for filing and furnishing statements to tiered partners and their partners as established by Section 6226 of the Internal Revenue Code of 1986 and the regulations thereunder;

(B) Exclude from final federal adjustments and any positive reallocation adjustments the distributive share of such adjustments made to an exempt partner, that holds an interest directly in the audited partnership if the audited partnership is making the election or that holds an interest directly in the tiered partner if the tiered partner is making the election, that is not unrelated business income;

(C) Determine the total distributive share of all final federal adjustments and positive reallocation adjustments as modified by this title and apportion and allocate such adjustments as provided in Code Section 48-7-31 for such electing partnership or such electing tiered partner and determine the total distributive share of such amounts that are allocated to all corporate partners, all tiered partners, all exempt partners and that is unrelated business income, all nonresident individual partners, and all nonresident fiduciary partners. If the commissioner determines that a partnership or tiered partner fraudulently underreported its income on a return, the commissioner shall treat any income attributable to a tiered partner of such partnership or tiered partner as being apportioned and allocated entirely to Georgia to the extent the direct and indirect partners of such tiered partner are resident partners;

(D) Determine the total distributive share of all final federal adjustments and positive reallocation adjustments as modified by this title, but without the allocation and apportionment of such adjustments as provided by Code Section 48-7-31, that are allocated to all other partners, including but not limited to resident individual partners and resident fiduciary partners; and

(E) Total the amount computed pursuant to subparagraphs (C) and (D) of this paragraph and multiply by the rate provided in subsection (a) of Code Section 48-7-21.

(4) Effect of election by partnership or tiered partner and payment of amount due.

(A) The election made pursuant to paragraph (3) of this subsection is irrevocable.

(B) If properly reported and paid by the audited partnership or tiered partner, the amount determined in paragraph (3) of this subsection shall be treated as paid on behalf of such person's partners on the same final federal adjustments; provided, however, that no partner may take any deduction or credit for these amounts, claim a refund of these amounts, or include such amounts on such partner's return in any manner.

(C) Nothing in this subsection shall preclude a resident partner who is a natural person or a fiduciary and that holds an interest directly in the audited partnership if the audited partnership is making the election or that holds an interest directly in the tiered partner if the tiered partner is making the election, from claiming a credit against taxes paid to this state pursuant to Code Section 48-7-28 for any amounts paid by the audited partnership or tiered partner on such resident partner's behalf to another state or local tax jurisdiction provided the requirements of Code Section 48-7-28 are met.

(5) Failure of audited partnership or tiered partner to report or pay. Nothing in this subsection is intended to prevent the commissioner from assessing direct partners and indirect partners for taxes they owe in the event that an audited partnership or tiered partner fails to timely make any report or payment required by this subsection for any reason.

(6) Assessments of additional Georgia income tax, interest, and penalties arising from final federal adjustments. The commissioner will assess additional Georgia income tax, interest, and penalties arising from final federal adjustments as if it is a tax imposed by this chapter unless a different treatment is provided by this subsection. Since partnership adjustments are determined at the audited partnership level, any assessment issued to partners shall not be appealable by the partner. Any penalties or interest imposed on the partnership or its partners shall be as provided and at the rates in this title except that penalties and interest imposed on the audited partnership or tiered partners shall be from the day after the due date of the reviewed year return without extension. Such assessment shall be issued by the following dates:

(A) Timely reported final federal adjustments. If a partnership, tiered partner, or other partner files with the commissioner a federal adjustments report as required within the period specified in this subsection reporting all final federal adjustments, the commissioner may assess any taxes, including on-behalf taxes,

interest, and penalties arising from those final federal adjustments if the commissioner issues a notice of assessment to the partnership, tiered partner, or partner, on or before the later of:

(i) The expiration of the limitations period specified in Code Section 48-7-82; or

(ii) The expiration of the one-year period following the date of filing with the commissioner of the federal adjustments report by such person.

(B) Untimely reported final federal adjustments. If the partnership, tiered partner, or other partner fails to file the federal adjustments report within the period specified in this subsection, or the federal adjustments report filed by the partnership, tiered partner, or other partner omits final federal adjustments or understates the correct amount of Georgia income tax owed, the commissioner may assess any taxes, including on-behalf taxes, interest, and penalties arising from the final federal adjustments, if it issues a notice of assessment to the partnership, tiered partner, or other partner on or before the later of:

(i) The expiration of the limitations period specified in Code Section 48-7-82;

(ii) The expiration of the one-year period following the date the federal adjustments report was filed with the commissioner by such person; or

(iii) Absent fraud, the expiration of the five-year period following the date on which the Internal Revenue Service notifies the commissioner of the federal adjustments.

(7) Claims for refund of Georgia income tax arising from final federal adjustments. Notwithstanding the reporting requirement contained in this subsection and except as otherwise prohibited by this title, a partnership, tiered partner, or other partner, as the case may be, may file a claim for refund of Georgia income tax arising directly or indirectly from final federal adjustments on or before the later of:

(A) The expiration of the last day for filing a claim for refund of Georgia income tax pursuant to Code Section 48-2-35 for such person; or

(B) One year from the date the federal adjustments report was required to be filed by this subsection for such person.

(8) Scope of adjustments and extensions of time.

(A) Unless otherwise agreed in writing by the partnership, tiered partner, or other partner and the commissioner, any

adjustments by the commissioner after the expiration of the time provided in Code Section 48-7-82 or by the partnership, tiered partners, or other partners made after the expiration of the time provided in Code Section 48-2-35, are limited to changes to the partnership's, tiered partner's, or other partner's Georgia income tax liability arising directly or indirectly from final federal adjustments.

(B) Where, before the expiration of the time prescribed in this subsection for the assessment of Georgia income tax, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period and the commissioner is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed; provided, however, that the time periods provided in this subsection may be extended automatically by 60 days for an audited partnership which has 10,000 or more direct partners or a tiered partner which has 10,000 or more partners that hold an interest directly in such tiered partner, provided that such audited partnership or tiered partner attaches a statement to its federal adjustments report specifying that it has elected such automatic extension.

(9) Any income subtracted from federal taxable income for the adjustment year pursuant to Section 6225 of the Internal Revenue Code of 1986 and the regulations thereunder shall be added to the partnership's, tiered partner's, or other partner's Georgia taxable net income for the adjustment year.

(d) For taxable years beginning on or after January 1, 2017, any adjustment to a partnership's items of income, gain, loss, expense, or credit or an adjustment to such items allocated to a partner that holds an interest in a partnership for the reviewed year by the commissioner as a result of a state partnership audit shall be determined at the partnership level in the same manner as provided by subsection (a) of Section 6221 of the Internal Revenue Code of 1986 and the regulations thereunder unless a different treatment is specifically provided in this title. If the commissioner and the partnership agree, the provisions of this subsection may be applied to taxable years beginning before January 1, 2017. The provisions of Sections 6222, 6223, and 6227 of the Internal Revenue Code of 1986 and the regulations thereunder shall also apply in the same manner as provided in such sections unless a different treatment is specifically provided in this chapter. For purposes of applying such sections, due account shall be made for differences in

federal and Georgia terminology such as substitution of "Secretary" with "Commissioner" and other obvious differences. The adjustment provided by subsection (a) of Section 6221 of the Internal Revenue Code of 1986 shall be determined as provided in such section but shall be based on the Georgia taxable net income or other tax attributes of the partnership as determined pursuant to this chapter for the reviewed year. The commissioner shall issue a notice of adjustment to the partnership. Such notice shall be treated as an assessment for purposes of Code Sections 48-2-59 and 48-7-82, and, as such, the notice shall be appealable pursuant to Code Section 48-2-59 and shall be issued within the time period provided by Code Section 48-7-82. Once the adjustments to partnership-related items or reallocations of income, expenses, gains, losses, credits, and other attributes among such partners for the reviewed year are finally determined, the partnership and any direct partners or indirect partners shall then be subject to the provisions of subsection (c) of this Code section in the same manner as if the state partnership audit were a partnership level audit.

(e) For purposes of this chapter, any adjustment to a pass-through entity's items of income, gain, loss, expense, or credit or an adjustment to such items allocated to a partner that holds an interest in a pass-through entity for the reviewed year by the commissioner shall be determined in the same manner as provided in subsection (d) of this Code section.

(f) An administrative adjustment request filed by the partnership with the Internal Revenue Service or the commissioner shall be treated in the reviewed year in the same manner as provided by subsection (c) of this Code section, except that:

(1) The period of limitations on claiming refunds for the partnership and partners shall be as provided by this title, notwithstanding subsection (c) of this Code section; and

(2) The period of limitations on making adjustments and assessments for the partnership and partners shall be on or before the later of:

(A) The expiration of the limitations period specified in Code Section 48-7-82; or

(B) The expiration of the one-year period following the date of the filing of the administrative adjustment request by the partnership or the amended Georgia income tax return by the partners, as the case may be.

(g) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 27; Code 1933, § 92-3204; Ga. L. 1935, p. 121, § 7; Code 1933, § 91A-3703, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2018, p. 319, § 3/HB 849; Ga. L. 2019, p. 817, § 2/HB 419; Ga. L. 2019, p. 1056, § 48/SB 52.

**Cross references.**
Partnerships generally, § 14-8-1 et seq.

**Law reviews.**
For article, "Aggregate-Plus Theory of Partnership Taxation," see 43 Ga. L. Rev. 717 (2009).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 469.

**C.J.S.**
85 C.J.S., Taxation, § 1832.

## 48-7-54. Electronic filing for nonindividual taxpayers.

The commissioner may require any nonindividual taxpayer and any return preparer who prepares any return, report, or other document required to be filed by this chapter to electronically file any return, report, or other document required to be filed by this chapter when the federal counterpart of such return, report, or other document is required to be filed electronically pursuant to the Internal Revenue Code of 1986 or Internal Revenue Service regulations. The commissioner shall be authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section.

**History.**
Code 1981, § 48-7-54, as enacted by Ga. L. 2008, p. 898, § 9/HB 1151; Ga. L. 2010, p. 895, § 3/HB 1138.

**Editor's notes.**
This Code section formerly pertained to returns of persons making payments to taxpayers and disallowance of unreported payments. The former Code section was based on Ga. L. 1931, Ex. Sess., p. 24, § 26; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3205; Ga. L. 1937, p. 109, § 13; Code 1933, § 91A-3704, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 19, and was repealed by Ga. L. 1988, p. 1380, § 1, effective April 11, 1988.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

**Administrative rules and regulations.**
Electronic Funds Transfer, Credit Card Payments, and Electronic Filing, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Fiscal Operations Division, Substantive Regulations, Rule 560-3-2-.26.

## 48-7-55. [Reserved] Required questions on returns for individuals.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 56; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3208; Ga. L. 1969, p. 744, § 1; Code 1933, § 91A-3706, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 2005, p. 529, § 1/HB 556, effective July 1, 2005.

**Editor's notes.**
Ga. L. 2005, p. 529, § 1/HB 556 repealed and reserved this Code section, effective July 1, 2005.

**48-7-56. Time and place of filing returns; extensions; tentative returns; extensions for members of armed forces; estimated returns.**

(a) Returns of taxpayers other than corporations and partnerships shall be filed with the commissioner on or before April 15 in each year except that, in the case of taxpayers using a fiscal year, the return shall be filed on or before the fifteenth day of the fourth month after the close of the fiscal year. However, in the case a taxpayer's return is allowed to be filed at a later date, pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003, because the taxpayer has electronically filed returns, the date the return shall be filed shall be extended without interest and penalty to the date the return is allowed to be filed pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003. Returns of corporations other than Georgia Subchapter "S" corporations made on the basis of a calendar year shall be filed on or before the fifteenth day of April following the close of the calendar year, and returns of corporations other than Georgia Subchapter "S" corporations made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. Returns of Georgia Subchapter "S" corporations made on the basis of a calendar year shall be filed on or before the fifteenth day of March following the close of the calendar year, and returns of Georgia Subchapter "S" corporations made on the basis of a fiscal year shall be filed on or before the fifteenth day of the third month following the close of the fiscal year. Returns of partnerships made on the basis of a calendar year shall be filed on or before the fifteenth day of March following the close of the calendar year, and returns of partnerships made on the basis of a fiscal year shall be filed on or before the fifteenth day of the third month following the close of the fiscal year. Returns required for a taxable year relating to returns of domestic import sales corporations and former domestic import sales corporations and foreign sales corporations shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year. The commissioner may allow further time for filing returns in the case of sickness or other disability or whenever in his or her judgment good cause exists for the extension. In case a taxpayer is granted an extension of time to file a return, the commissioner may require a tentative return to be filed on or before the due date of the return for which the extension is granted. A tentative return shall be made on the usual form, shall be plainly marked "tentative," shall state the estimated amount of the tax believed to be due, and shall be properly signed by the taxpayer.

(b) A member of the armed forces of the United States serving outside the continental United States may file his required return for a taxable year ending during such service, without prior application, at

any time within a period of six months following the return of the serviceman to the continental United States. During the period of extension, no interest shall accrue and no penalties shall be imposed.

(c) Any taxpayer may file an estimated income tax return within the taxpayer's taxable year in compliance with rules and regulations promulgated by the commissioner. Estimated returns shall be plainly marked "estimated."

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 32; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3210; Ga. L. 1937, p. 109, § 14; Ga. L. 1952, p. 230, § 1; Ga. L. 1952, p. 360, § 1; Ga. L. 1955, p. 193, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 5; Code 1933, § 91A-3708, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1988, p. 1380, § 2; Ga. L. 1999, p. 81, § 48; Ga. L. 2003, p. 442, § 3; Ga. L. 2016, p. 1, § 2/HB 742.

**Editor's notes.**

Ga. L. 1988, p. 1380, § 8, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, except that the state revenue commissioner, to the extent that he determines administratively necessary, may delay the implementation of any provision of this Act to no later than January 1, 1989." This Act became effective April 1, 1988.

Ga. L. 2016, p. 1, § 8/HB 742, not codified by the General Assembly, provides, in part, that Section 2 of this Act shall be applicable to all taxable years beginning on or after January 1, 2016.

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1763 et seq.

**ALR.**

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause", 29 A.L.R.4th 413.

## 48-7-57. Penalties for failure to file timely return; exceptions; reduction of tax due by partial payment, credit, or other penalty; impact of federal return extensions.

(a) In case of failure to file an income tax return on the date prescribed for the filing, such date to be determined with regard to any extension of time for filing, there shall be added to the amount of tax required to be shown on the return 5 percent of the amount of the tax if the failure is for not more than one month with an additional 5 percent for each additional month or fraction of a month during which the failure to file continues. No penalty shall be assessed pursuant to this Code section which exceeds in the aggregate 25 percent of the amount of the tax. No penalty shall be assessed pursuant to this Code section when it is shown that the failure is due to reasonable cause and not due to willful neglect.

(b) For the purposes of this Code section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of

the tax and by the amount of any credit against the tax which may be claimed on the return.

(c) With respect to any return, the amount of the addition under subsection (a) of this Code section shall be reduced by the amount of the addition under paragraph (1) of subsection (a) of Code Section 48-7-86 for any month to which an addition to tax applies under both subsection (a) of this Code section and paragraph (1) of subsection (a) of Code Section 48-7-86.

(d)(1) No penalty due to late filing shall be incurred by a taxpayer if the taxpayer attaches to the state return a copy of an approved extension of time within which to file the federal income tax return which has been granted by the Internal Revenue Service and also files the state return within the period of time specified in the extension or, for tax years beginning on or after January 1, 2025, in the case of a corporate taxpayer, within the period of time specified in the extension, plus one month. In such instances, the taxpayer need not apply to the commissioner for an extension of time within which to file the state return.

(2) Nothing in paragraph (1) of this subsection shall allow a taxpayer to defer payment of a corporate income tax liability beyond the original due date provided for in Code Section 48-7-56.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 34; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3211; Ga. L. 1937, p. 109, § 15; Ga. L. 1964, p. 453, § 1; Ga. L. 1969, p. 719, § 1; Ga. L. 1971, p. 671, § 1; Code 1933, § 91A-3709, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2024, p. 15, § 3/HB 1023, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, designated the existing provisions of subsection (d) as paragraph (d)(1) and added paragraph (d)(2); and, in paragraph (d)(1), substituted the first occurrence of "the state return" for "his return", substituted "the federal" for "his federal", substituted the second and third occurrences of "the state return" for "his state return", and added "or, for tax years beginning on or after January 1, 2025, in the case of a corporate taxpayer, within the period of time specified in the extension, plus one month" at the end of the first sentence. See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 15, § 4/HB 1023, not codified by the General Assembly, makes subsection (d) of this Code section applicable to all taxable years beginning on or after January 1, 2024.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

72 Am. Jur. 2d, State and Local Taxation, § 487 et seq.

**C.J.S.**

85 C.J.S., Taxation, § 1856 et seq.

**ALR.**

Constitutionality, construction, application and effect of specific provisions of state corporate income tax law in respect of tax evasion, 92 A.L.R. 1073.

Time of mailing or time of receipt as determination of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

## 48-7-57.1. Filing of returns which are frivolous or desire to impede the administration of state income tax laws.

(a) A penalty of $1,000.00 may be assessed against any individual who files what purports to be a return of the tax imposed by Article 2 of this chapter if:

(1) The purported return:

(A) Does not contain information on which the substantial correctness of the amount of tax shown to be due may be judged; or

(B) Contains information that on its face indicates that the amount of tax shown to be due is substantially incorrect; and

(2) The conduct described in paragraph (1) of this subsection is due to:

(A) A position which is frivolous; or

(B) A desire which appears on the purported return to delay or impede the administration of state income tax laws.

(b) The penalty imposed by subsection (a) of this Code section shall be in addition to any other penalty provided by law.

**History.**

Code 1981, § 48-7-57.1, enacted by Ga. L. 1984, p. 357, § 1; Ga. L. 2004, p. 410, § 5.

**Editor's notes.**

Ga. L. 1984, p. 357, § 2, not codified by the General Assembly, makes this Code section applicable with respect to returns filed after March 14, 1984.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

## 48-7-58. Taxpayer activities distorting true net income; proper computation by commissioner; consideration of potential reasonable profits.

(a) When the commissioner has reason to believe that any taxpayer conducts his or her trade or business so as to evade taxes, distort directly or indirectly his or her true net income, or distort directly or indirectly the net income properly attributable to this state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, as a result of which the net income is arbitrarily assigned to a person related to the taxpayer, the commissioner may require the facts as he or she deems necessary for the proper computation of the entire net income and the net income properly attributable to this state. In determining the computation, the commissioner shall consider the fair profit which would normally arise from the conduct of

the trade or business. The commissioner shall by regulation provide when to apply this subsection.

(b)(1) Additionally, the commissioner may determine the amount of taxable income of any one or more corporations for a calendar or fiscal year when a corporation:

(A) Subject to taxation under this chapter conducts its business in such manner as to benefit either directly or indirectly the members or stockholders of the corporation or any person interested in the business of the corporation by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained for the goods or commodities;

(B) A substantial portion of whose capital stock is directly or indirectly owned by another corporation acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of the corporations; or

(C) Directly or indirectly owning a substantial portion of the stock of another corporation acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such a manner as to create a loss or improper net income for either of the corporations.

(2) In his or her determination, the commissioner shall consider the reasonable profits which, but for the arrangement or understanding, might or could have been obtained by the corporation or corporations subject to taxation under this chapter from dealing in such products, goods, or commodities.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 31; Code 1933, § 92-3209; Code 1933, § 91A-3707, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2005, p. 159, § 18/HB 488.

**Editor's notes.**

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

**JUDICIAL DECISIONS**

**Construction with provisions of § 48-7-31 as to subsidiaries and affiliates.** — Bifurcated accounting rule of former Code 1933, § 92-3113(6) (see now O.C.G.A. § 48-7-31) did not render former Code 1933, § 92-3209 (see now O.C.G.A. § 48-7-58) meaningless because the purpose of that section is much broader than specific accounting rules provided in former Code 1933, § 92-3113. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Scope of commissioner's authority.** — Discretionary authority granted under this section may be applied to taxpayers who are shifting income, whether operating wholly within this state, or within and outside the state, but the statute contains no authority for

combining the income of related corporations. Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**Transfer of goods and services for fixed percentages and performance of services for subsidiaries without specific charges** do not necessarily reveal a distortion of true net income whether by the arbitrary shifting of income, through price-fixing, charges for service, or otherwise so that a fair profit is not shown, as contemplated under former subsection (a) of this section or manipulations to create a loss or improper net income so that reasonable profits are not shown, as contemplated under former subsection (b). Blackmon v. Campbell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474, 1972 Ga. App. LEXIS 1491 (1972).

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1772et seq.

## 48-7-59. Examination of federal income tax returns.

Whenever in the opinion of the commissioner it is necessary to examine any copy of the federal income tax returns of any taxpayer in order to audit properly the state returns of the taxpayer, the commissioner shall have the right to examine the federal returns and all statements, inventories, and schedules in support of the returns.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 47; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3215; Code 1933, § 91A-3710, enacted by Ga. L. 1978, p. 309, § 2.

## 48-7-60. Confidentiality of tax information; exceptions; authorized inspection by certain officials; furnishing information to local tax authorities; furnishing information to nonofficials; conditions; effect of Code section.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the commissioner, other officer, employee, or agent, or any former officer, employee, or agent to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under the law of this state or any return or return information required by the Internal Revenue Code when the information or return is received from the Internal Revenue Service or submitted by the taxpayer as provided by the laws of this state. Nothing contained in this Code section shall be construed to prohibit the print or electronic publication of statistics so presented as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the state, or use as evidence, of the report or return of a taxpayer in the event of any action or proceeding involving any tax liability of the taxpayer. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(b) The commissioner may permit the commissioner of internal revenue of the United States, the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representative of either such officer to inspect the income tax returns of any taxpayer, or may furnish to the officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer. The permission shall be granted or the information shall be furnished to the officer or his representative only if:

(1) The request is only for state tax information including federal tax information required by the state to be filed by the taxpayer with his state return;

(2) The requested information will be used solely for tax purposes;

(3) The requesting state has a confidentiality statute which complies with the requirements of Section 6103(p)(8) of the Internal Revenue Code; and

(4) The statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(c) The commissioner may permit the disclosure of inventories, depreciable assets, accumulated depreciation, and book value of depreciable assets to local tax authorities in this state to be used solely for ad valorem tax purposes, provided that the furnishing of the information is not prohibited by Section 6103 of the Internal Revenue Code; and provided, further, that the furnishing of the information to the local tax authorities shall not be deemed to change the confidential character of the information, and any persons receiving the information pursuant to this subsection shall be subject to Code Section 48-7-61, relating to the sanctions to be imposed for the unauthorized disclosure of confidential material.

(d) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having access to tax information where necessary to conduct research commissioned by the department or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration. Any such access shall be pursuant to a written agreement with the department providing for the handling, permitted uses, and destruction of such tax information, requiring security clearance checks for such persons or groups of persons similar to those

required of employees of the department, and including such other terms and conditions as the department may require to protect the confidentiality of the tax information to be disclosed. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.

(e) Notwithstanding any other law, this Code section shall remain in full force and effect unless specific reference is made in such other law to this Code section and to the disclosure of income tax information contained in any report or return required under this Code section.

**History.**

Code 1933, § 91A-3711, enacted by Ga. L. 1979, p. 5, § 72; Ga. L. 1982, p. 3, § 48; Ga. L. 1987, p. 191, § 9; Ga. L. 2002, p. 372, § 7; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 297, § 4/HB 346.

**Cross references.**

Failure of Senators to file state income tax returns, § 28-1-8.1.

Inspection of public records generally, § 50-18-70 et seq.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Administrative rules and regulations.**

Inspection of Records, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Administrative Unit, Organization, Rule 560-1-1-.05.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-3216, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Legislative purpose.** — Legislative purpose of this section is to encourage voluntary and truthful reporting of income by ensuring confidentiality. The strict language of the statute and the severe penalty for defaulting from the statute's mandates emphasize a clear policy favoring nondisclosure. Garrett v. State, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979) (decided under former Code 1933, § 92-3216).

**Purpose of exceptions to confidentiality of tax information.** — It is clear from the exceptions to the law that the confidentiality of tax returns was not absolute and that the social policy underlying the law providing for confidentiality of tax returns inured to the benefit of the state by encouraging the citizenry in voluntary reporting and assessment of income. Thus, the decision to produce the returns or appeal an order demanding the returns for use in a criminal prosecution lies with the Attorney General. Garrett v. State, 147

Ga. App. 666, 250 S.E.2d 1, 1978 Ga. App. LEXIS 2913 (1978), aff'd, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979) (decided under former Code 1933, § 92-3216).

**Open Records Act, O.C.G.A. § 50-18-70, has not abrogated the mandate of O.C.G.A. § 48-7-60** that tax information be maintained inviolate. Bowers v. Shelton, 265 Ga. 247, 453 S.E.2d 741, 1995 Ga. LEXIS 117 (1995).

**Permissible grounds for release of tax information.** — No "proper judicial order" can be made except in an event when the integrity of the report itself is attacked or defended as the main and not as a merely collateral issue. Garrett v. State, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979) (decided under former Code 1933, § 92-3216).

By "proper judicial order" a court may require employees of the department to produce income tax returns and reports only when such returns are directly in issue. Garrett v. State, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979) (decided under former Code 1933, § 92-3216).

**Use of tax information in litigation.** — While a court will afford the utmost deference to a claim of privacy raised by the Attorney General with respect to income tax returns, it cannot defeat the need for evidence in pending criminal proceedings based upon a generalized interest in confidentiality, and particularly in extraordinary cases, when the interest in criminal prosecution is as important as the release of privileged information to other governmental units for the purpose of collection of taxes, there exists a specific exception to the confidentiality of income tax returns. Garrett v. State, 147 Ga. App. 666, 250 S.E.2d 1, 1978 Ga. App. LEXIS 2913 (1978), aff'd, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979) (decided under former Code 1933, § 92-3216).

Income tax director's motion to quash a subpoena for the production of tax returns of the deceased for use in a probate court proceeding to determine the existence of a common law marriage should have been granted because the proceeding did not involve the integrity of the returns. Goolsby v. Estate of Williams, 243 Ga. App. 890, 534 S.E.2d 559, 2000 Ga. App. LEXIS 602 (2000).

**Real property ad valorem records subject to Open Records Law.** — Real property ad valorem digest, returns, and related records, not having been made confidential by O.C.G.A. § 48-7-60 or other sections, are, prima facie, subject to the provisions of the Open Records Law, O.C.G.A. § 50-18-70. Pensyl v. Peach County, 252 Ga. 450, 314 S.E.2d 434, 1984 Ga. LEXIS 725 (1984), overruled in part, Blalock v. Cartwright, 300 Ga. 884, 799 S.E.2d 225, 2017 Ga. LEXIS 234 (2017).

**Illegal to conduct audits solely to uncover criminal activity.** — If the plaintiffs could show that Department of Revenue employees, acting for the commissioner, were engaged in a series of audits conducted solely to uncover criminal activity unrelated to tax improprieties on the part of the person audited, such conduct would be illegal and would constitute grounds for the issuance of an injunction against such employees. Willis v. Department of Revenue, 255 Ga. 649, 340 S.E.2d 591, 1986 Ga. LEXIS 581 (1986).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3216, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Legislative purpose.** — The purpose of former Code 1933, §§ 92-3216 and 91A-212 (see now O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) was to encourage taxpayers to fully disclose the taxpayers' income and to protect any confidential information with reference to the taxpayers' business which it was essential to divulge in an income tax return; it was also the intent of the General Assembly to relieve the department from furnishing information concerning a taxpayer's income tax

return. 1960-61 Ga. Op. Att'y Gen. 538 (decided under former Code 1933, § 92-3216).

**Construction with other provisions.** — Former Code 1933, §§ 92-3216 and 91A-212 (see now O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) must be construed together. 1954-56 Ga. Op. Att'y Gen. 767 (decided under former Code 1933, § 92-3216).

**Permissible grounds for release of tax information.** — Former Code 1933, §§ 91A-212, 91A-9932.1, 92-3216 and 92-9914 (see now O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61) did not authorize the release of tax information for use only in cases involving the integrity of the tax return itself as the main issue, and not merely as a collateral issue. 1971 Op. Att'y Gen. No. 71-184 (decided under former Code 1933, § 92-3216).

**Disclosure of information which is neither secret nor confidential.** — Prohibition contained in former Code 1933, § 92-3216 applied only to divulging the amount of income or particulars set forth or disclosed in an income tax report or return required by law. The listing of worthless checks, their amount, and the person issuing the checks in an official audit of the department made by the state auditor did not come within the prohibition contained in former Code 1933, § 92-3216. Former Code 1933, § 40-1805 (see now O.C.G.A. § 50-6-24) made it mandatory upon the state auditor to list and call special attention to all irregularities found in an examination of a department of the state government and to make available for the information of the public, through the press, such transactions, and for the further information of the public officials of the state charged with the responsibility of instituting legal action for violations of state laws. 1950-51 Ga. Op. Att'y Gen. 358 (decided under former Code 1933, § 92-3216).

**Release of tax information to public officers and agencies.** — Records of the income tax unit of the department constitute confidential information and should not be divulged to local taxing authorities of this state. 1952-53 Ga. Op. Att'y Gen. 471 (decided under former Code 1933, § 92-3216).

Neither former Code 1933, §§ 92-3216 and 91A-212 (see now O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) made income tax returns privileged or confidential as to the commissioner, the commissioner's agents, or other persons who properly have access to the returns for use in the administration and the enforcement of any tax. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

County board of tax assessors in the discharge of the boards' official duties are entitled to have access to the files of the commissioner, including the income tax files; any files furnished to county boards of tax assessors retain their privileged or confidential character in the hands of those officials. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

Information contained in state income tax returns may not be furnished to city or municipal tax assessors. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

**Release of tax information to private firms and other groups.** — It is not a violation of law for the department to deliver income tax returns to a private company for processing of the information onto punch cards if certain restrictions are followed. 1960-61 Ga. Op. Att'y Gen. 538 (decided under former Code 1933, § 92-3216).

## RESEARCH REFERENCES

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 470.

**ALR.**

Constitutionality, construction, and application of statutory provisions regarding publicity or confidential and privileged character of income tax information or returns, 151 A.L.R. 1049.

## 48-7-61. Unlawful divulging of confidential information concerning income taxes under Code Section 48-7-60; penalties.

(a) It shall be unlawful for any person to violate any provision of Code Section 48-7-60 when the violation involves the divulging of information concerning income taxes.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) In addition to the penalty provided in subsection (b) of this Code section, if the offender is an officer or employee of the state, he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years after his dismissal.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 51; Code 1933, § 92-9914; Code 1933, § 91A-9932.1, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 112.

### OPINIONS OF THE ATTORNEY GENERAL

**Permissible grounds for release of tax information.** — Former Code 1933, §§ 92-3216 and 92-9914 and Ga. L. 1937-38, Ex. Sess., p. 77 (see now O.C.G.A. §§ 48-7-60, 48-7-61, 48-1-6, and 48-2-1 et seq.) did not authorize release of tax information for use in any manner other than a case involving the integrity of the tax return itself as the main issue, and not merely as a collateral issue. 1971 Op. Att'y Gen. No. 71-184.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, §§ 470, 471.

**C.J.S.**
67 C.J.S., Officers and Public Employees, § 283 et seq.

**ALR.**
Recovery of damages under § 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 A.L.R. Fed. 537.

## 48-7-62. Optional taxpayer contributions to the Georgia National Guard Foundation through income tax payment and refund process.

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2005, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Georgia National Guard Foundation by donating either all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of

the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the foundation may designate such contribution as provided in this Code section on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed and shall transmit such amount to the Georgia National Guard Foundation. The Georgia National Guard Foundation is the nonprofit 501(c)(3) corporation whose purpose is to provide support to members of the Georgia Department of Defense.

**History.**
Code 1981, § 48-7-62, enacted by Ga. L. 2005, p. 157, § 3/HB 282.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2005, "donating either" was substituted for "either donating" in the first sentence of subsection (a).

**Editor's notes.**
Ga. L. 2005, p. 157, § 4/HB 282, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2005.

## 48-7-63. Optional taxpayer contributions to permitted stem cell research through income tax payment and refund process.

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2007, shall contain appropriate language, to be determined by the commissioner, offering the taxpayer the opportunity to contribute to permitted stem cell research, as defined in Code Section 31-46-2, through the Georgia Commission for Saving the Cure by donating either all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which the commission was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the commission may designate such contribution as provided in this Code section on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed and shall transmit such amount to the Georgia Commission for Saving the Cure.

**History.**
Code 1981, § 48-7-63, enacted by Ga. L. 2007, p. 473, § 3/SB 148; Ga. L. 2009, p. 8, § 48/SB 46.

**Editor's notes.**
Ga. L. 2007, p. 473, § 4(b)/SB 148, not codified by the General Assembly, provides that this Code section shall apply

to all taxable years beginning on and after January 1, 2007.

**Law reviews.**

For note on 2007 enactment of this Code section, see 24 Georgia St. U.L. Rev. 81 (2007).

## 48-7-64. Tax exempt contributions to the Technical College System of Georgia Foundation for scholarships awards.

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2023, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Technical College System of Georgia Foundation by donating either all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the foundation may designate such contribution as provided in this Code section on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed and shall transmit such amount to the Technical College System of Georgia Foundation, which is a nonprofit 501(c)(3) corporation that supports the Technical College System of Georgia through marketing, advocacy, and fundraising to benefit college programs, faculty, and students. All contributions received by such organization pursuant to this Code section shall be used exclusively to award scholarships to the Technical College System of Georgia to veterans with service-connected disabilities as such term is defined in 38 U.S.C. Section 101(16).

**History.**

Code 1981, § 48-7-64, enacted by Ga. L. 2022, p. 95, § 2/SB 87.

**Editor's notes.**

Ga. L. 2022, p. 95, § 1/SB 87, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Senator Jack Hill Veterans' Act.'"

Ga. L. 2022, p. 95, § 3/SB 87, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2023.

# ARTICLE 4

# PAYMENT: DEFICIENCIES, ASSESSMENT, AND COLLECTION

### RESEARCH REFERENCES

**ALR.**

Income tax: right to deduction in respect of obligations voluntarily assumed or paid, 79 A.L.R. 977.

Power to make additional tax levy necessitated by failure of some property owners to pay their proportions of original levy, 79 A.L.R. 1157.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

## 48-7-80. Time and place of payment of tax on basis of calendar or fiscal year.

The total amount of tax imposed by this chapter on taxpayers other than corporations shall be paid to the commissioner on or before April 15 following the close of the calendar year. If the return of a taxpayer other than a corporation is made on the basis of a fiscal year, the tax shall be paid to the commissioner on or before the fifteenth day of the fourth month following the close of the fiscal year. However, in the case a taxpayer's return is allowed to be filed at a later date, pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003, because the taxpayer has electronically filed returns, the date of payment shall be extended without interest and penalty to the date the return is allowed to be filed pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003. The total amount of tax imposed by this chapter on corporations other than Georgia Subchapter "S" corporations shall be paid to the commissioner on or before April 15, following the close of the calendar year. If the return of a corporation other than a Georgia Subchapter "S" corporation is made on the basis of a fiscal year, the tax shall be paid to the commissioner on or before the fifteenth day of the fourth month following the close of the fiscal year. The total amount of tax imposed by this chapter on Georgia Subchapter "S" corporations shall be paid to the commissioner on or before March 15, following the close of the calendar year. If the return of a Georgia Subchapter "S" corporation is made on the basis of a fiscal year, the tax shall be paid to the commissioner on or before the fifteenth day of the third month following the close of the fiscal year.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 33; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3301; Ga. L. 1952, p. 230, § 2; Ga. L. 1952, p. 360, § 2; Ga. L. 1955, p. 193, § 2; Code 1933, § 91A-3801, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 368, § 1; Ga. L. 2003, p. 442, § 4; Ga. L. 2016, p. 1, § 3/HB 742.

**Editor's notes.**

Ga. L. 2016, p. 1, § 8/HB 742, not codified by the General Assembly, provides, in part, that Sections 2, 3, 6, and 7 of this Act shall be applicable to all taxable years beginning on or after January 1, 2016.

**JUDICIAL DECISIONS**

**Payment of the tax imposed is not conditioned upon an assessment by the commissioner.** State v. Fuller, 90 Ga. App. 349, 83 S.E.2d 69, 1954 Ga. App. LEXIS 710 (1954).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 657.

**C.J.S.**
85 C.J.S., Taxation, § 2758.

## 48-7-81. Computation of interest due on taxes not timely paid; assessment, collection, and payment of interest on penalties or additions; assessment and collection period.

(a) If any amount of tax imposed by this chapter is not paid on or before the last date prescribed for payment, interest on the payment at the rate specified in Code Section 48-2-40 shall be paid for the period from the last date prescribed for payment to the date paid.

(b) The last date prescribed for payment of the tax shall be determined without regard to any:

(1) Extension of time for payment; or

(2) Notice and demand for payment issued by reason of jeopardy prior to the last date otherwise prescribed for the payment.

(c) If the amount of any tax imposed by this chapter is reduced by reason of a carry back of a net operating loss, the reduction in tax shall not affect the computation of interest under this Code section for the period ending with the last day of the taxable year in which the net operating loss arises.

(d) Except as otherwise specifically provided by law:

(1) Interest prescribed under this Code section shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax. Any reference to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this Code section on the tax;

(2) No interest under this Code section shall be imposed on the interest provided by this Code section;

(3) Interest shall be imposed under subsection (a) of this Code section on any assessable penalty, additional amount, or addition to the tax only if the assessable penalty, additional amount, or addition to the tax is not paid within ten days from the date of notice and demand for the payment. Interest shall be imposed only for the period from the date of the notice and demand to the date of payment; and

(4) If notice and demand are made for the payment of any amount and if the amount is paid within ten days after the date of the notice and demand, interest under this Code section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(e) Interest prescribed under this Code section may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 37; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3304; Ga. L. 1971, p. 673, § 1; Ga. L. 1975, p. 156, § 1; Code 1933, § 91A-3803, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 20.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2021, "and" was added at the end of paragraph (d)(3).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
72 Am. Jur. 2d, State and Local Taxation, § 687.

**C.J.S.**
85 C.J.S., Taxation, § 1832.

## 48-7-82. Periods of limitation for assessment of taxes; collection by execution; change or correction of net income.

(a) Except as otherwise provided in this Code section, the amount of income tax imposed by this chapter shall be assessed within the time periods specified in Code Section 48-2-49.

(b)(1) In the case of income received during the lifetime of a decedent, by the estate of a decedent during the period of administration, or by a corporation, the tax shall be assessed within three years after the return is filed, and any proceeding in court without assessment for the collection of the tax shall begin within 18 months after written request for the commencement of the proceeding (filed after the return is made) by the personal representative or other fiduciary representing the estate of the decedent or by the corporation. No such proceeding shall begin after the expiration of three years from the date the return is filed. This paragraph shall not apply in the case of a corporation unless:

(A) The written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of the 18 month period;

(B) The dissolution is begun in good faith before the expiration of the 18 month period; and

(C) The dissolution is completed.

(2) If the taxpayer omits from gross income an amount properly includable in gross income which exceeds 25 percent of the amount of gross income less business expenses stated in the return, the tax may be assessed or a proceeding in court for the collection of the tax may

begin without assessment at any time within six years after the return is filed.

(3) If the taxpayer omits from gross income an amount properly includable in gross income as an amount distributed in liquidation of a corporation, the tax may be assessed or a proceeding in court for the collection of the tax may begin without assessment at any time within five years after the return is filed.

(c) When the assessment of any income tax has been made within the period of limitation properly applicable to the assessment, the tax may be collected by execution, provided that the commissioner may transmit such execution electronically. The general provisions for tax executions as contained in Chapter 3 of this title shall apply to executions pursuant to this subsection.

(d) Reserved.

(e)(1) Except as provided in Code Section 48-7-53, when a taxpayer's amount of net income for any year under this chapter as returned to the United States Department of the Treasury is changed or corrected by the commissioner of internal revenue or other officer of the United States of competent authority, the taxpayer, within 180 days after the final determination date of the changed or corrected net income, shall make a return to the commissioner of the changed or corrected income, and the commissioner shall make assessment or the taxpayer shall claim a refund based on the change or correction within one year from the date the return required by this paragraph is filed. If the taxpayer does not make the return reflecting the changed or corrected net income and the commissioner receives from the United States government or one of its agents a report reflecting the changed or corrected net income, the commissioner shall make assessment for taxes due based on the change or correction within five years from the date the report from the United States government or its agent is actually received. If he or she chooses, the commissioner shall have the authority to establish a de minimis amount upon which a taxpayer shall not be required to comply with this subsection. For purposes of this subsection the final determination date shall be determined as follows:

(A) Except as provided in subparagraph (B) of this paragraph, the final determination date is the first day on which no changes or corrections for a particular audit remain to be finally determined, whether by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the commissioner of internal revenue and the taxpayer, the final determination date is the date on which the last party signed the agreement; or

(B) If the taxpayer filed as a member of a combined or consolidated group, the final determination date is the first day on which no related changes or corrections for a particular audit remain to be finally determined for the entire group.

(2) In the event the taxpayer fails to notify the commissioner of the final determination of his or her United States income taxes, the commissioner shall proceed to determine, upon evidence that the commissioner has brought to his or her attention or that he or she otherwise acquires, the corrected income of the taxpayer for the fiscal or calendar year. If additional tax is determined to be due, the tax shall be assessed and collected. If it is determined that there has been an overpayment of tax for the year, the taxpayer, by his or her failure to notify the commissioner as required in paragraph (1) of this subsection, shall forfeit his or her right to any refund due by reason of the change or correction. A taxpayer who so fails to notify the commissioner, however, shall be entitled to equitable recoupment of 90 percent of any overpayment so determined against any additional tax liability so determined, the remaining 10 percent of the overpayment being totally forfeited as a penalty for failure to make a return as required by paragraph (1) of this subsection.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 36; Code 1933, § 92-3303; Ga. L. 1937, p. 109, § 18; Ga. L. 1952, p. 405, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 279, § 6; Ga. L. 1965, p. 276, § 1; Ga. L. 1975, p. 862, § 1; Code 1933, § 91A-3802, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 2; Ga. L. 1986, p. 1480, § 2; Ga. L. 1997, p. 734, § 5; Ga. L. 2018, p. 319, § 4/HB 849.

**Editor's notes.**

Ga. L. 1986, p. 1480, § 3, not codified by the General Assembly, provided effective dates for §§ 1 and 2 of that Act and provided that § 2 of that Act, which amended this Code section, would apply to taxable years beginning on or after January 1, 1987.

**Law reviews.**

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

**JUDICIAL DECISIONS**

**Section comports with equal protection requirements.** — There is a rational basis for providing different statutes of limitations based on the different situations provided for in former Code 1933, § 92-3303(a) and (f). Therefore, former subsection (f) did not deny equal protection under the state and federal Constitutions. Blackmon v. Monroe, 233 Ga. 656, 212 S.E.2d 827, 1975 Ga. LEXIS 1410 (1975).

**Period of limitations applies only to returns containing all required information.** — Information may be applied improperly in calculating tax liability, but after three years, if all required information is included in the return, the commissioner is barred from maintaining an action against the taxpayer. However, when the return does not give full information which is required, the statute will not run. Redwine v. Arvaniti, 83 Ga. App. 203, 63 S.E.2d 222, 1951 Ga. App. LEXIS 832 (1951).

**Period of limitation inapplicable to examination of records.** — Provision that deficiency assessment must be made

within three years from the date of filing an income tax return is only applicable to the assessment and collection of taxes and not to the right of examination of records. Redwine v. Arvaniti, 83 Ga. App. 203, 63 S.E.2d 222, 1951 Ga. App. LEXIS 832 (1951).

**Taxpayer who missed three-year limitation period.** — O.C.G.A. § 48-7-82(e) did not give a taxpayer who missed the three-year limitation period for filing amended state returns a second opportunity to file an amendment; the taxpayer was not authorized by subsection (e) to submit an amended state tax return, and the taxpayer's untimely request for a refund was properly denied. Graham v. McKesson Info. Solutions, LLC, 279 Ga. App. 364, 631 S.E.2d 424, 2006 Ga. App. LEXIS 568 (2006), cert. denied, No. S06C1645, 2006 Ga. LEXIS 760 (Ga. Sept. 8, 2006).

**Section does not bar the commissioner from collecting** the amount admitted to be due when the return is filed, if that amount has not been paid. State v. Fuller, 90 Ga. App. 349, 83 S.E.2d 69, 1954 Ga. App. LEXIS 710 (1954).

**Administrative interpretation of waivers by former commissioner** will not estop present commissioner from relying on waivers, which toll the statute of limitation for 30 days beyond a time fixed by an unambiguous statute. Hawes v. Nashville, Chattanooga & St. Louis Ry., 223 Ga. 527, 156 S.E.2d 455, 1967 Ga. LEXIS 597 (1967).

**No assessment proceeding is required when the return is accepted by the commissioner as correct.** — Tax is due and payable as a personal debt without an assessment. An assessment is an action taken only with regard to the collection of an amount of tax exceeding that returned by the taxpayer. State v. Fuller, 90 Ga. App. 349, 83 S.E.2d 69, 1954 Ga. App. LEXIS 710 (1954).

**What constitutes a "report reflecting the changed or corrected net income."** — Conference report showing an increase in the taxpayer's tax liability, but which is not a final determination of the changed or corrected net income, is a "report reflecting the changed or corrected net income" for purposes of the statute of limitations. Chilivis v. Levy, 240 Ga. 792, 242 S.E.2d 594, 1978 Ga. LEXIS 830 (1978).

Conference report showing an increase in the taxpayer's tax is a report reflecting changed or corrected net income, notwithstanding the fact that the report does not show the changed or corrected net income itself. Chilivis v. Levy, 240 Ga. 792, 242 S.E.2d 594, 1978 Ga. LEXIS 830 (1978).

**Failure to amend after increase of income by IRS.** — O.C.G.A. § 48-7-82(e)(1) required the debtor to provide an amended tax return because the IRS had reassessed the debtor's income upwards for the relevant tax years; because the debtor never filed an amended return for those years, the taxes were deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(i). Loc Ngoc Pham v. Ga. Dep't of Revenue (In re Loc Ngoc Pham), No. 04-80207-MGD, No. 04-06677, 2005 Bankr. LEXIS 758 (Bankr. N.D. Ga. Mar. 1, 2005).

**Non-dischargeability in bankruptcy.** — Georgia Department of Revenue was not entitled to summary judgment on the department's nondischargeability claim under 11 U.S.C. § 523(a)(1)(B)(i) based on the debtor's alleged failure to file an amended return as required by O.C.G.A. § 48-7-82(e)(1) because the department failed to establish that an amended return was actually due; the debtor's tax liability could have been adjusted by the IRS without an adjustment to the net income (for example, the debtor could have made a mistake in computing the tax based on net income that did not change), thus failing to trigger the filing requirement of paragraph (e)(1). Patterson v. Ga. Dep't. of Revenue (In re Patterson), No. 05-91543, No. 06-9058, 2006 Bankr. LEXIS 3675 (Bankr. N.D. Ga. Dec. 12, 2006).

When the debtors failed to file an amended state income tax return after the debtors' federal income tax was revised upward by the IRS as required by O.C.G.A. § 48-7-82(e)(1), the debtors' state income tax based on the upward revision was excepted from discharge under 11 U.S.C. § 523(a)(1)(B)(i). Thovongsa v. Ga. Dep't of Revenue (In re Thavongsa), No. G11-22101-REB, No.

11-2133, 2012 Bankr. LEXIS 2451 (Bankr. N.D. Ga. Feb. 7, 2012).

**OPINIONS OF THE ATTORNEY GENERAL**

**Commissioner has three years to make assessment after return is filed.** — This section is a safeguard which gives the state an additional year in which to make the state's original audit and assessment. The General Assembly no doubt reasoned that if time permitted the commissioner to examine the return and make a proper assessment thereon within the two-year period, the commissioner should not be given additional time to reopen the assessment and correct the commissioner's own errors. If, however, the large volume of returns filed prevents the commissioner from completing work within the two-year period, the commissioner is granted an additional year in which to perform the duty. 1945-47 Ga. Op. Att'y Gen. 569.

**When taxpayer makes full disclosure in an income tax return but the tax is erroneously computed,** the period of limitation is three years. 1952-53 Ga. Op. Att'y Gen. 214.

**Only material amendments to return change period of limitations.** — Obvious legislative intent of this section is to give the department sufficient time to review returns of taxpayers, and when a deficiency is discovered, time to make an assessment. A reasonable interpretation of this section would be that when the taxpayer files an amended return which makes no material change, but makes changes of a minor nature, that the period of limitations should commence on the date of the original return. On the other hand, when the taxpayer files an amended return which makes a material change, a logical and reasonable interpretation would have the period of limitations commence as to the material change only at the time of the filing of the amended return. 1948-49 Ga. Op. Att'y Gen. 677.

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1832.

**ALR.**

Duress in obtaining waiver from taxpayer extending time for assessment of income tax, 78 A.L.R. 631.

Liability on bond given as condition of extension of time for payment of income tax, 117 A.L.R. 452.

When statute of limitation commences to run against action to recover tax, 131 A.L.R. 822.

Settlement negotiations as estopping reliance on statute of limitations, 39 A.L.R.3d 127.

Suspension of running of period of limitation, under 26 U.S.C.A. § 6503, for federal tax assessment or collection, 160 A.L.R. Fed. 1.

## 48-7-83. Action for collection of tax out of assets of dissolved corporation; procedure.

Whenever any corporation has been dissolved or the assets of the corporation for any reason have passed entirely from the control of the corporation into the possession of its former stockholders or other persons without the payment of income taxes due the state, the commissioner shall have the right to bring action against any or all persons possessing the assets for the collection of any income taxes that may be due the state up to the value of the assets. If the assets have come into the possession of more than one person, each person shall

have the right to prorate the amount of the tax according to the value of the assets coming into each person's possession.

**History.**
Code 1933, § 92-3315, enacted by Ga. L. 1937, p. 109, § 20; Code 1933, § 91A-3807, enacted by Ga. L. 1978, p. 309, § 2.

**Cross references.**
Dissolution of business corporations generally, § 14-2-1401 et seq.

**RESEARCH REFERENCES**

**C.J.S.**
84 C.J.S., Taxation, § 695. 85 C.J.S., Taxation, §§ 1773 et seq., 1805.

## 48-7-84. Actions in restraint of assessment or collection of income tax.

No action for the purpose of restraining the assessment or collection of any tax under this chapter shall be maintained in any court.

**History.**
Ga. L. 1931, Ex. Sess., p. 24, § 40; Code 1933, § 92-3307; Code 1933, § 91A-3805, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, §§ 1828 et seq., 1854 et seq.

## 48-7-85. Discretionary authority to prorate tax and exemptions for person moving into or out of state.

Whenever the commissioner in his discretion determines that a person is not liable for the tax for an entire year because of moving into the state or moving out of the state, he may prorate the amount of the tax due the state and also may require the taxpayer to prorate any exemptions on the basis of the time spent within the state. The commissioner in his reasonable discretion shall be the sole judge as to when this Code section shall apply.

**History.**
Code 1933, § 92-3316, enacted by Ga. L. 1937, p. 109, § 20; Code 1933, § 91A-3808, enacted by Ga. L. 1978, p. 309, § 2.

**JUDICIAL DECISIONS**

**Scope of commissioner's discretion.** — Discretion given to the State Revenue Commission (now commissioner) does not mean that the commission has the discretion to determine what is the law, but simply that the commission can determine facts which are necessary to make applicable the commission's provisions. It is not empowered to exclude from the commission's provisions a person who manifestly comes within its terms. The commission cannot set aside the law, but must enforce the law. That the commission is the sole judge of the facts to

apply in a particular case does not mean that the commission may act arbitrarily and withhold benefits to which a taxpayer is clearly entitled. Forrester v. Culpepper, 194 Ga. 744, 22 S.E.2d 595, 1942 Ga. LEXIS 663 (1942).

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1785 et seq.
**ALR.**
Protection of out-of-state sellers from state income tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384), 182 A.L.R. Fed. 291.

## 48-7-86. Penalties for nonpayment, failure to pay, or underpayment of taxes; reduction of tax by partial payments and credits; relief of liability on joint return.

(a)(1) In case of failure to pay:

(A) The amount shown as tax on a return on or before the date prescribed for payment of the tax, such date to be determined with regard to any extension of time for payment, there shall be added to the amount of tax required to be shown on the return one-half of 1 percent of the amount of the tax if the failure is for not more than one month and with an additional one-half of 1 percent for each additional month or fraction of a month during which the failure continues. For the purposes of this subparagraph, the amount of tax shown on the return shall be reduced, for the purpose of computing the addition for any month, by the amount of any part of the tax which is paid on or before the beginning of the month and by the amount of any credit against the tax which is claimed on the return;

(B) Any amount in respect of any tax required to be shown on a return which is not so shown within ten days of the date of the notice and demand for the payment, the amount of tax stated in the notice and demand shall be increased by one-half of 1 percent of the amount of the tax if the failure is for not more than one month and by an additional one-half of 1 percent for each additional month or fraction of a month during which the failure continues. For the purposes of this subparagraph, the amount of tax stated in the notice and demand shall be reduced, for the purpose of computing the addition for any month, by the amount of any part of the tax which is paid before the beginning of the month.

(2) No penalty shall be assessed pursuant to this subsection which exceeds in the aggregate 25 percent of the amount of the tax or when it is shown that the failure is due to reasonable cause and not due to willful neglect.

(b) With respect to any return, the maximum amount of the addition

permitted under subparagraph (a)(1)(B) of this Code section shall be reduced by the amount of the addition under subsection (a) of Code Section 48-7-57 which is attributable to the tax for which the notice and demand are made and which is not paid within ten days of such notice and demand.

(c) If the amount required to be shown as tax on a return is less than the amount shown as tax on the return, subparagraph (a)(1)(A) of this Code section shall be applied by substituting the lower amount.

(d) For purposes of subsections (e) and (f) of this Code section, the term "underpayment" means a deficiency as defined in Code Section 48-7-1.

(e) If any part of any underpayment of tax required to be shown on a return is due to a negligent or intentional disregard of rules and regulations, but without intent to defraud, an amount equal to 5 percent of the underpayment shall be added to the tax.

(f) If any part of any underpayment of tax required to be shown on a return is due to fraud, an amount equal to 50 percent of the underpayment shall be added to the tax. This amount shall be in lieu of any amount determined under subsection (e) of this Code section. If any penalty is assessed under this subsection for an underpayment of tax which is required to be shown on a return, no penalty under Code Section 48-7-57 or subsection (a) of this Code section shall be assessed with respect to the same underpayment.

(g)(1) Notwithstanding any other provision of this Code section to the contrary, if:

(A)(i) A joint return has been made for a taxable year;

(ii) On such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(iii) The other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement; and

(iv) Taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; or

(B) The other individual has made the proper election pursuant to Section 6015 of the Internal Revenue Code, if applicable

then the other individual shall be relieved of liability for tax, including interest, penalties, and other amounts, for such taxable

year to the extent such liability is attributable to such understatement, if such other individual has been relieved of liability for federal income taxes pursuant to Section 6015 of the Internal Revenue Code, if applicable.

(2) The commissioner shall promulgate any rules and regulations necessary to implement and administer this subsection.

**History.**

Ga. L. 1931, Ex. Sess., p. 24, § 38; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3305; Ga. L. 1952, p. 405, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 279, § 7; Ga. L. 1953, Jan.-Feb. Sess., p. 294, § 1; Code 1933, § 92-3305, enacted by Ga. L. 1971, p. 376, § 1; Code 1933, § 91A-3804, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 1649, § 3; Ga. L. 1999, p. 483, § 2; Ga. L. 2001, p. 984, § 12; Ga. L. 2004, p. 410, § 6.

**Editor's notes.**

Ga. L. 1993, p. 1649, § 4, not codified by the General Assembly, makes subsection (f) of this Code section applicable to all taxable years beginning on or after April 27, 1993.

Ga. L. 1999, p. 483, § 3, not codified by the General Assembly, provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1999, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 1999, p. 483, § 3, not codified by the General Assembly, makes subsection (g) of this Code section applicable to all taxable years beginning on or after January 1, 1999.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

**Law reviews.**

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1856 et seq.

**ALR.**

Constitutionality, construction, application and effect of specific provisions of state corporate income tax law in respect of tax evasion, 92 A.L.R. 1073.

Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 A.L.R. Fed. 233; 161 A.L.R. Fed. 373.

## ARTICLE 5

## CURRENT INCOME TAX PAYMENT

**Administrative rules and regulations.**

Payment and Withholding of Reporting Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Returns and Collections, Rule 560-7-8-.33.

**Law reviews.**

For article examining Georgia Withholding Tax Act of 1960, see 23 Ga. B. J. 33 (1960).

**RESEARCH REFERENCES**

**ALR.**
Payment of tax in installments as affecting time for claiming refund under statute requiring claim to be made within specified time after payment of tax, 94 A.L.R. 978.

## 48-7-100. Definitions.

As used in this article, the term:

(1) "Calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(1.1) "Corporation" shall have the same meaning as provided in Code Section 48-7-1, and shall also include electing Subchapter "S" corporations as defined in paragraph (7) of subsection (b) of Code Section 48-7-21 and electing partnerships as defined in paragraph (1) of subsection (b) of Code Section 48-7-23 and for purposes of Code Section 48-7-117 for such electing partnerships, Code Section 48-7-23 shall be substituted for Code Section 48-7-21.

(2) "Dependent exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(2.1) "Distribution credited" means a recognition or assignment of interest in proceeds or property of a partnership, Subchapter "S" corporation, or limited liability company, including a net distributive share of income which is passed through to members and which may be subject to Georgia income tax.

(2.2) "Distribution paid" means any disbursement of funds of a partnership, Subchapter "S" corporation, or limited liability company that is made to a member with respect to that member's interest in the entity and which may be subject to Georgia income tax.

(3)(A) "Doing business in this state" means a person:

(i) Having or maintaining directly or indirectly an office, warehouse, stock of goods, or other established facility or place of business in this state;

(ii) Performing services or owning, leasing, or operating tangible property in this state on a more or less permanent and not transitory basis; or

(iii) Having an officer, employee, agent, or other representative who has or maintains an office or who regularly or systematically solicits or promotes the person's business in this state.

(B) "Office" as used in this paragraph includes, but is not limited to, the residence of any officer, employee, agent, or

representative of a person if the residence is held out to be, or identified in the trade with, the person's business.

(C) "Business" as used in this paragraph includes, but is not limited to, any particular activity, occupation, or employment habitually engaged in whether for financial gain or not.

(4) "Employee" means:

(A) Any individual who is a domiciliary or resident of this state and who performs services either within or outside, or both within and outside, this state for an employer;

(B) Any individual not a domiciliary or resident of this state who performs services within this state for an employer;

(C) An officer, employee, or elected official of any body politic or of any agency or instrumentality of a body politic, and an officer of a corporation; or

(D) Any person to whom a payment of wages is made whether or not the person is an employee of the payer of the wages at the time of payment.

(5) "Employer" means any person for whom an individual who is a resident or domiciliary of this state performs or performed any service of whatever nature within or outside this state or for whom a nonresident individual performs or performed any service of whatever nature within this state as the employee of the person, except that:

(A) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for the service, the term "employer" includes the person having control of the payment of the wages; and

(B) In the case of a person paying wages on behalf of a nonresident individual, foreign partnership, or foreign corporation not doing business within this state, the term "employer" includes the person paying the wages.

(6) "Marital exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(6.1) "Member" shall mean partner, shareholder, or other person to whom the taxpaying obligation of the partnership, Subchapter "S" corporation, or limited liability company falls.

(6.2) "Nonresident" shall mean an individual or fiduciary member who resides outside this state and all other members whose headquarters or principal place of business is located outside this state.

(7) "Number of dependent exemptions claimed" means the number of dependent exemptions claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(8) "Payroll period" means a period for which a payment of wages is ordinarily made to the employee by an employer. The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(8.1) "Periodic payment" means a designated distribution from a pension, annuity, or similar fund which is one of a series of substantially equal distributions made over:

(A) The life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and his or her beneficiary; or

(B) A specified period of ten years or more.

(9) "Single exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(10) "Wages" means all remuneration paid including, but not limited to, the cash value of all remuneration paid in any medium other than cash, and shall be computed without any deduction of any amounts withheld by the employer for any reason and regardless of the terminology which the employer or employees may apply to the remuneration. The term does not include remuneration paid:

(A) For agricultural labor;

(B) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(C) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(D) For services performed for a foreign government or an international organization;

(E) For service not in the course of the employer's trade or business performed by an employee in any calendar quarter unless the cash remuneration paid for the service is $50.00 or more and the service is performed by an individual who is regularly employed, as defined in the rules and regulations of the commissioner, by the employer to perform the services;

(F) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news,

not including delivery or distribution to any point for subsequent delivery or distribution, or for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement by which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on his retention of the excess of such price over the amount at which the newspaper or magazines are charged to him. This subparagraph shall apply whether or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines returned;

(G) For services not in the course of the employer's trade or business to the extent paid in any medium other than cash;

(H) For services for an employer performed by a resident or domiciliary of this state in another state if at the time of the payment of the remuneration the employer is required by the law of the other state to withhold income tax from the remuneration;

(I) For services performed as a master, officer, or any other seaman who is a member of the crew on a vessel engaged in foreign, coastal, intercoastal, interstate, or contiguous trade to the extent withholding from the remuneration is prohibited by the laws of the United States;

(J) To, or on behalf of, any employee:

(i) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1986 which is exempt under Code Section 48-7-25 at the time of the payment unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

(ii) Under or to an annuity plan which at the time of the payment meets the requirements of Section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1986;

(K) For services performed by a nonresident if the nonresident has been employed within this state for no more than 23 calendar days during the calendar quarter and the nonresident is not a taxable nonresident as defined in Code Section 48-7-1; or

(L) As fees to a public official for services employed by an employee for his employer.

(11) "Withholding agent" means any person required to deduct and withhold any tax under the provisions of Code Section 48-7-101.

**History.**

Ga. L. 1960, p. 7, § 2; Ga. L. 1978, p. 982, § 1; Code 1933, § 91A-3901, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 74; Ga. L. 1987, p. 191, § 4; Ga. L. 1993, p. 597, §§ 1, 2; Ga. L. 1994, p. 595, § 1; Ga. L. 2005, p. 159, §§ 19, 20/HB 488; Ga. L. 2007, p. 271, § 5/SB 184; Ga. L. 2008, p. 898, § 10/HB 1151; Ga. L. 2021, p. 277, § 5/HB 149.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in subdivision (10)(J)(i).

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1993, p. 597, § 4, not codified by the General Assembly, provides that paragraphs (2.1), (6.1), and (6.2) of this Code section are applicable with respect to any distribution paid or credited after January 1, 1994.

Ga. L. 1994, p. 595, § 3, not codified by the General Assembly, provides that paragraph (8.1) of this Code section is applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(d)/HB 488, not codified by the General Assembly, provides that subparagraph (10)(K) of this Code section is applicable to all calendar quarters on and after July 1, 2005.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

**U.S. Code.**

Section 401 of the United States Internal Revenue Code, referred to in subparagraph (10)(J)(i), is codified as 26 U.S.C. § 401.

**Law reviews.**

For note on the 1993 amendment of this Code section, see 10 Georgia St. U.L. Rev. 218 (1993).

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 255 (1994).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3316, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

**Amount to be withheld not affected by garnishment.** — Computation of the amount to be withheld under Ga. L. 1960, p. 7 is not affected by a garnishment. 1960-61 Ga. Op. Att'y Gen. 511 (decided under former Code 1933, § 92-3316).

**When unrestricted subsistence allowance constitutes wages.** — Unrestricted subsistence allowance that was an allowance which was in no wise limited to expenditures incurred on account of the employee's business, was an allowance to defray the employee's personal living expenses and was, in substance, a form of compensation or

remuneration within the scope of former Code 1933, § 92-3107 (see now O.C.G.A. § 48-7-27) and the definition of "wages" in Ga. L. 1960, p. 7, § 2 (see now O.C.G.A. §§ 48-7-100 and 48-7-110). To the extent that an employee incurred expenses on account of the business of an employer, and the employee was not otherwise reimbursed therefor, so that such expenses were a charge against this subsistence allowance, then the situation was one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7. 1960-61 Ga. Op. Att'y Gen. 506.

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1752 et seq.
**ALR.**
Tips as taxable income, 10 A.L.R.2d 191.
What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

## 48-7-100.1. Withholding of income tax from retirement benefits of federal annuitants.

The commissioner shall, not later than July 1, 1996, enter into an agreement with the federal Office of Personnel Management pursuant to 5 U.S.C. Section 8345 and its implementing regulations, 5 C.F.R. Sections 1901 through 1907, for the withholding of state income tax from the retirement benefits of annuitants under the federal Civil Service Retirement and Disability Fund.

**History.**
Code 1981, § 48-7-100.1, enacted by Ga. L. 1995, p. 1154, § 1.

## 48-7-101. Collection of income tax at source; withholding.

(a) **Wages subject to withholding.** The amount of wages subject to withholding shall be the amount of each wage payment less the total withholding exemption allowance applicable to the wage payment as computed under subsection (b) of this Code section and less the standard deduction allowance applicable to the wage payment, determined according to the payroll period and marital status of the employee as follows:

| Payroll Period | Married Filing Jointly | Single | Married Filing Separately |
|---|---|---|---|
| Weekly | $ 57.50 | $ 44.25 | $ 28.75 |
| Biweekly | 115.00 | 88.50 | 57.50 |
| Semimonthly | 125.00 | 95.75 | 62.50 |
| Monthly | 250.00 | 191.50 | 125.00 |
| Quarterly | 750.00 | 575.00 | 375.00 |

| Payroll Period | Married Filing Jointly | Single | Married Filing Separately |
|---|---|---|---|
| Semiannual | 1,500.00 | 1,150.00 | 750.00 |
| Annual | 3,000.00 | 2,300.00 | 1,500.00 |
| Daily or Miscellaneous | 8.20 | 6.30 | 4.10 |

(b) **Withholding exemption allowance.**

(1) The withholding exemption allowance applicable to a wage payment to an employee, determined according to the payroll period of the employee, shall be the amount shown in Column 1, below, or the amount shown in Column 2, below, as the withholding exemption status of the employee may be, plus the amount shown in Column 3, below, multiplied by the number of dependency exemptions claimed by the employee.

| Payroll Period | Col. 1 Single Exemption | Col. 2 Marital Exemption | Col. 3. Each Dependent Exemption |
|---|---|---|---|
| Weekly | $ 51.92 | $ 103.85 | $ 51.92 |
| Biweekly | 103.85 | 207.69 | 103.85 |
| Semimonthly | 112.50 | 225.00 | 112.50 |
| Monthly | 225.00 | 450.00 | 225.00 |
| Quarterly | 675.00 | 1,350.00 | 675.00 |
| Semiannual | 1,350.00 | 2,700.00 | 1,350.00 |
| Annual | 2,700.00 | 5,400.00 | 2,700.00 |
| Daily or Miscellaneous | 7.40 | 14.79 | 7.40 |

(2) If wages are paid for a miscellaneous payroll period or with respect to a period which is not a payroll period, the withholding exemption allowance with respect to each payment of wages shall be the exemption allowed for a daily payroll period multiplied by the number of days in the period including, but not limited to, Saturdays and Sundays, with respect to which the wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowance with respect to each payment of wages shall be exemption allowance for a daily payroll period multiplied by the number of days, including but not limited to, Saturdays and Sundays, which have elapsed since the last payment of wages by the employer during the calendar year, since the date of commencement of employment with the employer during the year, or since January 1 of the year, whichever is later.

(c) **Requirement of withholding.** Every employer making payments of wages shall deduct and withhold from the wages a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the income tax reasonably estimated to be due for the calendar year as a result of including the employee's wages received during the calendar year in the employee's Georgia adjusted gross income. The method of determining the amount to be withheld shall be prescribed by regulations of the commissioner, with due regard for the withholding exemption allowances of the employee provided in this Code section and the sum of any credits allowable against his tax.

(d) **Other employer plans.** Upon application by an employer and under conditions the commissioner deems proper, the commissioner may approve any plan of withholding developed by an employer to produce, insofar as practicable, the tax required to be withheld under the regulations prescribed by the commissioner under subsection (c) of this Code section. Any plan authorized under this subsection shall be in lieu of the tax required to be deducted and withheld under the regulations prescribed by the commissioner.

(e) **Included and excluded wages.** If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by the employer to the employee for the period shall be deemed to be wages. If the remuneration paid by an employer to an employee for services performed during more than one-half of any payroll period of not more than 31 consecutive days does not constitute wages, then none of the remuneration paid by the employer to the employee for the period shall be deemed to be wages.

(f) **Unusual cases.** The commissioner may promulgate regulations for withholding in unusual cases, including the following:

(1) To authorize an employer to estimate the wages which will be paid to an employee in any quarter of the calendar year and to determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages so estimated constituted the actual wages paid;

(2) To authorize the employer to deduct and withhold from any payment of wages to an employee during a quarter the amount necessary to adjust the amount actually deducted and withheld during the quarter to the amount required to be deducted and withheld during the quarter if the payroll period of the employee were quarterly;

(3) To authorize an employer to deduct and withhold an amount in addition to that otherwise required to be withheld under this article in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this article;

(4) To authorize an employer to deduct from wages, before withholding and deducting tax, any amount attributable to travel and other necessary business expenses of employees who are not reimbursed by the employer for the expenses and whose duties require such expenditures, other than traveling to and from the employee's home and place of employment;

(5) To prescribe the manner and extent to which withholding tax shall apply to extra payments to employees for services rendered, including, but not limited to, bonuses, separation pay, and year-end Christmas, or birthday payments and to authorize, under such conditions as the commissioner deems proper, an employer to compute the tax to be withheld from the payments so as to make adjustments to the annual wages which the employer may pay to the employee. No withholding shall be required with respect to a Christmas payment or a birthday payment to an employee when the amount of the payment is not in excess of $100.00;

(6) To prescribe the manner and extent to which withholding tax shall apply to unusual payments of wages; and

(7) To prescribe the manner and extent to which withholding tax shall apply to the proceeds of any lottery prize of $5,000.00 or more awarded by the Georgia Lottery Corporation.

(g) **Employees incurring no income tax liability.**

(1) An employer is not required to deduct and withhold any tax under this article from a payment of wages to an employee if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee certifying that the employee:

(A) Incurred no liability for income tax under this chapter for his preceding taxable year; and

(B) Anticipates that he will incur no liability under this chapter for income tax for his current taxable year.

(2) The withholding exemption certificate for use as provided in this subsection shall be in the form and shall contain such information as required by the commissioner.

(h) **Withholding requirements for periodic payments.**

(1) The payor of any periodic payment as defined in paragraph (8.1) of Code Section 48-7-100 shall withhold from such payment the amount which would be required to be withheld if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) The payee of any periodic payment may elect to have paragraph (1) of this subsection not apply with respect to periodic payments made to such payee. Such an election shall remain in effect until revoked by the payee.

(3) The commissioner is authorized to prescribe forms and to promulgate rules and regulations setting forth the requirements for withholding from such periodic payments and the requirements for making elections not to withhold.

(i) **Form 1099 withholding and reporting.**

(1) A withholding agent shall be required to withhold state income tax at the rate of 6 percent of the amount of compensation paid for labor services as defined in paragraph (3) of Code Section 48-7-21.1 to an individual, which compensation is reported on Form 1099 and with respect to which the individual has:

(A) Failed to provide a taxpayer identification number;

(B) Failed to provide a correct taxpayer identification number. Except as to the withholding rate specified in this paragraph, such failure shall be determined in the same manner as provided for in Section 3406 of the Internal Revenue Code and regulations thereunder; or

(C) Provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(2) Any withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the commissioner.

(j)(1) The payee of any nonperiodic payment may elect to have withholding made on distributions from a pension, annuity, or similar fund. Such an election shall remain in effect until revoked by the payee.

(2) Upon such election by a payee as provided in paragraph (1) of this subsection, the payor of any nonperiodic payment shall withhold from such payment the amount specified by the payee, but in no event shall the amount withheld be less than the amount which would be

required to be withheld if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(3) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations setting forth the requirements for withholding from such nonperiodic payments and the requirements for making elections to withhold.

**History.**

Ga. L. 1960, p. 7, § 3; Ga. L. 1972, p. 1195, § 1; Ga. L. 1979, p. 926, § 1; Code 1933, § 91A-3902, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 926, § 2; Ga. L. 1987, p. 191, § 5; Ga. L. 1988, p. 1390, §§ 1, 2; Ga. L. 1992, p. 1296, § 2; Ga. L. 1994, p. 361, § 1; Ga. L. 1994, p. 381, § 3; Ga. L. 1994, p. 595, § 2; Ga. L. 1998, p. 1, § 3; Ga. L. 2006, p. 105, § 8/SB 529; Ga. L. 2007, p. 271, § 6/SB 184; Ga. L. 2008, p. 898, § 11/HB 1151.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1994, p. 361, § 2, not codified by the General Assembly, makes paragraph (f)(7) of this Code section applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1994, p. 595, § 3, not codified by the General Assembly, makes subsection (h) of this Code section applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes paragraph (b)(1) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

**Administrative rules and regulations.**

Returns and Collections, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Subject 560-7-8.

**Law reviews.**

For note on the 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 338 (1992).

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 255 (1994).

For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998).

For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally . . . Act Locally'," see 13 Ga. St. B. J. 14 (2007).

**OPINIONS OF THE ATTORNEY GENERAL**

**Treatment of employee's unrestricted subsistence allowance.** — Unrestricted subsistence allowance, that is, an allowance which is in no wise limited to expenditures incurred on account of the employee's business, is an allowance to defray the employee's personal living expenses and is, in substance, a form of compensation or remuneration within the scope of former Code 1933, § 92-3107 and the definition of "wages" in Ga. L. 1960, p. 7. To the extent that an employee incurs expenses on account of the business of the employer, and the employee is not otherwise reimbursed therefor, so that such expenses are a charge against this subsistence allowance, then the situation is one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7. 1960-61 Ga. Op. Att'y Gen. 506.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 445.

**C.J.S.**

85 C.J.S., Taxation, §§ 1827, 1853 et seq.

**ALR.**

Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 A.L.R.5th 509.

## 48-7-102. Withholding exemption status.

(a)(1) A zero exemption status shall apply to any employee receiving wages who, on the withholding exemption certificate required under subsection (c) of this Code section, disclaims any exemption status or who fails to file with his employer the withholding exemption certificate required under subsection (c) of this Code section.

(2) A single exemption status shall be available to any employee receiving wages who at the time cannot qualify for a marital exemption or who disclaims a marital exemption, unless such employee is an individual who is eligible to be claimed as a dependent on another taxpayer's federal income tax return in which case a zero exemption status shall apply.

(3) A marital exemption status shall be available to any employee receiving wages who at the time is married and living with his spouse, but only if his spouse does not have in effect at that time a withholding exemption certificate claiming a single or marital exemption.

(b) An employee receiving wages shall be entitled on any day to one withholding dependency exemption for each individual with respect to whom he may reasonably be expected to be entitled to an exemption for the taxable year under Code Section 48-7-26.

(c)(1) On or before the date of the commencement of employment with any employer, the employee shall furnish the employer with a signed withholding certificate in the form prescribed by the commis-

sioner relating to his withholding exemption status and the number of dependency exemptions which the employee claims. No exemption may be claimed to which the employee is not entitled. If the employee fails to furnish such completed certificate or furnishes erroneous information on such certificate to the employer, the employer will withhold as if the exemption status were single and zero until a withholding certificate is received which contains complete or corrected information, as necessary.

(2) Except as otherwise provided by rules or regulations of the commissioner, if an employee has filed with his employer an exemption certificate as required for federal withholding tax purposes, an employer may give effect to the exemption status and exemptions claimed on the federal exemption certificate when the certificate contains sufficient information to enable the employer to give effect to the withholding exemptions allowable under this Code section.

(3) Whenever during a calendar year the withholding exemption status of an employee or the number of dependency exemptions to which an employee is entitled changes or whenever an employee reasonably expects such a change before the end of the calendar year which would entitle the employee to different withholding exemptions than those shown on the exemption certificate in effect for the employee, the employee shall file with his employer within ten days of the change or, for the next calendar year, on or before December 20 a new certificate indicating the change. In no event shall the withholding exemption status or the number of dependency exemptions claimed on a certificate exceed the number to which the employee is entitled.

(4)(A) A withholding exemption certificate furnished the employer when no previous certificate is in effect shall take effect as of the beginning of the first payroll period ending, or as of the first payment of wages made without regard to a payroll period, on or after the date on which the certificate is so furnished.

(B) A withholding exemption certificate furnished the employer when a previous certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which the certificate is so furnished. At the election of the employer, the certificate may be made effective with respect to any payment of wages made on or after the date on which the certificate is so furnished. For purposes of this subparagraph, the term "status determination date" means January 1 and July 1 of each year.

(5) A withholding exemption certificate which takes effect under this subsection shall continue in effect with respect to the employer

until another certificate takes effect under this subsection. Each withholding exemption certificate which is in effect is, at the time of the receipt of any wages, a present representation of fact subject to the criminal penalties of Code Section 48-7-127.

**History.**

Ga. L. 1960, p. 7, § 4; Code 1933, § 91A-3903, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 6; Ga. L. 1992, p. 1296, § 3.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Law reviews.**

For note on the 1992 amendment of this Code section, see 9 Georgia St. U.L. Rev. 338 (1992).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 445.

**C.J.S.**

85 C.J.S., Taxation, § 1806 et seq.

**ALR.**

Tax exemptions and the contract clause, 173 A.L.R. 15.

## 48-7-102.1. Withholding exemptions; rules and regulations; submission of certificates to commissioner.

(a) The commissioner shall have the power to make and publish reasonable rules and regulations:

(1) Setting forth circumstances under which an employer shall be required to submit to the commissioner copies of withholding exemption certificates furnished to the employer by his employees;

(2) Establishing a procedure by which the commissioner may notify an employer and employee that any withholding exemption certificate which has been submitted to the commissioner shall be considered defective for purposes of computing amounts of withholding under this article;

(3) Establishing a procedure by which the commissioner may, after a withholding exemption certificate submitted to him has been determined to be defective, specify to an employer the basis upon which amounts of withholding under this article are to be computed; and

(4) Governing any and all other matters reasonably considered by the commissioner to be appropriate in addressing those matters set forth in paragraphs (1) through (3) of this subsection.

(b) For purposes of rules and regulations promulgated under the authority of subsection (a) of this Code section, the term "employer" may be defined by the commissioner to include an individual authorized by an employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(c) Nothing in this Code section shall be construed to deny additional withholding allowances to an employee who can show that he will have additional deductions because he or his spouse has attained age 65 or is blind, large itemized deductions, deductible alimony payments, moving expenses, employee business expenses, retirement contributions, net losses, or tax credits.

**History.**

Code 1981, § 48-7-102.1, enacted by Ga. L. 1985, p. 1411, § 1; Ga. L. 1987, p. 191, § 6.

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**Administrative rules and regulations.**

Net Taxable Income, Individual, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-4-.01 et seq.

## 48-7-103. Quarterly, monthly, and jeopardy returns; tax payments; forms.

(a) Every employer whose tax withheld or required to be withheld is $200.00 or less per month is required to file and remit payment to the department on or before the last day of the month following the end of the quarter.

(b)(1) Except as otherwise provided in subsection (a) of this Code section, every employer whose tax withheld or required to be withheld is $50,000.00 or less in the aggregate for the lookback period is required to file and remit payment to the department on or before the fifteenth day of the following month; provided, however, that the commissioner shall be authorized to promulgate rules and regulations to permit the filing of such returns on a quarterly basis.

(2) Every employer whose tax withheld or required to be withheld exceeds $50,000.00 in the aggregate for the lookback period must remit the withheld taxes pursuant to paragraph (3) of subsection (f) of Code Section 48-2-32 and shall file returns pursuant to paragraph (1) of this subsection.

(3) Notwithstanding any provision of this subsection to the contrary, for employers whose tax withheld or required to be withheld exceeds $100,000.00 for the payday, the taxes must be remitted by the next banking day.

(4) For purposes of this subsection, the lookback period for each calendar year shall be the 12 month period which ended the preceding June 30.

(c) If the commissioner has reason to believe that the collection of the tax required to be paid under this article is in jeopardy for any reason, he or she may require the employer to make a return and pay the required tax at any time.

(d) The commissioner is authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section and shall be authorized to permit the filing of returns or the remitting of payments thereunder on an annual basis if agreed to by the taxpayer.

**History.**

Ga. L. 1960, p. 7, § 5; Ga. L. 1964, p. 451, § 1; Ga. L. 1967, p. 780, §§ 1, 2; Ga. L. 1970, p. 107, § 1; Ga. L. 1972, p. 6, §§ 1, 2; Ga. L. 1973, p. 227, §§ 1, 2; Code 1933, § 91A-3904, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 1178, §§ 1, 2; Ga. L. 1991, p. 739, § 1; Ga. L. 1997, p. 734, § 6; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 665, § 9; Ga. L. 2005, p. 60, § 48/HB 95.

**Editor's notes.**

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(c), not codified by the General Assembly, provides that this Act shall be applicable to all taxable quarters beginning on or after April 1, 2004.

**Law reviews.**

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

**RESEARCH REFERENCES**

**C.J.S.**

85 C.J.S., Taxation, § 1806 et seq.

## 48-7-104. Period adjustments for incorrect withholdings or payments.

(a) **In general.** If for any reason during any period of the calendar year more or less than the correct amount of the tax is withheld or more

or less than the correct amount of the tax is paid to the commissioner, proper adjustment without interest may be made in any subsequent period of the same calendar year. No adjustment under this Code section shall be made with respect to an underpayment for any period after receipt from the commissioner of notice and demand for payment of the amount of the underpayment based upon an assessment. The amount of the underpayment shall be paid in accordance with the notice and demand. No adjustment under this Code section shall be made with respect to an erroneous payment or overpayment for any period after the filing of a claim for refund of the payment.

(b) **Less than correct amount of tax withheld.**

(1) If no tax or less than the correct amount of the tax is deducted from any wage payment and the error is ascertained prior to the filing of the return for the period in which the wages are paid, the employer shall report on the return and pay to the commissioner the correct amount of the tax required to be withheld. If the error is not ascertained until after the filing of the return for the period in which the wages are paid, the undercollection may be corrected by an adjustment on the return for any subsequent period of the same calendar year subject to the limitations noted in subsection (a) of this Code section. The amount of any undercollection adjusted in accordance with this paragraph shall be paid to the commissioner without interest at the time prescribed for payment of the tax for the period in which the adjustment is made.

(2) If no tax or less than the correct amount of the tax is withheld from any wage payment, the employer may correct the error by deducting the amount of the undercollection from any remuneration of the employee under the employer's control after the employer ascertains the error. The deduction may be made even though the remuneration, for any reason, does not constitute wages.

(c) **More than correct amount of tax withheld.**

(1) If in any period more than the correct amount of tax is deducted from any wage payment, the overcollection may be paid to the employee in any period of the same calendar year. If the amount of the overcollection is so paid, the employer shall obtain and keep as part of his records the endorsed canceled check or written receipt of the employee showing the date and amount of the payment.

(2) If any overcollection in any period is paid to and receipted for by the employee prior to the time the return for the period is filed with the commissioner, the amount of the overcollection shall not be included in the return for that period.

(3) Subject to the limitations provided in subsection (a) of this Code section, if an overcollection in any period is paid to and

receipted for by the employee after the return for the period is filed and the tax is paid to the commissioner, the overcollection may be corrected by an adjustment on the return for any subsequent period of the same calendar year.

(4) Every overcollection not paid to and receipted for by the employee as provided in this subsection must be reported and paid to the commissioner with the return for the period in which the overcollection is made.

**History.**
Ga. L. 1960, p. 7, § 6; Code 1933, § 91A-3905, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1991, p. 739, § 2.

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1835 et seq.

## 48-7-105. Statements of wages paid and taxes withheld to employees; time; penalties; enforcement.

(a) Not later than January 31 in each year, each person required to withhold taxes as provided in this article shall furnish each employee for whom taxes have been withheld or to whom remuneration has been paid during the preceding calendar year a statement of wages paid and taxes withheld during the preceding calendar year. This subsection shall also apply with respect to Form 1099s.

(b) If a statement required by subsection (a) of this Code section is not furnished to an employee by such date, the person required to furnish such statement shall be assessed a late penalty in the amount of:

(1) Ten dollars per statement furnished up to 30 calendar days after the date such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $50,000.00;

(2) Twenty dollars per statement furnished at least 31 calendar days, but not more than 210 calendar days after the date such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $100,000.00; or

(3) Fifty dollars per statement furnished 211 calendar days or more after such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $200,000.00.

(c) The commissioner may establish other dates when a person shall be required to furnish to each employee for whom taxes have been

withheld or to whom remuneration has been paid during a prescribed period a statement of wages paid and taxes withheld during such prescribed period.

(d) The commissioner shall provide by rule for the enforcement and implementation of this Code section.

**History.**
Ga. L. 1960, p. 7, § 7; Code 1933, § 91A-3906, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 75; Ga. L. 2016, p. 1, § 4/HB 742; Ga. L. 2019, p. 902, § 2/SB 183.

**Editor's notes.**
Ga. L. 2019, p. 902, § 4/SB 183, provides, in part, that the amendment to this Code section shall be applicable to all tax years beginning on or after January 1, 2019.

## 48-7-106. Annual and final returns; time; return to be filed upon sale of business; withholding unpaid withholding taxes from purchase prices; penalties for violations.

(a) For calendar years beginning on or before December 18, 2015, on or before February 28 of each year for the preceding calendar year or on or before the thirtieth day after the date on which the final payment of wages is made by an employer who has ceased to pay wages, an employer shall file with the commissioner an annual or a final return, as the case may be, on a form prescribed by the commissioner. The employer shall attach to the return copies of the statements required to be furnished under Code Section 48-7-105 for the period covered by the return, provided that in lieu of attaching copies, the commissioner may authorize the reporting of such information by electronic or magnetic media. This subsection shall continue to apply for calendar years beginning after December 18, 2015, with respect to Form 1099s where Georgia withholding occurred and which are required to be filed for any reason other than to report nonemployee compensation.

(b) For calendar years beginning after December 18, 2015, on or before January 31 of each year for the preceding calendar year or on or before the thirtieth day after the date on which the final payment of wages is made by an employer who has ceased to pay wages, an employer shall file with the commissioner an annual or a final return, as the case may be, on a form prescribed by the commissioner. The employer shall attach to the return copies of the statements required to be furnished under Code Section 48-7-105 for the period covered by the return, provided that in lieu of attaching copies, the commissioner may authorize the reporting of such information by electronic or magnetic media. This subsection shall also apply with respect to Form 1099s where Georgia withholding occurred and which are required to be filed to report nonemployee compensation.

(c) If a statement required by subsection (a), (b), or (d) of this Code section is not filed by an employer with the department on or before the

date that it is due to be filed, such an employer shall be assessed a late penalty in the amount of:

(1) Ten dollars per statement filed up to 30 calendar days after the date such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $50,000.00;

(2) Twenty dollars per statement filed at least 31 calendar days, but not more than 210 calendar days after the date such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $100,000.00; or

(3) Fifty dollars per statement filed 211 calendar days or more after such statement is due, provided that the total amount imposed on a person pursuant to this paragraph shall not exceed $200,000.00.

(d) If an employer liable for any withholding tax, interest, or penalty levied pursuant to this chapter sells out his or her business or stock of goods or equipment or quits the business, he or she shall file the final return as required in subsection (a) or (b) of this Code section. The employer's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the withholding taxes, interest, and penalties due and unpaid until the former owner provides a receipt from the commissioner showing that the taxes, interest, and penalties have been paid or a certificate from the commissioner stating that no withholding taxes, interest, or penalties are due.

(e) If the purchaser of a business or stock of goods or equipment fails to withhold the purchase money as required by this Code section, he or she shall be personally liable for the payment of the withholding tax, interest, and penalties accruing and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner.

**History.**

Ga. L. 1960, p. 7, § 8; Code 1933, § 91A-3907, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 21; Ga. L. 1983, p. 1834, § 9; Ga. L. 1988, p. 1380, § 3; Ga. L. 1997, p. 734, § 7; Ga. L. 2016, p. 1, § 5/HB 742; Ga. L. 2019, p. 902, § 3/SB 183.

**Editor's notes.**

Ga. L. 1988, p. 1380, § 8, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, except that the state revenue commissioner, to the extent that he determines administratively necessary, may delay the implementation of any provision of this Act to no later than January 1, 1989."

Ga. L. 2019, p. 902, § 4/SB 183, provides, in part, that the amendment to this Code section shall be applicable to all tax years beginning on or after January 1, 2019.

**Law reviews.**

For article, "Common State Tax Pitfalls

in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B. J. 82 (1985).

**RESEARCH REFERENCES**

**C.J.S.**

### 48-7-107. Filing of returns; persons authorized to sign; verification; furnishing of required forms by commissioner; effect of failure to furnish forms.

(a) Each return shall be signed by or for the employer required to deduct and withhold the tax under this article and shall contain or be verified by a written declaration that the return is made under the penalties for false swearing. The return shall be signed and verified by the employer, by a person having control of the payment of wages for the employer, or by a person authorized to make the return for the employer. The fact that a name appears to be signed to a return shall be prima-facie evidence that the name was actually signed by the person named. The fact that a person appears to have signed for an employer shall be prima-facie evidence that the person was authorized to sign for the employer.

(b) The commissioner, as far as possible, shall furnish employers, regularly and without application, copies of the prescribed forms required to be used under this article. No employer is excused from making a return or furnishing a receipt by the fact that no forms had been furnished to the employer.

**History.**
Ga. L. 1960, p. 7, § 9; Code 1933, § 91A-3908, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1761.

### 48-7-108. Employer's liability.

(a) **In general.** The employer shall be liable for the payment of the tax required to be deducted and withheld under this article whether or not the employer has deducted and withheld the tax as required under this article.

(b) **Withheld tax.** The amount of tax deducted and withheld by an employer from an employee's wages under this article shall be held to be a special fund in trust for the state; and the employer's liability for the tax shall be discharged only by payment of the tax to the commis-

sioner. To the extent that the tax is deducted and withheld, the employer shall not be liable to any other person for the amount of the tax and shall be indemnified against the claims and demands of any person for the payment of any amounts made to the commissioner in accordance with this article.

(c) **Assessment, collection, and payment.** Except as otherwise provided by law, the liability of an employer under subsection (a) of this Code section and the amount of the fund described in subsection (b) of this Code section shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations, including, but not limited to, penalties as are income taxes. In the event any employer is delinquent in payment of the tax imposed by this article, the commissioner may give notice of the amount of the delinquency by registered or certified mail or statutory overnight delivery to all persons having in their possession or under their control any credits or other personal property belonging to the employer and to all persons owing any debts to the employer at the time of receipt by them of the notice. In lieu of registered or certified mail or statutory overnight delivery, the notice may be served and the recipient may acknowledge service thereof by telephonic facsimile transmission or by other means of instantaneous electronic transmission. Thereafter, no person so notified shall transfer or make any other disposition of the credits, other personal property, or debts until the commissioner has consented to a transfer or disposition or until 30 days have elapsed after receipt of the notice. Each person so notified must advise the commissioner, within five days after receipt of the notice, of any and all credits, other personal property, or debts in such person's possession, under such person's control, or owing by such person as provided in this Code section.

(d) **Amount due on face of return.** The filing of any return by an employer in compliance with this article which shows on its face an amount due shall by operation of law constitute an assessment of the amount shown to be due on the return against the employer filing the return as of the date the return is filed. For the purposes of this Code section, an entry on a return showing the date of receipt by the department shall be prima-facie evidence that the return was actually received and filed on the date indicated. If payment is not made either with the return or on or before the due date of the return, whichever is later, the amount shown to be due shall be in default and the commissioner may issue an execution for the collection of the amount due.

(e) **Protest of proposed assessment.** Each protest of a proposed assessment of taxes due under this article shall be filed within ten days of the notice of the proposed assessment unless the commissioner authorizes additional time. The filing of a protest and the filing of a

request for additional time for the filing of a protest shall toll the period of limitations for making an assessment until the protest or request is withdrawn by the employer or denied by the commissioner.

**History.**
Ga. L. 1960, p. 7, § 11; Code 1933, § 91A-3909, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 37; Ga. L. 1996, p. 780, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2022, p. 352, § 48/HB 1428.

**Amendments.**
**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

**Editor's notes.**
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section shall apply with respect to notices delivered on or after July 1, 2000.

**JUDICIAL DECISIONS**

**Tax lien rendered choate.** — For purposes of determining the priority between competing tax liens held by the State of Georgia and the United States, the Georgia statute which provides that a return filed by a taxpayer constitutes an assessment for the unpaid amount as shown on that return rendered Georgia's lien choate, the return sufficiently identifying the lienor, the property, and the amount. In re Alliance Transp., Inc., 47 B.R. 743, 1985 Bankr. LEXIS 6481 (Bankr. N.D. Ga. 1985).

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1853.

## 48-7-109. Effect as to employer's liability of employee's payment of tax not deducted and withheld; effect on employee's income tax liability resulting from employer's failure to withhold tax.

(a) If the employer fails to deduct and withhold the required tax in violation of this article and thereafter the income tax liability of the employee under Code Section 48-7-20, against which the amount, if withheld, would have been a credit, is paid by the employee, the tax required to be deducted and withheld shall not be collected from the employer. This Code section in no way shall relieve the employer from the liability for any penalties or additions to the tax otherwise applicable with respect to such failure.

(b) The income tax liability of an employee shall in no way be affected by the failure of his employer to withhold the tax required under this article.

**History.**
Ga. L. 1960, p. 7, § 14; Code 1933, § 91A-3912, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 39.

**Law reviews.**
For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

### 48-7-109.1. Special accounting for withheld tax by employer who fails to deduct, withhold, collect, account for, or pay over taxes as required by article.

(a) Whenever an employer required to deduct and withhold taxes as required under this article fails, at the time and in the manner prescribed by law or regulation, to deduct and withhold, collect, account truthfully for, or pay over to the commissioner the amount of taxes due as required by this article, upon being notified of the failure by the commissioner by notice served upon him, personally or by registered or certified mail or statutory overnight delivery addressed to his last known address, he shall comply with the requirement of special accounting as set forth in subsection (b) of this Code section.

(b) Beginning at the time of service upon him of the notice provided for in subsection (a) of this Code section, the employer shall deduct and withhold the tax required under this article and, not later than the second banking day after any amount of such tax is deducted and withheld, shall:

(1) Deposit the tax in a special and separate account in any state or national bank designated as a state depository and keep the amount of such taxes in such account until payment over to the commissioner or to the department. Each such account shall be a special fund in trust for the state payable only to the commissioner or the department; or

(2) Purchase a postal money order or other certified or bankable paper for such amount, payable only to the commissioner or the department. The order or paper shall be handled and dealt with under such rules and regulations as the commissioner may prescribe.

(c) Whenever the commissioner is satisfied that the special accounting prescribed under subsections (a) and (b) of this Code section is no longer necessary to effect future compliance with law or regulations, he may cancel the notice requiring compliance with subsection (b) of this Code section at such time and under such conditions as he may specify.

**History.**
Code 1933, § 91A-3911.1, enacted by Ga. L. 1981, p. 1857, § 38; Ga. L. 2000, p. 1589, § 3.

**Editor's notes.**
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section shall apply with respect to notices delivered on or after July 1, 2000.

### 48-7-110. Effect of employer's voluntary compliance with requirements of article as to admission of doing business in state.

The fact of an employer's voluntary compliance with the require-

ments of this article shall not of itself constitute any admission that the employer is doing business within this state for any other purpose, but it shall be taken as conferring jurisdiction upon this state for purposes of collecting amounts withheld under this article.

**History.**
Ga. L. 1960, p. 7, § 2; Code 1933, § 91A-3910, enacted by Ga. L. 1978, p. 309, § 2.

## 48-7-111. Employer's records; contents; period of preservation.

(a) Each employer required to deduct and withhold taxes under this article shall keep accurate records of all remuneration paid to his employees, including, but not limited to, remuneration paid in forms other than cash. The records shall contain the information required by rules issued by the commissioner.

(b) The records required to be kept pursuant to subsection (a) of this Code section and records relating to refunds shall be preserved and maintained for a period of at least four years after the date the tax to which they relate becomes due or the date the tax is paid, whichever is later.

**History.**
Ga. L. 1960, p. 7, § 12; Code 1933, § 91A-3911, enacted by Ga. L. 1978, p. 309, § 2.

**Administrative rules and regulations.**
Electronic Record Keeping and Retention, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Administrative Unit, Organization, Rule 560-1-1-.19.

## 48-7-112. Employee refunds and credits; procedures.

(a) **Credit.** The amount of tax deducted or withheld during any calendar year with respect to an employee shall be allowed as a credit to the employee against his income tax liability under Code Section 48-7-20 for the taxable year beginning in the calendar year.

(b) **Overpayment.**

(1) To the extent that the credit provided in subsection (a) of this Code section together with other credits allowed by law is in excess of the employee's income tax liability for the taxable year as shown on an income tax return filed by the employee for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this Code section. An overpayment shall be credited to the person's estimated income tax liability for the succeeding taxable year unless the person claims a refund for the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment.

Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or from the due date of the final return, whichever is later.

(2) A refund shall be deemed to have been made when the commissioner issues a check for the refund payable to the claimant. The record in the office of the commissioner as to the time of issuance of the refund shall be prima-facie evidence of the time the refund is made. Whenever a check is issued for a refund claimed or shown due on a final return and no separate claim has been filed for the refund, the check shall be sent by first-class mail to the claimant at the address shown on the return in an envelope instructing return of the envelope if not delivered in ten days. The commissioner shall publish in print or electronically the names of claimants whose checks are returned. If a refund check is not claimed in accordance with the commissioner's instructions within 90 days after the publication, the refund claim covered by the check shall be deemed to have been abandoned. Any refund check which is not presented for payment within 180 days after the date of the check shall be void and the refund claim covered by the check shall be deemed to have been abandoned. When any claim for refund has been abandoned, any funds which may have been designated or set aside for its payment shall be returned to the Office of the State Treasurer and the claimant's right to the refund shall be barred. This subsection shall not apply to a claim for refund filed with, but separately from, a final return under general law and shall not affect the period of limitations allowed by general law applicable to a claim for refund when filed separately from a final return.

(c) **Limitation on refund or credit.** No refund or credit shall be allowed unless the employee attaches to and files with his final income tax return a copy of the employer's receipt as provided for in Code Section 48-7-105 for the amount of tax deducted and withheld from his wages for that taxable year. If an employee submits satisfactory proof that his employer deducted and withheld taxes from his wages and that the employer failed or refused to furnish the employee with the prescribed receipt, the proof so furnished may be taken to establish a credit or refund under this Code section.

(d) **Setoffs.** Notwithstanding any other provision of this subsection, a refund or a portion thereof may be transferred to a claimant agency to set off a debt due and owing to the claimant agency as provided in Article 7 of this chapter. When any action pursuant to Article 7 of this chapter is taken, that article shall govern all aspects of right and entitlement to refunds covered thereunder. Funds transferred to claimant agencies shall not bear interest. If there is a final determination

that the taxpayer alleged to be a debtor is entitled to receive all or part of the funds transferred to a claimant agency, the amount to which the taxpayer is entitled shall bear interest at the rate provided in Code Section 48-2-35 beginning 30 days after the final determination.

**History.**
Ga. L. 1960, p. 7, § 15; Ga. L. 1961, p. 53, § 1; Ga. L. 1975, p. 156, § 2; Code 1933, § 91A-3913, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1555, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 777, § 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 863, § 2/SB 296.

**OPINIONS OF THE ATTORNEY GENERAL**

**No recovery of excess withholdings when return not filed within three years.** — Overpayment of income taxes resulting from excess withholdings may not be recovered under normal circumstances by filing a claim for refund or by obtaining credit against liability of different years, when the taxpayer does not file an income tax return until more than three years after the date of payment. 1976 Op. Att'y Gen. No. 76-54.

**Rules and regulations as to refund checks not presented within 180 days.** — In the absence of statutory authority to the contrary, rules and regulations providing for stop payments to be issued after 180 days and the return of funds to the general treasury would be deemed reasonable. 1973 Op. Att'y Gen. No. 73-103.

**RESEARCH REFERENCES**

**ALR.**
Right to interest on tax refund or credit in absence of specific controlling statute, 76 A.L.R. 1012; 112 A.L.R. 1183; 88 A.L.R.2d 823.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

## 48-7-113. Employer refunds and credits; procedure; claim for abatement of overassessment.

If more than the correct amount of tax, penalty, or interest is paid to the commissioner by an employer, the employer may file a claim for refund of the overpayment or may take credit for the overpayment against the tax reported on any quarterly return which the employer subsequently files. A refund or credit of the overpayment, however, shall be made only to the extent that the amount of overpayment exceeds the tax actually withheld and the penalty and interest on the tax. If more than the correct amount of tax, penalty, or interest is assessed and is not paid to the commissioner, the employer against whom the assessment is made may file a claim for abatement of the overassessment.

**History.**
Ga. L. 1960, p. 7, § 16; Code 1933, § 91A-3914, enacted by Ga. L. 1978, p. 309, § 2.

**Law reviews.**
For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

**RESEARCH REFERENCES**

**ALR.**
Right to interest on tax refund or credit in absence of specific controlling statute, 76 A.L.R. 1012; 112 A.L.R. 1183; 88 A.L.R.2d 823.
When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.
Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

## 48-7-114. Estimated income tax due from individuals; returns, exemptions, and limitations; applicability to fiduciaries.

(a) **"Estimated tax" defined.** For purposes of this Code section, the term "estimated tax" means the amount which the individual estimates as the amount of income tax imposed by Code Section 48-7-20 less the amount which the individual estimates as the sum of credits allowable by law against the tax.

(b) **Requirement of estimated tax.** Except as otherwise provided in subsection (d) of this Code section, every resident individual and every taxable nonresident individual shall file his or her estimated tax for the current taxable year if he or she can be reasonably expected to be required to file a Georgia income tax return for the current taxable year and his or her gross income can reasonably be expected to:

(1) Include more than $1,000.00 from sources other than wages as defined in paragraph (10) of Code Section 48-7-100; and

(2) Exceed:

(A) One thousand five hundred dollars if the individual is single or the individual is married and not living with his or her spouse or the individual is married and expects to claim only $1,500.00 of the marital exemption; or

(B) Three thousand dollars if the individual is married and living with his or her spouse and expects to claim the full marital exemption.

(c) **Return as estimated tax.** If on or before January 31 of the succeeding taxable year or, in the case of an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, on or before March 1 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the estimated tax is required and pays in full the amount computed on the return as payable and the estimate is not required to be filed during the taxable

year but is required to be filed on or before January 15, then the return shall be considered as the estimate.

(d) **Exemptions.** This Code section shall not apply to an individual in a given tax year if:

(1) The sum of the allowable credits shown on the individual's income tax return for the tax year exceeds the individual's tax liability shown on the return before the tax liability is reduced by the amount of the allowable credits; and

(2) The individual reasonably expected at the time estimated tax was otherwise required to be filed with respect to the tax year that the conditions of paragraph (1) of this subsection would be met for the tax year.

(e)(1) **Applicability to fiduciaries.** With respect to taxable years beginning on or after January 1, 1988, fiduciaries shall be subject to all requirements of this article in the same manner as individuals, except as provided in paragraph (2) of this subsection.

(2) This Code section shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death in the case of:

(A) The estate of such decedent; or

(B) A testamentary trust as defined in IRC Section 6654(l)(2)(B).

**History.**

Ga. L. 1960, p. 7, § 18; Code 1933, § 91A-3915, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 76; Ga. L. 1980, p. 459, §§ 1, 2; Ga. L. 1987, p. 191, § 7; Ga. L. 1988, p. 1380, § 4; Ga. L. 1988, p. 1389, § 1; Ga. L. 2012, p. 796, § 1/HB 965.

**Code Commission notes.**

Two 1988 Acts amended this Code section and pursuant to Code Section 28-9-5, subsections (a) — (d) are set out as designated by Ga. L. 1988, p. 1380, and subsection (f), as added by Ga. L. 1988, p. 1389, is redesignated as subsection (e).

**Editor's notes.**

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1988, p. 1389, § 2, not codified by the General Assembly, provided that no civil or criminal liability under that Act shall be incurred with respect to any act or failure to act occurring on or before July 1, 1988.

### 48-7-115. Time for filing estimated income tax by individuals.

(a) **In general.** Estimated tax required by Code Section 48-7-114 from an individual not regarded as a farmer or fisherman shall be filed with the commissioner on or before April 15 of the taxable year, except that if the requirements of subsection (b) of Code Section 48-7-114 are first met:

(1) On or after April 1 and before June 1 of the taxable year, the estimated tax shall be filed on or before June 15 of the taxable year;

(2) On or after June 1 and before September 1 of the taxable year, the estimated tax shall be filed on or before September 15 of the taxable year; or

(3) On or after September 1 of the taxable year, the estimated tax shall be filed on or before January 15 of the succeeding year.

(b) **Farmers and fishermen.** Estimated tax required by Code Section 48-7-114 from individuals whose estimated gross income from farming or fishing for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may be filed, in lieu of the time prescribed in subsection (a) of this Code section, at any time on or before January 15 of the succeeding taxable year.

(c) **Short taxable years.** In the application of this Code section to a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this Code section the months which correspond to the months specified in this Code section.

**History.**
Ga. L. 1960, p. 7, § 19; Code 1933, § 91A-3917, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 77; Ga. L. 1988, p. 1380, § 4.

### 48-7-116. Installment payments of estimated tax by individuals.

(a) **In general.** The amount of estimated tax required to be paid by an individual shall be paid as follows:

(1) If the estimate is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid on or before April 15. The second and third installments shall be paid on or before June 15 and September 15, respectively, of the taxable year. The fourth installment shall be paid on January 15 of the succeeding year;

(2) If the estimate is filed after April 15 and not after June 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first

installment shall be paid at the time of the filing of the estimate, the second installment shall be paid on September 15 of the taxable year, and the third installment shall be paid on January 15 of the succeeding year;

(3) If the estimate is filed after June 15 and not after September 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the estimate and the second installment shall be paid on January 15 of the succeeding year;

(4) If the estimate is filed after September 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the estimate; or

(5) If the estimate is filed after the time prescribed in subsection (a) of Code Section 48-7-115 including, but not limited to, cases in which an extension of time for filing has been granted, paragraphs (2), (3), and (4) of this subsection shall not apply, and all installments of estimated tax which would have been payable on or before such time if the estimate had been filed within the time prescribed in subsection (a) of Code Section 48-7-115 shall be paid at the time of the filing. The remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the estimate had been so filed.

(b) **Farmers and fishermen.** If an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, files estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding year, the estimated tax shall be paid in full at the time of the filing.

(c) **Fiscal years.** In the application of this Code section to a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this Code section the months which correspond to the months specified in this Code section.

(d) **Installments paid in advance.** At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

**History.** Ga. L. 1960, p. 7, § 20; Code 1933, § 91A-3919, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 78; Ga. L. 1988, p. 1380, § 4.

## 48-7-117. Estimated income tax by corporations.

(a) **"Estimated tax" defined.** For purposes of this Code section, the term "estimated tax" means the amount which the corporation estimates as the amount of income tax imposed by Code Section 48-7-21 less the amount which the corporation estimates as the sum of credits allowable by law against the tax.

(b) **In general.** Every domestic and foreign corporation subject to taxation under Code Section 48-7-21 shall pay estimated tax for the taxable year if its net income for the taxable year as defined in Code Section 48-7-31 can reasonably be expected to exceed $25,000.00.

**History.**
Ga. L. 1963, p. 18, § 1; Code 1933, § 91A-3916, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1380, § 4.

**RESEARCH REFERENCES**

**ALR.**
Income of subsidiary as taxable to it or to parent corporation, 10 A.L.R.2d 576.

## 48-7-118. [Reserved] Time for filing declarations of estimated income tax by corporations.

**History.**
Repealed by Ga. L. 1988, p. 1380, § 4, effective April 11, 1988.
**Editor's notes.**
Ga. L. 1988, p. 1380, § 4 repealed and reserved this Code section, effective April 11, 1988.

## 48-7-119. Installment payments of estimated tax by corporations.

If the requirements of Code Section 48-7-117 are first met as shown in the left-hand column of the following table, then the estimated tax shall be due as shown in the remaining columns:

| | The following percentages of the estimated tax shall be paid on the fifteenth day of the: | | | |
|---|---|---|---|---|
| | fourth month of the taxable year | sixth month of the taxable year | ninth month of the taxable year | twelfth month of the taxable year |
| Before the first day of the fourth month of the taxable year | 25 | 25 | 25 | 25 |
| After the last day of the third month and before the first day of the sixth month of the taxable year | | 33 1/3 | 33 1/3 | 33 1/3 |
| After the last day of the fifth month and before the first day of the ninth month of the taxable year | | | 50 | 50 |
| After the last day of the eighth month and before the first day of the twelfth month of the taxable year | | | | 100 |

**History.**
Ga. L. 1963, p. 18, § 3; Code 1933, § 91A-3920, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1380, § 4; Ga. L. 1989, p. 1110, § 1.
**Editor's notes.**
Ga. L. 1989, p. 1110, § 2, not codified by the General Assembly, provides that the amendments to this Code section by the Act shall apply to taxable years beginning on or after January 1 of the calendar year in which the Act takes effect.

### 48-7-120. Failure by taxpayer to pay estimated income tax.

(a) **Addition to the tax.** In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d) of this Code section, an amount computed at the rate of 9 percent per annum upon the amount of the underpayment, determined under subsection (b) of this Code section, for the period of the underpayment, determined

under subsection (c) of this Code section, shall be added to the tax under Code Section 48-7-21 for the taxable year.

(b) **Amount of underpayment.** For purposes of subsection (a) of this Code section, the amount of the underpayment shall be the lesser of the excess of paragraph (1) or paragraph (2) of this subsection over paragraph (3) of this subsection when those paragraphs are as follows:

(1) The amount of the installment required to be paid if the estimated tax were equal to 70 percent (66 2/3 percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing) of the tax shown on the return for the taxable year or, if no return was filed, 70 percent (66 2/3 percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing) of the tax for the year;

(2) The amount of the installment required to be paid if the estimated tax were equal to 100 percent of the tax shown on the return for the preceding taxable year, as long as the preceding taxable year was a taxable year of 12 months, and a tax return was filed for such preceding taxable year; and

(3) Any amount of the installment paid on or before the last date prescribed for payment.

(c) **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year; or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. For the purposes of this paragraph, a payment of estimated tax on the installment date or, in the case of a corporation, on the fifteenth day of the first month of the succeeding taxable year shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under paragraph (1) of subsection (b) of this Code section for the installment date or, in the case of a corporation, for the fifteenth day of the first month of the succeeding taxable year.

(d) **Exception.** Notwithstanding subsections (a) through (c) of this Code section, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before the last date prescribed for the payment if the estimated tax were the least of the following:

(1) The tax shown on the return for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and the preceding year was a taxable year of 12 months;

(2) An amount equal to the tax computed at the rates applicable to the taxable year on the basis of the taxpayer's status with respect to Code Section 48-7-26 for the taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and under the law applicable to, the preceding taxable year; or

(3) An amount equal to 70 percent, or 66 2/3 percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this paragraph, the taxable income shall be placed on an annualized basis by:

(A) Multiplying by 12 or, in the case of a taxable year of less than 12 months, by the number of months in the taxable year the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid;

(B) Dividing the resulting amount by the number of months in the taxable year ending before the month in which the installment date falls; and

(C) Deducting from the amount the deductions for any personal exemptions allowable for the taxable year, such personal exemptions to be determined as of the last date prescribed for payment of the installment.

(4) In the case of an individual, an amount equal to 90 percent of the tax computed at the rates applicable to the taxable year on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) **Application to individual.** For purposes of applying this Code section in the case of an individual:

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under subsection (a) of Code Section 48-7-112; and

(2) The amount of the credit allowed under subsection (a) of Code Section 48-7-112 for the taxable year shall be deemed a payment of estimated tax, and an equal part of the amount shall be deemed paid on each installment date as determined under Code Section 48-7-116

for the taxable year. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts so withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld.

(f) **"Tax" defined.** For purposes of subsections (b) and (d) of this Code section, the term "tax" means the tax imposed by Code Section 48-7-20 reduced by the credits against the tax allowed by law other than the credit against tax provided by subsection (a) of Code Section 48-7-112, relating to tax withheld on wages.

**History.**

Ga. L. 1960, p. 7, § 22; Ga. L. 1963, p. 18, § 5; Ga. L. 1975, p. 156, §§ 3, 4; Code 1933, § 91A-3921, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 79, 80; Ga. L. 2003, p. 428, § 1.

**Editor's notes.**

Ga. L. 2003, p. 428, § 2, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2003."

**OPINIONS OF THE ATTORNEY GENERAL**

**Basis for computation of addition to tax.** — When a taxpayer has filed a return, the addition to the tax imposed by this section should be computed on the basis of the tax shown on the taxpayer's return and not with reference to any deficiency assessed against the taxpayer. 1967 Op. Att'y Gen. No. 67-401.

## 48-7-121. Credit of estimated tax payment; credit or refund of estimated tax overpayment; rate of interest on refund; time.

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

(1) "Final return" means the original income tax return filed by the taxpayer for the tax year or an amended return filed on or before the due date of the return without extensions. Such term does not include any other amended income tax return for the period or an estimated tax return.

(2) "Income tax liability for a taxable year" means the taxpayer's income tax liability as calculated under Code Section 48-7-20 or 48-7-21 for the taxable year reduced (but not below zero) by all nonrefundable credits to which the taxpayer is entitled. Nonrefundable credits include any credit that is limited by the taxpayer's income tax liability or some percentage thereof.

(3) "Other credits allowed by law" means only those income tax credits that are refundable, such as the credit for income tax withholding and the credit allowed by Code Section 48-7-28.1. Refundable credits do not include any credit that is limited by the taxpayer's income tax liability or some percentage thereof.

(b) The amount of estimated tax paid under this article for any

taxable year shall be allowed as a credit to the taxpayer against the taxpayer's income tax liability under Code Section 48-7-20 or 48-7-21 for the taxable year.

(c) To the extent that the estimated tax credit, together with other credits allowed by law, is in excess of the taxpayer's income tax liability for a taxable year as shown on a final return filed by the taxpayer for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this subsection. The overpayment shall be credited to the taxpayer's estimated income tax liability for the succeeding taxable year unless the taxpayer claims a refund for the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment. Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or 90 days from the due date of the final return, whichever is later.

**History.**
Ga. L. 1960, p. 7, § 23; Ga. L. 1963, p. 18, § 6; Ga. L. 1975, p. 156, § 5; Code 1933, § 91A-3922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 777, § 3; Ga. L. 2005, p. 159, § 21/HB 488.

**Editor's notes.**
Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, §§ 426 et seq., 490 et seq.
**C.J.S.**
85 C.J.S., Taxation, § 1792.
**ALR.**
Retrospective operation of statute enlarging or shortening period of claim of tax refund, 163 A.L.R. 778.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

## 48-7-122. Nondeductibility to employer of tax deducted and withheld.

The tax deducted and withheld under this article shall not be allowed as a deduction to the employer.

**History.**
Ga. L. 1960, p. 7, § 28; Code 1933, § 91A-3924, enacted by Ga. L. 1978, p. 309, § 4; Ga. L. 1988, p. 1380, § 5.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 397 et seq.

### 48-7-123. Disregard of fractional parts of dollar in allowance of credits or refunds or in assessment or collection of deficiencies or underpayments.

The commissioner may disregard a fractional part of a dollar in the allowance of any amount as a credit or refund or in the assessment or collection of any amount as a deficiency or underpayment.

**History.** Ga. L. 1960, p. 7, § 24; Code 1933, § 91A-3927, enacted by Ga. L. 1978, p. 309, § 2.

### 48-7-124. Reciprocal arrangements for relief of taxpayers from operation of income tax payment laws of more than one jurisdiction.

In the administration and enforcement of this article with respect to a taxpayer whose income may be subject to the current income tax payment laws of two or more tax jurisdictions, including this state, the commissioner may make reciprocal arrangements with the tax authorities of the other jurisdictions for the relief of the taxpayer from the multiple burden imposed by the operation of several current income tax payment laws.

**History.** Ga. L. 1960, p. 7, § 29; Code 1933, § 91A-3925, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**ALR.**
Reciprocity provision of income tax law, 152 A.L.R. 748.

### 48-7-125. Application of article to short taxable years.

The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner.

**History.** Ga. L. 1960, p. 7, § 20; Code 1933, § 91A-3923, enacted by Ga. L. 1978, p. 309, § 2.

### 48-7-126. Assessable penalties and interest.

(a) **Assessable as tax.** The liabilities specified in this Code section shall be paid upon notice and demand by the commissioner and shall be assessed and collected in the same manner as are income taxes. Except as otherwise provided by law, any reference to "tax" imposed under this article shall be deemed also to refer to the liabilities specified in this Code section.

(b) **Failure to withhold tax.** Any person required to deduct and withhold the tax imposed by Code Section 48-7-101 who, with respect to each wage payment to each employee, fails to deduct and withhold the

required tax shall pay a penalty of $10.00 unless it is shown that the failure is due to reasonable cause and not to willful neglect. The penalty shall not exceed $10.00 quarterly for each employee with respect to whose wages the failure occurred.

(c) **Failure to file employer return or pay tax.** If an employer fails to file within the prescribed time a return required under this article or fails to pay when due the tax required under this article, or both, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be assessed a penalty of $25.00 against any employer for each such failure plus 5 percent of the amount of the tax if the failure is for not more than one month and an additional 5 percent for each additional month or fraction of a month during which the failure continues. The penalty shall not exceed $25.00 plus 25 percent in the aggregate of the tax and in no event shall the penalty be less than $25.00. If any check or money order in payment of any amount is not paid when duly presented for payment, it shall constitute a failure to pay under this subsection.

(d) **Fraudulent withholding receipt.** Any person required to furnish an employee with a withholding receipt required by Code Section 48-7-105 who willfully furnishes a false or fraudulent receipt shall for each such receipt be subject to a penalty of $50.00.

(e) **Interest.** If the tax imposed by this article on employers is not paid on the date prescribed for payment in Code Section 48-7-103 and is not adjusted as authorized in Code Section 48-7-104, interest on the unpaid amount at the rate specified in Code Section 48-2-40 shall be paid for the period from the due date of the tax, irrespective of any extension of time for payment, until the date of payment. The interest shall be assessed and collected as part of the tax.

(f) **Failure of corporation to pay estimated tax.** If a corporation fails to timely pay estimated tax, a penalty shall be assessed against the corporation in an amount equal to 5 percent of the Georgia income tax imposed on the corporation for the taxable year.

**History.**

Ga. L. 1960, p. 7, § 30; Ga. L. 1963, p. 18, § 7; Ga. L. 1975, p. 156, § 6; Code 1933, § 91A-3926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 23; Ga. L. 1988, p. 1380, § 6; Ga. L. 1991, p. 739, § 3.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

71 Am. Jur. 2d, State and Local Taxation, § 683 et seq.

**C.J.S.**

85 C.J.S., Taxation, §§ 1792, 1817, 1828 et seq.

**ALR.**

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

**48-7-127. Other violations of article; penalties.**

(a) **Willful failure to withhold tax.**

(1) It shall be unlawful for any person who is required to deduct and withhold the tax imposed by Code Section 48-7-101 willfully to fail, in making payments of wages for any payroll period, to deduct and withhold the required tax from the wages paid to any employee.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such payroll period.

(b) **Willful failure to pay over withheld tax.**

(1) It shall be unlawful for any person who has deducted and withheld any amount from an employee's wages as a tax required under Code Section 48-7-101 willfully to fail, within the prescribed time, to pay the amount over to the commissioner as required under Code Section 48-7-103.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(3) For purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of the wages, shall not negate willfulness.

(c) **Willful failure to file return or pay estimated tax.**

(1) It shall be unlawful for any person who is required under this article or regulations pursuant to this article to file any return of any tax or pay estimated tax or to keep any record, willfully to fail to file the return or pay the tax or to keep the records at the time or times required by law or regulation.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(d) **False exemption certificate or failure to supply information.**

(1) It shall be unlawful for any individual who is required to supply information to his employer under Code Section 48-7-102 willfully to supply false or fraudulent information or willfully to fail to supply information under Code Section 48-7-102 which would require an increase in the tax to be withheld under Code Section 48-7-102.

(2) In lieu of any penalty otherwise provided, any individual who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(e) **False withholding receipts or failure to furnish receipts.**

(1) It shall be unlawful for any person who is required to furnish to an employee the receipt prescribed in Code Section 48-7-105 willfully to furnish a false or fraudulent receipt or willfully to fail to furnish the receipt at the time, in the manner, and showing the information required by law or regulation.

(2) In lieu of any other penalty provided by law, except the penalty provided in subsection (d) of Code Section 48-7-126, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such receipt or failure.

(f) **Attempts to evade or defeat tax.**

(1) It shall be unlawful for any person willfully to attempt in any manner to evade or defeat any tax imposed under this article or the payment of any tax imposed under this article.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(g) **Willful failure to pay corporate estimated tax.**

(1) It shall be unlawful for any officer, director, or employee of a corporation required under this article or regulations pursuant to this article to file estimated tax willfully to be responsible for the failure of the corporation to pay any installment of estimated tax due.

(2) In addition to any other penalties provided by law, any individual who violates any provision of paragraph (1) of this subsection shall be guilty of a misdemeanor for each such failure.

(h) **Violation of notice of delinquency.**

(1) It shall be unlawful for any person to violate the provisions of subsection (c) of Code Section 48-7-108 with respect to notice of delinquency.

(2) Any person who violates paragraph (1) of this subsection with respect to notice of delinquency shall be guilty of a misdemeanor.

(i) **Failure to comply with notice of special accounting.**

(1) It shall be unlawful for any person to fail to comply with a notice of the commissioner requiring compliance with subsection (b) of Code Section 48-7-109.1, providing for special accounting under the current income tax payment law.

(2) In addition to other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor unless there was a reasonable doubt as to whether the law required

collection of the tax or as to who was required by law to collect the tax or the failure to comply was due to circumstances beyond his control.

(3) For the purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of such wages, shall not be considered to be circumstances beyond the control of a person.

**History.**
Ga. L. 1960, p. 7, § 31; Ga. L. 1963, p. 18, § 8; Code 1933, § 91A-9933, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 10; Ga. L. 1988, p. 1380, § 7; Ga. L. 2004, p. 416, § 1; Ga. L. 2004, p. 487, § 1.

**Editor's notes.**
Ga. L. 2004, p. 487, § 3, not codified by the General Assembly, deleted former subsection (j), effective July 1, 2014.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 683 et seq.
**C.J.S.**
37 C.J.S., Fraud, §§ 12 et seq., 115, 123 et seq. 85 C.J.S., Taxation, §§ 1763 et seq., 1852 et seq., 2062 et seq.

## 48-7-128. Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents.

(a) As used in this Code section, the term "nonresident of Georgia" shall include individuals, trusts, partnerships, corporations, and unincorporated organizations. Any seller or transferor who meets all of the following conditions and who provides the buyer or transferee with an affidavit signed under oath swearing or affirming that the following conditions are met will be deemed a resident for purposes of this Code section:

(1) The seller or transferor has filed Georgia income tax returns or appropriate extensions have been received for the two income tax years immediately preceding the year of sale;

(2) The seller or transferor is in business in Georgia and will continue substantially the same business in Georgia after the sale or the seller or transferor has real property remaining in the state at the time of closing of equal or greater value than the withholding tax liability as measured by the 100 percent property tax assessment of such remaining property;

(3) The seller or transferor will report the sale on a Georgia income tax return for the current year and file it by its due date; and

(4) If the seller or transferor is a corporation or limited partnership, it is registered to do business in Georgia.

(b)(1) Except as otherwise provided in this Code section, in the case of

any sale or transfer of real property and related tangible personal property located in Georgia by a nonresident of Georgia, the buyer or transferee shall be required to withhold and remit to the commissioner on forms provided by the commissioner a withholding tax equal to 3 percent of the purchase price or consideration paid for the sale or transfer; provided, however, that, if the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor. Any buyer or transferee who fails to withhold such amount shall be personally liable for the amount of such tax.

(2) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(3) The person or entity identified as the seller on the settlement statement shall be considered the seller for all purposes regarding this Code section, including, but not limited to, executing and delivering to the buyer or transferee all forms or other documents incident to determining the appropriate amount of tax to be withheld or the appropriate amount exempt from withholding requirements.

(c) If the seller or transferor determines that the amount required to be withheld pursuant to paragraph (1) of subsection (b) of this Code section will result in excess withholding on any gain required to be recognized from the sale, the seller or transferor may provide the buyer or transferee with an affidavit signed under oath swearing or affirming to the amount of the gain required to be recognized from the sale, and the buyer or transferee shall withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section. If, however, the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor.

(d) Subsection (b) of this Code section shall not apply where:

(1) The real property being sold or transferred is a principal residence of the seller or transferor within the meaning of Section 1034 of the Internal Revenue Code;

(2) The seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of

Georgia, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or a private mortgage insurance company.

The commissioner may by regulation set a purchase price amount below which no withholding is required.

(e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter "S" corporation or other unincorporated organization which certifies to the buyer or transferee that a composite return is being filed on behalf of the nonresident partners, shareholders, or members and that the partnership, Subchapter "S" corporation, or unincorporated organization remits the tax on the gain on behalf of the nonresident partners, shareholders, or members, the buyer or transferee shall not be required to withhold as provided in this Code section. Any nonresident partner, shareholder, or member who falsely certifies that a composite return is being filed on behalf of such partner, shareholder, or member shall be liable for a penalty in the amount of $500.00 or 10 percent of the amount required to be withheld, whichever is greater.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(f) Every buyer or transferee of real property located in Georgia who is required to deduct and withhold the withholding tax imposed by subsection (b) of this Code section shall file the required return and remit payment to the department on or before the last day of the calendar month following the calendar month within which the sale or transfer giving rise to the withholding tax occurred.

**History.**

Code 1981, § 48-7-128, enacted by Ga. L. 1993, p. 768, § 2; Ga. L. 2011, p. 674, § 2-1/HB 117; Ga. L. 2024, p. 1052, § 5(46)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(1).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1993, the Code Section 48-7-128 enacted by Ga. L. 1993, p. 597, § 3, was redesignated as Code Section 48-7-129, since Ga. L. 1993, p. 768, § 2, also enacted a Code Section 48-7-128.

**Editor's notes.**

Ga. L. 1993, p. 768, § 3, not codified by the General Assembly, makes this Code section applicable with respect to any sale or transfer occurring on or after January 1, 1994.

**Administrative rules and regulations.**

Returns and Collections, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-8-.01 et seq.

**Law reviews.**

For note on the 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 218 (1993).

## 48-7-129. Withholding tax on distributions to nonresident members of partnerships, Subchapter "S" corporations, and limited liability companies.

(a)(1) Any partnership, Subchapter "S" corporation, or limited liability company which owns property or does business within this state shall be subject to a withholding tax. Such tax shall be withheld from a nonresident member's share of taxable income sourced to this state, whether distributed or not, except as provided in subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term "taxable income sourced to this state" means the entity's income allocated or apportioned to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

(2) The amount of tax to be withheld for each nonresident member shall be determined by multiplying the nonresident member's share of the taxable income sourced to this state by a rate of 4 percent. To the extent that the partnership, Subchapter "S" corporation, or limited liability company remits withholding tax during the course of the tax year which exceeds the Georgia income tax liability of a nonresident member, that member shall be entitled to a refund of the excess withholding at the end of the taxable year.

(3) Any partnership, Subchapter "S" corporation, or limited liability company which fails to withhold and pay over to the commissioner any amount required to be withheld under this Code section may be liable for a penalty equal to 25 percent of the amount not withheld and paid over. Any penalty imposed under this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding taxes imposed by this article.

(4) The partnership, Subchapter "S" corporation, or limited liability company and its members shall be jointly and severally liable for the withholding tax liability imposed under this subsection and shall be assessed accordingly.

(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter "S" corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term "composite return" means a return filed by a partnership, Subchapter "S" corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.

(2) Where a partnership, Subchapter "S" corporation, or limited

liability company chooses to file a composite return and meets all the requirements of filing such composite return, such partnership, Subchapter "S" corporation, or limited liability company shall be exempt from the withholding requirements imposed under subsection (a) of this Code section.

(3) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(c)(1) If a partnership, Subchapter "S" corporation, or limited liability company fails to remit withholding for a nonresident member and the commissioner determines that such failure is due to a false representation that the member is a resident of Georgia, there shall be imposed in addition to the tax a penalty of the greater of $250.00 or 5 percent of the amount which should have been withheld. The partnership, Subchapter "S" corporation, or limited liability company and the nonresident member shall be jointly and severally liable for any such penalty imposed.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as withholding tax imposed by this article.

(d)(1) Every partnership, Subchapter "S" corporation, or limited liability company which is required to deduct and withhold the withholding tax imposed by subsection (a) of this Code section shall remit such tax and file the required return on a form approved by the commissioner. Taxes withheld on a nonresident member's share of the taxable income sourced to this state shall be due on or before the due date for filing the income tax return for the partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(2) Every partnership, Subchapter "S" corporation, or limited liability company required to deduct and withhold tax under this article shall furnish a written statement or form approved by the commissioner to each nonresident member. Such statement or form shall include the name and federal tax identification number of the partnership, Subchapter "S" corporation, or limited liability company, the member's name and federal tax identification number, the total amount of the nonresident member's share of the taxable income sourced to this state during the taxable year, the total amount of tax deducted and withheld with respect to such member during the year, and such other information as the commissioner shall prescribe. Such

statement or form shall be furnished to the nonresident member and filed in duplicate with the commissioner on or before the earlier of the date the income tax return is filed or the due date for filing the income tax return of such partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(3) Any partnership, Subchapter "S" corporation, or limited liability company required to furnish a nonresident member with the written statement required by this subsection which furnishes a false or fraudulent statement or which fails to furnish the statement shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter "S" corporation, or limited liability company shall not be required to deduct and withhold tax for a nonresident member if:

(A) A composite return is filed on behalf of nonresident members pursuant to the requirements of filing such composite returns as set by the commissioner;

(B) The aggregate amount of a nonresident member's share of the taxable income sourced to this state is less than $1,000.00;

(C) A federally chartered Subchapter "S" corporation fails to meet the requirements of subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit corporate income tax;

(D) Compliance will cause undue hardship on the partnership, Subchapter "S" corporation, or limited liability company, provided that no partnership, Subchapter "S" corporation, or limited liability company shall be exempt from complying with the withholding requirements imposed under subsection (a) of this Code section unless the commissioner approves in writing a written petition for exemption from the withholding requirements based on undue hardship. The commissioner may prescribe the form and contents of such a petition and specify standards for when a partnership, Subchapter "S" corporation, or limited liability company shall not be required to comply with the withholding requirements due to undue hardship;

(E) The partnership is a publicly traded partnership as defined in Section 7704 of the Internal Revenue Code of 1986; or

(F) The member meets one of the exceptions as set forth in the rules and regulations promulgated by the commissioner.

(2) Where a nonresident member's share of the taxable income sourced to this state is subject to withholding under other provisions of Georgia law, such amount shall not be subject to withholding under subsection (a) of this Code section.

(e.1) This Code section shall not apply to electing Subchapter "S" corporations as defined in paragraph (7) of subsection (b) of Code Section 48-7-21 and electing partnerships as defined in paragraph (1) of subsection (b) of Code Section 48-7-23.

(f) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section.

**History.**

Code 1981, § 48-7-129, enacted by Ga. L. 1993, p. 597, § 3; Ga. L. 1997, p. 450, § 3; Ga. L. 2008, p. 898, § 12/HB 1151; Ga. L. 2012, p. 796, § 2/HB 965; Ga. L. 2021, p. 277, § 6/HB 149.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 1993, the Code Section 48-7-128 enacted by Ga. L. 1993, p. 597, § 3, was redesignated as Code Section 48-7-129, since Ga. L. 1993, p. 768, § 2, also enacted a Code Section 48-7-128.

**Editor's notes.**

Ga. L. 1993, p. 597, § 4, not codified by the General Assembly, makes this Code section applicable with respect to any distribution paid or credited after January 1, 1994.

Ga. L. 1997, p. 450, § 4, not codified by the General Assembly, makes the 1997 amendment to this Code section applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2012, p. 796, § 3/HB 965, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2012.

Ga. L. 2021, p. 277, § 7/HB 149, not codified by the General Assembly, provides, in part, that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2022."

**Law reviews.**

For note on the 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 218 (1993).

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997).

For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B. J. 24 (2004).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

**RESEARCH REFERENCES**

**ALR.**

State income tax treatment of S corporations and their shareholders, 118 A.L.R.5th 597.

## ARTICLE 6

## LOCAL INCOME TAXES

**Editor's notes.**

Ga. L. 2010, p. 156, § 1/HB 984, effective May 20, 2010, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 48-7-140 through 48-7-149, relating to local income taxes, and was based on Code 1933, §§ 91A-4001—91A-4010, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1974, p. 506, §§ 1-5, 7-9, 11; Ga. L. 1995, p. 714, § 3.

Ga. L. 2010, p. 156, § 3(b)/HB 984, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of this Act." This Act became effective May 20, 2010.

Ga. L. 2010, p. 156, § 3(c)/HB 984, not codified by the General Assembly, provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective May 20, 2010.

### 48-7-140. Prohibition of local income taxes.

On or after May 20, 2010, there shall be no local income taxes whatsoever levied or collected by any political subdivision of this state, and no local income tax returns shall be required.

**History.**

Code 1981, § 48-7-140, enacted by Ga. L. 2010, p. 156, § 2/HB 984.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2010, "On or after May 20, 2010," was substituted for "On or after the effective date of this Code section" at the beginning of this Code section.

**RESEARCH REFERENCES**

**ALR.**

Validity of municipal ordinance imposing income tax or license upon nonresident in taxing jurisdiction (commuter tax), 48 A.L.R.3d 343.

## ARTICLE 7

## SETOFF DEBT COLLECTION

### 48-7-160. Purposes.

The purpose of this article is to establish a policy and to provide a system whereby all claimant agencies and courts of this state in conjunction with the department shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or courts and who qualify for refunds from the department. It is also the purpose of this article to establish procedures for setting off against any such refund the sum of any debt owed to the claimant agencies or

courts. It is the intent of the General Assembly that this article be liberally construed to effectuate these purposes.

**History.**
Code 1933, § 91A-4101, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

**OPINIONS OF THE ATTORNEY GENERAL**

**Statute of limitations** for recovering overpayments of unemployment benefits pursuant to O.C.G.A. § 34-8-159, either by an independent action or by intercepting state income tax refunds pursuant to O.C.G.A. § 48-7-160, is four years, and the statute begins to run from the date the money is due. 1989 Op. Att'y Gen. 89-36.

## 48-7-161. Definitions.

As used in this article, the term:

(.1) "Administrative Office of the Courts" means the entity created pursuant to Code Section 15-5-22.

(1) "Claimant agency" means and includes, in the order of priority set forth below:

(A) The Department of Human Services and the Department of Behavioral Health and Developmental Disabilities with respect to collection of debts under Article 1 of Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) Reserved;

(D) The Georgia Board of Health Care Workforce with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Community Supervision with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the

Department of Corrections or the Department of Community Supervision;

(G) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult;

(H) The Georgia Lottery Corporation with respect to proceeds arising under Code Section 50-27-21; and

(I) The State Road and Tollway Authority with respect to collection of amounts determined by the Office of State Administrative Hearings as due and payable for violations of subsection (c) of Code Section 32-10-64.

(2) "Court" means all trial courts in this state, including but not limited to the superior, state, juvenile, magistrate, probate, and municipal courts, whether called mayor's courts, recorder's courts, police courts, civil courts, or traffic courts, and miscellaneous and special courts.

(3) "Debt" means:

(A) Any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum, any sum which is due and owing any person and is enforceable by the Department of Human Services pursuant to subsection (b) of Code Section 19-11-8, or any sum of restitution or reparation due pursuant to a sentence imposed on a person convicted of a crime and sentenced to restitution or reparation and probation; or

(B) Any liquidated sum that constitutes any and all court costs, surcharges, and fines for which there is an outstanding court judgment.

(4) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency or court, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(5) "Refund" means the Georgia income tax refund which the department determines to be due any individual taxpayer.

**History.**

Code 1933, § 91A-4102, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 10; Ga. L. 1986, p. 825, § 1; Ga. L. 1988, p. 937, § 1; Ga. L. 1991, p. 139, § 2; Ga. L. 2000, p. 136, § 48; Ga. L. 2004, p. 148, § 1; Ga. L. 2005, p. 88, § 7/HB 172; Ga. L. 2009, p. 453, § 2-21/HB 228; Ga. L. 2011, p. 459, § 5/HB 509; Ga. L. 2014, p. 56, § 1/HB 1000; Ga. L. 2015, p. 422, § 5-99/HB 310; Ga. L. 2015, p. 909, § 1/HB 275; Ga. L. 2018, p. 152, § 2/HB 150; Ga.

L. 2019, p. 224, § 2/SB 207; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2024, p. 120, § 2-41/HB 985, effective June 30, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "means the entity" for "means entity" in paragraph (.1).

**The 2024 amendment,** effective June 30, 2024, substituted "Reserved" for "The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20" in subparagraph (1)(C).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2015, "and" was deleted at the end of subparagraph (1)(F).

**Editor's notes.**

Ga. L. 2005, p. 88, § 1/HB 172, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Crime Victims Restitution Act of 2005.'"

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

**Law reviews.**

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 231 (2015).

## 48-7-162. Collection remedy additional.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law.

**History.**

Code 1933, § 91A-4103, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

## 48-7-162.1. Submission of debts through Administrative Office of the Courts.

(a) Submission of debts through the Administrative Office of the Courts shall be the sole manner through which debts owed to courts may be submitted to the department for collection under this article. The Administrative Office of the Courts shall be authorized to enter into written contracts for the performance of administrative functions and duties under this article by one or more administrative entities consisting of nonprofit Georgia corporations, except for a public utility, in existence on or before January 1, 2012, whose income is exempt from federal income taxation pursuant to Section 115 of the Internal Revenue Code of 1986, or third party vendors approved by the department.

(b) Any claim submitted by a court through the Administrative Office of the Courts shall be subordinate to all claims submitted by claimant agencies.

**History.**

Code 1981, § 48-7-162.1, enacted by Ga. L. 2014, p. 56, § 1/HB 1000.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2016, "Internal Revenue" was substituted

for "Internet Revenue" in the second sentence of subsection (a).

### 48-7-163. Collection of debts through setoff; minimum debt; procedure; exceptions; request for setoff; administrative collection assistance fee.

(a) A claimant agency or the Administrative Office of the Courts may submit any debt or debts when each such debt is in excess of $25.00 to the department for collection through setoff under the procedures established by this article, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon request of a claimant agency or the Administrative Office of the Courts, the department shall set off any refund against the debt certified by the claimant agency or the Administrative Office of the Courts as provided in this article.

(c) An administrative collection assistance fee shall be imposed on each such debt submitted by the Administrative Office of the Courts to the department to recover the costs incurred by the Administrative Office of the Courts and the department in collecting debts under this article. The fee shall be in addition to the debt to be set off and shall be fixed such that the proceeds of the fee shall not exceed the total direct and indirect costs to the Administrative Office of the Courts and the department for administering such debt setoff collection. In no event shall the amount of such fee exceed $20.00 per debt. The Administrative Office of the Courts shall reimburse the department from the proceeds of such fee based upon the actual costs incurred by the department. Such proceeds shall be retained and expended pursuant to Code Section 45-12-92.1.

**History.** Code 1933, § 91A-4104, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2004, p. 148, § 2; Ga. L. 2014, p. 56, § 1/HB 1000.

### 48-7-164. Procedure for setoffs and notification of taxpayers; certification of debts; transfer of refunds to claimant agency; notice to taxpayers; transferred funds in escrow account; costs borne by claimant agency.

(a)(1) Within a time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off, including but not limited to such debtor's social security number, and shall certify the amount of the debt or debts owed by each debtor.

(2) The Administrative Office of the Courts shall supply the information necessary to identify each debtor whose refund is sought to be set off, including but not limited to such debtor's social security number, and shall certify the amount of the debt or debts owed by each debtor.

(3) The department may rely upon the certification by a claimant agency or the Administrative Office of the Courts that the debt is valid and owed by the debtor and that such debt may be validly collected by the department under this article. No employee or agent of the department shall be liable to any person for collecting any such debt that was not valid and owed by the debtor.

(b)(1) If a debtor identified by a claimant agency or the Administrative Office of the Courts is determined by the department to be entitled to a refund of at least $25.00, the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency or the Administrative Office of the Courts. When the refund owed exceeds the claimed debt and administrative collection assistance fee, the department shall send the excess amount to the debtor within a reasonable time after the excess is determined.

(2) When the amount of the setoff available for claims is insufficient for the combined total of the claims filed by courts, distribution of the available setoff funds shall be made in the order of the date each court claim is received by the Administrative Office of the Courts. Such claim shall remain active until sufficient additional setoff funds become available to set off the remainder of the debt or until the claims themselves expire by law.

(3) If the department is able to collect only part of a debt through setoff under this article, the administrative collection assistance fees shall have priority over the remainder of the debt.

(c) At the time of the transfer of funds to a claimant agency or the Administrative Office of the Courts pursuant to this Code section, the department shall notify the taxpayer or taxpayers whose refund is sought to be set off and the claimant agency or the Administrative Office of the Courts that the transfer has been made. The notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency or the Administrative Office of the Courts pursuant to this Code section and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within 30 days of the date of mailing of the notice, the name and mailing address of the claimant agency or the Administrative Office of the

Courts to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30 day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return, the notice shall also state the name of any taxpayer named in the return against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him or her regardless of the debt asserted against his or her spouse, and that in order to obtain a refund due him or her such taxpayer must apply in writing for a hearing with the claimant agency or the Administrative Office of the Courts named in the notice within 30 days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for a hearing within 30 days of the mailing of the notice, he or she will have waived his or her opportunity to contest the setoff.

(d) Upon receipt of funds transferred from the department pursuant to this Code section, the claimant agency or the Administrative Office of the Courts shall deposit and hold the funds in an escrow account until a final determination of the validity of the debt. Any interest accruing on proceeds in such escrow account shall not constitute any part of the setoff funds being held in escrow and shall be retained by the claimant agency or the Administrative Office of the Courts to cover administrative costs.

(e) The claimant agency shall pay the department for all costs incurred by the department in setting off debts in the manner provided in this article.

**History.** Code 1933, § 91A-4105, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

## 48-7-165. Hearing procedure; adjustments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.

(a)(1) If the claimant agency receives written application contesting the setoff or the sum upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the sum is valid according to the procedures established under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(2) A request for a hearing pursuant to the Internal Revenue Code to contest the collection of past-due support may be consolidated with a request for a hearing under paragraph (1) of this subsection. If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(b) The hearing established by subsection (a) of this Code section shall be in lieu of a hearing before the department to determine the validity of the debt or the propriety of the setoff.

(c) No issues which have been previously litigated shall be considered at the hearing.

(d) Appeals from actions taken at the hearing allowed under this Code section shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

**History.**
Code 1933, § 91A-4106, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 11; Ga. L. 1986, p. 10, § 48; Ga. L. 2012, p. 318, § 11/HB 100; Ga. L. 2014, p. 56, § 1/HB 1000.

**Editor's notes.**
Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case.

**Law reviews.**
For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 70 (2012).

## 48-7-165.1. Hearing; final determination of debt.

(a)(1) Except as otherwise provided in subsection (d) of this Code section, if the Administrative Office of the Courts receives written notice from the debtor contesting the setoff or the sum upon which the setoff is based within 30 days of the debtor being notified of the debt setoff, the Administrative Office of the Courts shall notify the court to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to this article until the court to whom the debt is owed has granted a hearing to the debtor and obtained a final determination on the debt under this Code section and provided evidence of such final determination to the Administrative Office of the Courts. Such sum due and owing shall not be disbursed to the debtor or the court to whom the debt is owed prior to such final determination.

(2) The hearing required under this Code section shall be conducted after notice of such hearing is provided to the debtor by certified mail or personal service. When personal service is utilized, such personal service shall be made by the officers of the court designated by the judges of that court or any other officers authorized by law to serve process.

(b)(1) The officers of the court designated by the judges of that court submitting debts to the Administrative Office of the Courts shall appoint a hearing officer for the purpose of conducting hearings under this Code section. The officers of the court shall adopt appropriate procedures to govern the conducting of hearings by the hearing officer. A written or electronic copy of such procedures shall be

provided to a debtor immediately upon the receipt of notice from a debtor under subsection (a) of this Code section.

(2) Issues that have been previously litigated shall not be considered at a hearing. The hearing officer shall determine whether the debt is owed to the court and the amount of the debt. Such determination shall be in writing and shall be provided to the debtor and the Administrative Office of the Courts within five days after the date the hearing is conducted.

(3) If the debtor or the court disagrees with the determination of the hearing officer, either party may appeal that determination by filing a petition in the superior court not later than ten days following the date of the hearing officer's written determination. The superior court judge shall conduct a hearing and shall render a final determination in writing and shall transmit a copy to the hearing officer, the debtor, and the Administrative Office of the Courts not later than ten days after the date of that hearing.

(4) The losing party to such proceeding as provided for in paragraph (3) of this subsection shall pay any filing fees and costs of service, except that the officers of the court designated by the judges of that court shall be authorized to waive such fees and costs. The court submitting the debt to the Administrative Office of the Courts shall be responsible for attorneys' fees of the debtor who is contesting the setoff in cases where the superior court finds in favor of the debtor.

(c) If a court submits a debt for collection under this article following final determination of the debt in accordance with this Code section and the Administrative Office of the Courts is notified by the department that no refund proceeds are available or sufficient for setoff of the entire debt, such claim shall remain valid until sufficient refund proceeds are available for setoff as provided in subsection (b) of Code Section 48-7-164 and are not subject to further appeal.

**History.**
Code 1981, § 48-7-165.1, enacted by Ga. L. 2014, p. 56, § 1/HB 1000.

## 48-7-166. Final determination of debt due; escrow account transfers; crediting of debt due; notice of setoff; refund of excess; disbursement of funds.

(a)(1) Upon final determination of the amount of the debt due and owing by means of the hearing provided by Code Section 48-7-165 or by the taxpayer's default through failure to comply with subsection (c) of Code Section 48-7-164, the claimant agency shall remove the amount of the debt due and owing from the escrow account

established pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

(2) Upon final determination of the amount of the debt due and owing as provided by Code Section 48-7-165.1, or by the taxpayer's default through failure to comply with subsection (c) of Code Section 48-7-164, the Administrative Office of the Courts shall remove the amount of the debt due and owing from the escrow account established pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency or the Administrative Office of the Courts shall notify the debtor in writing of the finalization of the setoff. The department shall prepare a notice for use by the claimant agency or the Administrative Office of the Courts. Such notice shall include a final accounting of the refund which was set off, including the amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount of the refund in excess of the debt which has been returned to the debtor by the department pursuant to Code Section 48-7-164, and the amount of the funds transferred to the claimant agency or the Administrative Office of the Courts pursuant to Code Section 48-7-164 in excess of the debt finally determined to be due and owing at a hearing held pursuant to Code Section 48-7-165 or 48-7-165.1, if such a hearing was held or the amount of the funds transferred to the Administrative Office of the Courts pursuant to Code Section 48-7-164 is in excess of the debt finally determined to be due and owing pursuant to Code Section 48-7-165.1 as determined in the filing of an appeal. At such time, the claimant agency or the Administrative Office of the Courts shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the department in excess of the amount of debt finally found to be due and owing.

(c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the Administrative Office of the Courts shall transfer the funds to the court. Any funds so transferred by the Administrative Office of the Courts shall be disbursed by the court in the same manner as if such funds had been originally collected by such court without having resorted to collection under this article.

**History.** Code 1933, § 91A-4107, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

### 48-7-167. Effect of setoff on refund.

When the setoff authorized by this article is exercised, the refund which is set off shall be deemed granted.

**History.** Code 1933, § 91A-4111, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

### 48-7-168. Priority of department over claimant agencies for collection by setoff.

The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every claimant agency and the Administrative Office of the Courts for collection by setoff under this article.

**History.** Code 1933, § 91A-4108, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

### 48-7-169. Rules and regulations.

The commissioner is authorized to prescribe forms and to promulgate rules and regulations which he or she deems necessary in order to effectuate this article.

**History.** Code 1933, § 91A-4109, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

### 48-7-170. Disclosure of taxpayer information to claimant agency or Administrative Office of the Courts; confidentiality; use of information.

(a) Notwithstanding Code Section 48-7-60, which prohibits disclosure by the department of the contents of taxpayer records or information, and notwithstanding any other confidentiality statute, the commissioner may provide to a claimant agency or the Administrative Office of the Courts all information necessary to accomplish and effectuate the intent of this article.

(b) The information obtained by a claimant agency or the Administrative Office of the Courts from the department in accordance with this article shall retain its confidentiality and shall only be used by a claimant agency or the Administrative Office of the Courts in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency or the Administrative Office of the Courts who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the department.

**History.** Code 1933, § 91A-4110, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.

# CHAPTER 7A

# LOW-INCOME TAX CREDIT

Sec.
48-7A-1. [Reserved] Legislative findings and purposes.
48-7A-2. "Dependent" defined.
48-7A-3. Eligibility, amount, and claims for low-income tax credit.

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**Editor's notes.**
Ga. L. 1991, p. 87, § 5(b), not codified by the General Assembly, provides that this chapter is applicable to all taxable years beginning on or after January 1, 1992.

**Law reviews.**
For note on the 1991 enactment of this chapter, see 8 Georgia St. U.L. Rev. 190 (1992).

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 1870 et seq.

## 48-7A-1. [Reserved] Legislative findings and purposes.

**History.**
Ga. L. 1991, p. 87, § 1; repealed by Ga. L. 2010, p. 1163, § 4/HB 1069, effective June 4, 2010.
**Editor's notes.**
Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides that the repeal and reservation of this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

## 48-7A-2. "Dependent" defined.

As used in this chapter, the term "dependent" means:

(1) The taxpayer;

(2) The spouse of the taxpayer; and

(3) A natural or legally adopted child of the taxpayer.

**History.**
Code 1981, § 48-7A-2, enacted by Ga. L. 1991, p. 87, § 1; Ga. L. 1992, p. 6, § 48.

## 48-7A-3. Eligibility, amount, and claims for low-income tax credit.

(a) Except as otherwise provided in subsection (e) of this Code section, each resident taxpayer who files an individual income tax return for a taxable year and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Georgia individual income tax purposes may claim a tax credit against

the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that:

(1) A husband and wife filing a joint return shall each be deemed a dependent for purposes of such joint return; and

(2) A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

(b) Each taxpayer may claim a tax credit in the amount indicated for each adjusted gross income bracket as shown in the schedule below multiplied by the number of dependents which the taxpayer is entitled to claim. Each taxpayer 65 years of age or over may claim double the tax credit.

TAX CREDIT SCHEDULE

| Adjusted Gross Income | Tax Credit |
|---|---|
| Under $6,000.00 | $ 26.00 |
| 6,000.00 but not more than 7,999.00 | 20.00 |
| 8,000.00 but not more than 9,999.00 | 14.00 |
| 10,000.00 but not more than 14,999.00 | 8.00 |
| 15,000.00 but not more than 19,999.00 | 5.00 |

(c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which it is properly claimed; provided, however, that in no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall not be allowed to be carried forward to the taxpayer's succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(d) All claims for a tax credit under this Code section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

(e) Any individual who receives a food stamp allotment for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(e.1) Any individual incarcerated or confined in any city, county, municipal, state, or federal penal or correctional institution for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(f) The commissioner shall be authorized by rule and regulation to provide for the proper administration of this Code section.

**History.**

Code 1981, § 48-7A-3, enacted by Ga. L. 1991, p. 87, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2004, p. 410, § 7; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 1163, § 5/HB 1069.

**Editor's notes.**

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

# CHAPTER 8

# SALES AND USE TAXES

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## State Sales and Use Tax

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48-8-3. (Effective January 1, 2025.) Exemptions.

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**Cross references.**

Excise taxes for importation, and manufacture of distilled spirits, § 3-4-60 et seq.

**Editor's notes.**

Ga. L. 2008, p. 889, § 1, sought to enact Article 5 of Chapter 8 of this title, consisting of Code Sections 48-8-220 and 48-8-221, regarding additional funding sources for transportation. Section 3 of that Act provided that Article 5 would have become effective January 1, 2009, but only upon ratification at the November, 2008, state-wide general election of a resolution amending the Constitution authorizing such funding. No such resolution was adopted by the

General Assembly and, consequently, the referendum did not occur and Article 5 was not given effect.

**Law reviews.**

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For article, "Curing the Structural Defect in State Tax Systems: Expanding the Tax Base to Include Services," see 61 Mercer L. Rev. 491 (2010).

**RESEARCH REFERENCES**

**ALR.**

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 A.L.R.4th 1114.

## ARTICLE 1

## STATE SALES AND USE TAX

**Administrative rules and regulations.**

Administrative Rules and Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Rule 560-12-1-.02 et seq.

Forms (Forms Applicable to Sales and Use Tax), Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Rule 560-12-3-.01 et seq.

Special County Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Rule 560-12-6-.01 et seq.

**Law reviews.**

For article, "The Scope and Effect of the Georgia Retail Sales and Use Tax, Its Weaknesses and Needed Changes," see 17 Ga. B. J. 319 (1955).

For note, "The State Retail Sales Tax: A Critical Re-Examination of Underlying Policy," see 1 Ga. L. Rev. 503 (1967).

For comment on Colonial Stores v. Undercofler, 223 Ga. 105, 153 S.E.2d 549 (1967), see 4 Ga. St. B. J. 132 (1967).

For article, "Georgia Retailers' and Consumers' Sales and Use Tax Act," see 9 Ga. St. B. J. 37 (1972).

For article, "Georgia Sales and Use Tax From Viewpoint of Practicing Attorney," see 9 Ga. St. B. J. 45 (1972).

**JUDICIAL DECISIONS**

**Distinction between sales within and outside state comports with equal protection requirements.** — Distinction made by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) as to sales for resale or for shipment out of the state and those made other than for resale and for delivery within the state for storage are valid classifications and do not violate the equal protection provisions of the federal and state constitutions. Orkin Exterminating Co. v. Blackmon, 229 Ga. 146, 190 S.E.2d 43, 1972 Ga. LEXIS 534 (1972).

**No intent to differentiate between legal and illegal sales.** — Nothing in Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) indicates any intention on the part of the legislature to differentiate between legal and illegal sales, and the law's general language should not be limited to legal sales only merely because the law does not specifically tax illegal sales by referring to those sales as such.

Undercofler v. VFW Post 4625, 110 Ga. App. 711, 139 S.E.2d 776, 1964 Ga. App. LEXIS 748 (1964).

**Georgia's sales tax collection procedures do not amount to a denial of due process of law** although a hearing is not provided for the taxpayer prior to the taxpayer either having to post a bond or pay the tax. Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341, 1975 Ga. LEXIS 1360 (1975).

**Seizure of property before issuance of fi. Fa. Comports with due process.** — Failure to give notice and an opportunity to be heard prior to issuance of a tax fi. fa. and a subsequent levy on back accounts does not violate the due process clause of the Fourteenth Amendment because seizure of property by the government for the collection of taxes constitutes one of those extraordinary situations justifying postponement of notice and hearing until after the property has been seized. Fowler v. Strickland, 243 Ga. 30, 252 S.E.2d 459, 1979 Ga. LEXIS 787, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35, 1979 U.S. LEXIS 2592 (1979).

**Purpose.** — Purpose of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is to bring about payment of taxes to and receipt of taxes by the State of Georgia. Drake v. Thyer Mfg. Corp., 105 Ga. App. 20, 123 S.E.2d 457, 1961 Ga. App. LEXIS 558 (1961).

**Scope of article.** — Ga. L. 1978, p. 309 deals only with retail sales and with means to preclude avoidance of the tax by provisions for a use tax when enforcement directly against the retail sale is not practicable. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**"User" and "consumer" synonymous.** — In the context of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), the words "user" and "consumer" are synonymous. J.W. Meadors & Co. v. State, 89 Ga. App. 583, 80 S.E.2d 86, 1954 Ga. App. LEXIS 519 (1954).

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is designed to tax sales at retail.** Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**Tax is for privilege of doing retail business.** — Tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is on the retailer for the privilege and license of engaging in the retail business in this state. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960).

**Intent is to levy tax against dealers.** — Intent and purpose of the General Assembly in Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) taken as a whole is to levy the tax against the dealer. The responsibility of collecting the tax on each sale from the purchaser and remitting to the commissioner is solely upon the dealer; if the dealer fails to collect the tax from the purchaser the dealer has to pay the tax. Williams v. Bear's Den, Inc., 214 Ga. 240, 104 S.E.2d 230, 1958 Ga. LEXIS 382 (1958).

**Whose liability extends beyond that of agent for collection.** — When a retail dealer has collected the tax from the customers under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), the dealer's duty or obligation to the state is not that of an agent, liable only for the use of ordinary care in the safeguarding and remittance of such taxes; the dealer is liable as a taxpayer since under the statute, the tax is levied upon the dealer and not against the customer. Williams v. Bear's Den, Inc., 214 Ga. 240, 104 S.E.2d 230, 1958 Ga. LEXIS 382 (1958).

**Retailer is required to pay the tax upon all nonexempt retail sales.** — Retail sales are used solely as a measure of the retailer's liability. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960).

**Retailer not relieved of tax liability by failure or inability to collect.** — While the retailer is required as far as practicable to collect the tax from the consumer, the retailer's failure or inability to collect does not relieve the retailer from paying the tax. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960).

**Tax is all-inclusive; exemptions are rare exception.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is noted

for the fact that the law is all-inclusive, covering everything from the cradle to the grave. Exemptions are the rare exception. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960).

**Uniformity in taxation does not mean universality.** Blackmon v. Cobb County-Marietta Water Auth., 126 Ga. App. 459, 191 S.E.2d 128, 1972 Ga. App. LEXIS 1183 (1972).

**Property in the hands of a trustee in bankruptcy is not thereby exempt from state and local taxes,** absent a clear expression from Congress to the contrary. Blackmon v. Nichols, 494 F.2d 1179, 1974 U.S. App. LEXIS 8443 (5th Cir. 1974).

## OPINIONS OF THE ATTORNEY GENERAL

**Analysis**

In General
Taxation of Particular Persons and Entities
Taxation of Particular Sales and Uses

### In General

**Tax applies to all consensual or contractual agreements for consideration.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is designed to reach consensual or contractual agreements, however effected, for the transfer of property for a consideration. 1971 Op. Att'y Gen. No. 71-145.

**There is no sales or use tax on a gift of tangible personal property.** However, if there is consideration, whether in the form of money or not, for the transfer of title or possession of tangible personal property, the transaction is taxable. 1963-65 Ga. Op. Att'y Gen. 62.

**When one commodity is traded in on another commodity,** the sales are separate and distinct and thus a tax upon both, unless one is for resale. 1950-51 Ga. Op. Att'y Gen. 418.

**When old equipment is traded in on new equipment of like kind, the sales tax applies on the difference.** 1950-51 Ga. Op. Att'y Gen. 418.

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) does not tax any bona fide interstate commerce.** 1950-51 Ga. Op. Att'y Gen. 400; 1960-61 Ga. Op. Att'y Gen. 542.

**In interstate commerce, "delivery" means transfer of possession.** — Relating to the applicability of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) to sales in interstate commerce, the use of the term "delivery" is generally used in the sense of a transfer of possession. 1963-65 Ga. Op. Att'y Gen. 67.

**Transfer of possession or title in this state is taxable.** — Regardless of where or when the parties intend title to pass, a taxable event takes place when possession or title is transferred in this state. Of course, if both title and possession are transferred outside the state, no taxable event occurs in Georgia to which the tax would apply. 1963-65 Ga. Op. Att'y Gen. 67.

**Obligations imposed on sellers and purchasers.** — Reading of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) as a whole shows that the law contemplates the imposition of two separate and distinct obligations: (1) an obligation to collect the tax imposed upon sellers regularly engaged in selling tangible personal property as an occupational and privilege tax; and (2) an obligation upon the purchaser, user, or consumer to pay the tax. 1954-56 Ga. Op. Att'y Gen. 855.

**Casual and isolated sales exempt.** — One who makes a casual and isolated sale and who is not engaged in the business of selling tangible personal property is not responsible to collect the sales tax thereon. 1954-56 Ga. Op. Att'y Gen. 837.

**Once taxpayer is adjudicated a bankrupt, penalties otherwise due under sales and use tax are not collectible by state.** — 1962 Ga. Op. Att'y Gen. 542.

**For discussion of exemptions to Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.),** see 1952-53 Ga. Op. Att'y Gen. 232.

### Taxation of Particular Persons and Entities

**Exemption of purchases necessary to operation and maintenance of Jekyll Island's facilities.** — Since the purchase of tangible personal property is an activity necessary to the operation and maintenance of the authority's buildings, sales of such property to the authority are exempt to the extent that the sales are made for the purposes of carrying on the operation and maintenance of its buildings. 1963-65 Ga. Op. Att'y Gen. 287.

**Georgia Ports Authority** is not exempt from paying sales tax on the purchase of supplies and equipment. 1950-51 Ga. Op. Att'y Gen. 409.

**Georgia Ports Authority must collect and remit taxes when due.** — If the Georgia Ports Authority sells tangible personal property or services, then the authority must register, collect, and remit to the commissioner taxes due under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1950-51 Ga. Op. Att'y Gen. 409.

**American National Red Cross is not liable for the payment of sales tax.** 1950-51 Ga. Op. Att'y Gen. 419.

**Federal Savings and Loan Associations** created under Title 12 of the United States Code are not exempt. 1950-51 Ga. Op. Att'y Gen. 399.

**National Farm Loan Associations** created under Title 12 of the United States Code are exempt. 1950-51 Ga. Op. Att'y Gen. 398.

**Exemption of credit unions.** — Ga. L. 1974, p. 705, § 1, being later in time than Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), will exempt purchases of credit unions from the taxes imposed by the law. 1974 Op. Att'y Gen. No. 74-136.

**Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes.** — When the organization is not registered with the commissioner as a dealer, one who sells to the organization must collect the tax. 1971 Op. Att'y Gen. No. U71-143.

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) does not exempt sales by nonprofit corporations.** 1972 Op. Att'y Gen. No. U72-109.

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) contains no exemption as to purchases by churches.** 1971 Op. Att'y Gen. No. U71-67.

**Imposition of sales and use tax on military personnel.** — Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501 et seq., does not prohibit a general sales and use tax charged against military personnel. 1969 Op. Att'y Gen. No. 69-284.

**Tax liability not determined by residence or domicile in state.** — Fact that a service personnel is in this state because of military duty and maintains no residence here is immaterial in the determination of liability. The tax is not determined by residence or domicile in this state, but applies to residents and nonresidents alike, and to civilians and service personnel alike. 1958-59 Ga. Op. Att'y Gen. 385.

### Taxation of Particular Sales and Uses

**Warehousing is a service not taxable under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.).** 1950-51 Ga. Op. Att'y Gen. 409.

**Contractors on state construction jobs** are required to pay sales tax on all materials used. 1950-51 Ga. Op. Att'y Gen. 409.

**Consumer of fuel oil and kerosene used for curing tobacco must pay sales tax.** 1950-51 Ga. Op. Att'y Gen. 411.

**Sale of materials used in church construction** is subject to the tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1972 Op. Att'y Gen. No. U72-96.

**Charges for a meal served by a church is subject to sales tax.** 1950-51 Ga. Op. Att'y Gen. 420.

**State sales tax should be computed upon the sale of liquor** or beer before the application of state and city excise taxes. 1952-53 Ga. Op. Att'y Gen. 231.

**Imposition of tax on that portion of the purchase price of gasoline** which is for federal gas tax and state motor fuel tax is not a tax on a tax. 1969 Op. Att'y Gen. No. 69-234.

**Sales tax must be collected on the service of mixing concrete since it is one of fabrication.** 1950-51 Ga. Op. Att'y Gen. 418.

**Sales tax applies to sheriff's sales** and other forced sales, including condemnation. 1950-51 Ga. Op. Att'y Gen. 422.

**Sheriffs who purchase food** for prisoners out of their own funds are required to pay sales tax. 1950-51 Ga. Op. Att'y Gen. 422.

**Sales tax applies to the acquisition of equipment and furniture to be used in hotel rooms.** 1950-51 Ga. Op. Att'y Gen. 421.

**Hotels, restaurants, and motor courts must pay tax on linens.** — Hotels, restaurants, and motor courts sell services and are themselves consumers of linens. Such linens are not purchased by them for resale, and they should pay the sales tax thereon. 1950-51 Ga. Op. Att'y Gen. 421.

Hotel operators in this state should pay sales tax on linens rented to them by out-of-state linen service companies. 1950-51 Ga. Op. Att'y Gen. 421.

**Sale of soft drinks through vending machines is taxable.** 1950-51 Ga. Op. Att'y Gen. 421.

**Taxicabs.** — Rental charge made by a concern renting automobiles to individuals to be operated as taxicabs is taxable. 1950-51 Ga. Op. Att'y Gen. 423.

Taxicab fares and sales of tangible personal property on military reservations are subject to sales tax. 1954-56 Ga. Op. Att'y Gen. 857.

**Operators of rental car services** must pay sales tax on gasoline, tires, and other items used in their operation. 1950-51 Ga. Op. Att'y Gen. 423.

**No sales tax on compensation paid to gasoline dealers for loss of stock in storage.** 1950-51 Ga. Op. Att'y Gen. 405.

**Common carrier** does not have to pay a sales tax based on the compensation paid for loss or damage of property in the carrier's possession. 1950-51 Ga. Op. Att'y Gen. 405.

**Retail sale of antique motor vehicles is taxable.** 1969 Op. Att'y Gen. No. 69-386.

**Foreclosure sales** conducted by the Small Business Administration through an auctioneer are subject to Georgia sales tax. 1976 Op. Att'y Gen. No. 76-39.

**Vending machine companies** operating on federal areas are liable for collection of the state sales tax. 1952-53 Ga. Op. Att'y Gen. 243.

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is applicable to sale of admission tickets to ball games sponsored by Georgia schools.** 1960-61 Ga. Op. Att'y Gen. 544.

**Electrical energy and fuel oil** used for producing high temperatures in the operation of brick kilns and molding machinery are taxable. 1950-51 Ga. Op. Att'y Gen. 416.

**Charge by a city for the installation of a water meter is not taxable, if the city retains title to the meter.** 1950-51 Ga. Op. Att'y Gen. 407.

**Sale of surplus property by a city is taxable, unless to a branch of government or for resale.** 1950-51 Ga. Op. Att'y Gen. 407.

**Taxation of Medicaid transactions.** — Although the statutory foundation for the state Medicaid program refers to a "cost" incurred for medical assistance to an individual for which payments are made "on his behalf," 42 U.S.C. §§ 1396, 1396d, the terms do not purport to establish a contractual relationship within the scope of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) between the recipient and pharmacist, or the recipient and the state. Rather, the terms are meant to fix the conditions on which the state will act. Thus, there is no contractual transfer of property for a consideration within the meaning of the tax statute. 1971 Op. Att'y Gen. No. 71-145.

Under the Medicaid programs the relationship between the pharmacist and the state, and whatever state "obligation" to pay that may result therefrom, simply does not fit into the concepts underlying the sales tax. 1971 Op. Att'y Gen. No. 71-145.

**Persons admitted to swimming pools, golf courses, and furnished rooms** in a hotel are purchasers within the contemplation of Ga. L. 1951, p. 360. 1963-65 Ga. Op. Att'y Gen. 745.

**When teachers collect voluntary contributions from pupils** for the

purchase of educational supplies, such purchases, although made by an agency of the state and the local political subdivisions in which it is located, are subject to sales tax. 1963-65 Ga. Op. Att'y Gen. 23.

**Exemption of Council of State Governments.** — Ga. L. 1937, p. 708, § 10 and the obvious relationship of the Council of State Governments to the Georgia Commission on Interstate Cooperation and its work, indicate the legislative intent that the council's work be viewed as governmental at the state level. Accordingly, its property is in the nature of public property, and its purchases of tangible personal property and services under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) are the equivalent of purchases by the state. 1972 Op. Att'y Gen. No. 72-20.

**RESEARCH REFERENCES**

**ALR.**

Validity of so-called "sales tax," 89 A.L.R. 1432; 110 A.L.R. 1485; 117 A.L.R. 486; 128 A.L.R. 893.

Rights as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 93 A.L.R. 1485; 119 A.L.R. 542.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Constitutionality, construction, and application of general use tax or other compensating tax designed to complement state sales tax, 129 A.L.R. 222; 153 A.L.R. 609.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Municipality as subject to state license or excise taxes, 159 A.L.R. 365.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 A.L.R. 276; 171 A.L.R. 697.

Sales tax on parts, repairs, or constituents used in repair of article, 11 A.L.R.2d 926.

Use tax on property purchased by nonresident in another state, 41 A.L.R.2d 535.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 A.L.R.2d 862.

Redemption of trading stamps or the like for merchandise as sale at retail within taxing statute, 80 A.L.R.2d 1221.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 A.L.R.4th 1114.

Liquor By-The-Drink Taxes, 53 A.L.R.7th 1.

## PART 1

## GENERAL PROVISIONS

### 48-8-1. Intent of article with respect to taxation of tangible personal property and services; constitutional and other exemptions.

It is the intention of the General Assembly in enacting this article to exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article except to the extent

prohibited by the Constitutions of the United States and of this state and except to the extent of specific exemptions provided in this article.

**History.**

Ga. L. 1951, p. 360, § 4; Ga. L. 1965, p. 13, § 2; Code 1933, § 91A-4506, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 93.

**Law reviews.**

For article, "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989).

## JUDICIAL DECISIONS

**Tax on receipts derived from use of leased vehicle in interstate commerce.** — Imposition of sales tax on that part of lease receipts derived from use of a leased vehicle in interstate commerce does not constitute a burden on interstate commerce and is therefore not within the exemption created by this section, which provides that it is not the intention of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) to levy a tax on bona fide interstate commerce. Oxford v. Blankenship, 106 Ga. App. 546, 127 S.E.2d 706, 1962 Ga. App. LEXIS 767 (1962).

Trial court's grant of summary judgment to the Georgia Department of Revenue on a limousine company's petition for a refund and declaration was upheld as no part of the Georgia Limousine Carrier Act, including O.C.G.A. § 40-1-168, barred the imposition and collection of state or local-option sales taxes from for-hire car services such as the limousine company for the rental of its limousines or cars. Exec. Limousine Transp., Inc. v. Curry, 361 Ga. App. 626, 865 S.E.2d 217, 2021 Ga. App. LEXIS 522 (2021).

**Standard of review.** — In a case challenging denial of sales tax refunds, the trial court's ruling was vacated because while the ruling stated the correct standard of review in the decision, the court summarily disregarded certain of Georgia Tax Tribunal's explicit factual findings, which if there was any evidence to support those findings, contravened the deferential legal framework to be applied therefrom. T-Mobile South v. Crittenden, 364 Ga. App. 523, 875 S.E.2d 524, 2022 Ga. App. LEXIS 338 (2022).

## OPINIONS OF THE ATTORNEY GENERAL

**Taxation of trucks leased in state.** — Any person or company engaged in the business of leasing trucks in this state has an obligation under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) to pay tax on the gross proceeds to the commissioner and to pass the tax on to the lessee as an additional charge. The fact that the lessee may use a leased truck partially or exclusively in interstate hauls is immaterial so long as the first use under the rental contract is within this state. 1957 Ga. Op. Att'y Gen. 321.

**Exemption of property used, consumed exclusively outside state.** — Construing Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), purchases made in this state of tangible personal property to be used or consumed or stored exclusively outside this state are not subject to the tax imposed by Ga. L. 1951, p. 360, and dealers are not required to collect the tax from such purchasers. 1954-56 Ga. Op. Att'y Gen. 865.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 62, 134.
**ALR.**
Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

## 48-8-2. Definitions.

As used in this article, the term:

(1) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(2) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing service, directory assistance, vertical service, and voice mail services.

(3)(A) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(B) As used in this paragraph, the term "distinct and identifiable products" shall not include:

(i) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompanies the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(iii) Items included in the sales price.

(C) As used in this paragraph, the term "one nonitemized price" shall not include a price that is separately identified by product on binding sales or other supporting sales related docu-

mentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(D) A transaction that otherwise meets the definition of a bundled transaction as provided under this paragraph shall not be a bundled transaction if such transaction is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service;

(iii)(I) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. As used in this subparagraph, the term "de minimis" means the seller's purchase price or sales price of the taxable product is 10 percent or less of the total purchase price or sales price of the bundled products.

(II) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(I) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, or prosthetic devices; and

(II) The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

(4) "Business" means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit, or advantage.

(5) "Coin operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(7) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service shall not include the telecommunications services used to reach the conference bridge.

(8) "Dealer" means every person who:

(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property in this state without acquiring title to the property;

(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property in this state without transferring title to the property;

(E) Maintains or utilizes within this state an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business, whether owned by such person or any other person, other than a common carrier acting in its capacity as such;

(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution,

or storage for use or consumption in this state tangible personal property;

(H) Solicits business by an agent, employee, representative, or any other person;

(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer's only activity in this state is:

(i) Advertising or solicitation by:

(I) Direct mail, catalogs, periodicals, or advertising fliers;

(II) Means of print, radio, or television media; or

(III) Telephone, computer, the internet, cable, microwave, or other communication system;

(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail; or

(iii) To engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer's sole physical presence in this state and the dealer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than $100,000.00 of net income from those activities in this state during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

The exceptions provided in divisions (i), (ii), and (iii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

(i) The in-state dealer to which the affiliate is related does

not engage in any of the following activities on behalf of the affiliate:

(I) Advertising;

(II) Marketing;

(III) Sales; or

(IV) Other services; and

(ii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate's return;

As used in this subparagraph, the term "affiliate" means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

(K)(i) Makes sales of tangible personal property or services that are taxable under this chapter if a related member, as defined in Code Section 48-7-28.3, other than a common carrier acting in its capacity as such, that has substantial nexus in this state:

(I) Sells a similar line of products as the person and does so under the same or a similar business name; or

(II) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(L)(i) Makes sales of tangible personal property or services that are taxable under this chapter if any other person, other than a common carrier acting in its capacity as such, who has a substantial nexus in this state:

(I) Delivers, installs, assembles, or performs maintenance services for the person's customers within this state;

(II) Facilitates the person's delivery of property to customers in this state by allowing the person's customers to

pick up property sold by the person at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state; or

(III) Conducts any other activities in this state that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(M)(i) Enters into an agreement with one or more other persons who are residents of this state under which the resident, for a commission or other consideration, based on completed sales, directly or indirectly refers potential customers, whether by a link on an internet website, an in-person oral presentation, telemarketing, or otherwise, to the person, if the cumulative gross receipts from sales by the person to customers in this state who are referred to the person by all residents with this type of an agreement with the person is in excess of $50,000.00 during the preceding 12 months.

(ii) The presumption that a person described in this subparagraph is a dealer in this state may be rebutted by submitting proof that the residents with whom the person has an agreement did not engage in any activity within this state that was significantly associated with the person's ability to establish or maintain the person's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the person has an agreement stating that they did not engage in any solicitation in this state on behalf of the person during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date the person and the resident entered into the agreement described in this subparagraph;

(M.1) Obtains gross revenue, in an amount exceeding $100,000.00 in the previous or current calendar year, from conducting retail sales of tangible personal property to be delivered electronically or physically to a location within this state to be used, consumed, distributed, or stored for use or consumption in this state;

(M.2) Conducts 200 or more separate retail sales of tangible personal property in the previous or current calendar year to be delivered electronically or physically to a location within this state to be used, consumed, distributed, or stored for use or consumption in this state;

(M.3) Acts as a marketplace facilitator to facilitate retail sales that are taxable under this chapter to be delivered, held for pickup, used, consumed, distributed, stored for use or consumption, or rendered as a service within this state, if the total value of the sales price of all such retail sales, combined across all its marketplace sellers and the marketplace facilitator itself, equals or exceeds $100,000.00 in aggregate in the previous or current calendar year;

(N) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a dealer in Georgia merely because such person:

(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of that person;

(O) Any ruling, agreement, or contract, whether written or oral and whether express or implied, between a person and this state's

executive branch or any other state agency or department stating, agreeing, or ruling that such person is not a dealer required to collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or a related member shall be null and void unless it is specifically approved by a majority vote of each body of the General Assembly. For purposes of this subparagraph, the term "related member" has the same meaning as in Code Section 48-7-28.3;

(P) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

(Q) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require.

(9) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(10) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include postage charges for the delivery of direct mail when the postage charge is passed on dollar-for-dollar without being marked up to the purchaser of the direct mail and separately stated on an invoice or other similar billing document given to the purchaser.

(11) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(11.1) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subparagraph;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplements Facts" box found on the label as required pursuant to 21 C.F.R. Section 101.36.

(11.2) "Digital audio-visual works" means any series of related images, together with accompanying sounds, if any and which, when shown in succession, impart an impression of motion.

(11.3) "Digital audio works" means digitized works that result from the fixation of a series of musical, spoken, or other sounds. Such term shall include digitized sound files that are downloaded onto a device and that may be used to alert an end user with respect to a communication.

(11.4) "Digital code" means a key, activation, or enabling code that conveys a right to obtain one or more specified digital goods or other digital goods. Such term shall not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser or a redeemable card, gift card, or gift certificate that entitles the holder to select specified digital goods or other digital goods of an indicated cash value.

(12) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

(13) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(14) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(15) "Durable medical equipment" means equipment including repair and replacement parts for the same, but does not include mobility enhancing equipment, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(15.1) "End user" means any person other than a person that receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

(16) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall not include alcoholic beverages, dietary supplements, or tobacco.

(16.05) "Internet access service" shall have the same meaning as such term is defined in 47 U.S.C. Section 151, note.

(16.1) "Jet fuel" means any form of fuel that is designed for or used in the operation of aircraft powered by jet turbine or turboprop engines, including but not limited to Jet-A, and excludes aviation gasoline designed for or used in piston engines, including but not limited to avgas.

(17) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1). Lease or rental shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100.00 or 1 percent of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or install the tangible personal property.

(18) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(18.1) "Marketplace facilitator" means a person that contracts with a seller in exchange for any form of consideration to make available or facilitate a retail sale that is taxable under this chapter on behalf of such seller by directly or through any agreement or arrangement with another person:

(A) Providing a service that makes available or facilitates such retail sale in any manner, including, but not limited to, promoting, marketing, advertising, taking orders or reservations for, providing the physical or electronic infrastructure that brings purchasers and marketplace sellers together for, or otherwise similarly assisting the seller in making such retail sale, or transmitting or otherwise similarly communicating the offer and acceptance between the marketplace seller and the purchaser for, or otherwise similarly assisting the seller for such retail sale, but excluding merely processing the payments for such retail sale; and

(B) Collecting, charging, processing, or otherwise similarly facilitating payment for such retail sale on behalf of the marketplace seller.

(18.2) "Marketplace seller" means a person that conducts a retail sale through or facilitated by any physical or electronic marketplace or platform operated directly or indirectly by a marketplace facilitator, regardless of whether such marketplace seller is required to be registered with the department pursuant to Code Section 48-8-59.

(19) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, by which the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed,

including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(20) "Mobility enhancing equipment" means equipment including repair and replacement parts to the same, but does not include durable medical equipment, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(20.05) "Other digital goods" means the following items transferred electronically to an end user:

(A) Artwork;

(B) Photographs;

(C) Periodicals;

(D) Newspapers;

(E) Magazines;

(F) Video or audio greeting cards; or

(G) Video games or electronic entertainment.

(20.1) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. Section 201.66. The over-the-counter drug label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

(21) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider.

(22) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access

number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "Prepaid local tax" means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes imposed under Code Section 48-9-3 and all local sales and use or excise taxes levied on motor fuel. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions.

(24) Reserved.

(25) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(26) Reserved.

(27) "Prepared food" means:

(A) Food:

(i) Sold in a heated state or heated by the seller;

(ii) With two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or

straws. A plate does not include a container or packaging used to transport the food; and

(B) Prepared food shall not include food:

(i) That is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as in Chapter 3, part 401.11 of the United States Food and Drug Administration Food Code so as to prevent food borne illnesses;

(ii) Sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing, except for industry group 3118, bakeries and tortilla manufacturing, if sold without eating utensils provided by the seller; or

(iii) Sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(28.1) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(29) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or

(C) Support a weak or deformed portion of the body.

Prosthetic device shall not include hearing aids.

(30) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(31) "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the commissioner's rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner's rules and regulations shall be liable for and shall pay the tax. The terms "retail sale" or "sale at retail" include but are not limited to the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone services, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale;

(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

(C) Sales of tickets, fees, or charges made for admission to places of amusement, sports, or entertainment, including, but not limited to:

(i) Billiard and pool rooms;

(ii) Bowling alleys;

(iii) Amusement devices;

(iv) Musical devices;

(v) Theaters;

(vi) Opera houses;

(vii) Moving picture shows;

(viii) Vaudeville;

(ix) Amusement parks;

(x) Athletic contests, including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;

(xi) Skating rinks;

(xii) Race tracks;

(xiii) Public bathing places;

(xiv) Public dance halls; and

(xv) Any other place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged;

(D) Charges made for participation in games and amusement activities;

(E) Sales of tangible personal property to persons for resale when there is a likelihood that the state will lose tax funds due to the difficulty of policing the business operations because:

(i) Of the operation of the business;

(ii) Of the very nature of the business;

(iii) Of the turnover of so-called independent contractors;

(iv) Of the lack of a place of business in which to display a certificate of registration;

(v) Of the lack of a place of business in which to keep records;

(vi) Of the lack of adequate records;

(vii) The persons are minors or transients;

(viii) The persons are engaged in essentially service businesses; or

(ix) Of any other reasonable reason.

The commissioner may promulgate rules and regulations requiring vendors of persons described in this subparagraph to collect the tax imposed by this article on the retail price of the tangible personal property. The commissioner shall refuse to issue certificates of registration and may revoke certificates of registration issued in violation of his rules and regulations;

(E.1)(i) Sales of digital codes.

(ii) Sales of specified digital products or other digital goods;

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated telephone service, except as otherwise provided in subparagraph (G) of this paragraph; or

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

(32) "Retailer" means every person making sales at retail or for distribution, use, consumption, or storage for use or consumption in this state and has the same meaning as "seller" in Code Section 48-8-161.

(33)(A) "Sale" means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration except as otherwise provided in subparagraph (B) of this paragraph and includes, but is not limited to:

(i) The fabrication of tangible personal property for consumers who directly or indirectly furnish the materials used in such fabrication;

(ii) The furnishing, repairing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property; or

(iii) A transaction by which the possession of property is transferred but the seller retains title as security for the payment of the price.

(B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail sale, excluding lease or rental, the taxable situs of the transaction for the purposes of collecting local sales and use taxes shall be the county of motor vehicle registration of the purchaser.

(34)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or

services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale; and

(iv) Delivery charges.

(B) Sales price shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;

(v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and

(vi) Credit for any trade-in.

(C) Sales price shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a preferred customer card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(34.1) "Specified digital products" means the following items transferred electronically to an end user:

(A) Digital audio-visual works;

(B) Digital audio works; or

(C) Digital books.

(35) "Storage" means any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than sale at retail in the regular course of business.

(36) "Streamlined sales tax agreement" means the Streamlined Sales and Use Tax Agreement under Code Section 48-8-162.

(37) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. Tangible personal property does not mean stocks, bonds, notes, insurance, or other obligations or securities.

(38) "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(39) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Such term includes such transmission, conveyance, or routing in which

computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Such term shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer's premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. Section 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(39.1) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that includes tobacco.

(39.2) "Transferred electronically" means obtained, accessed, or available to be accessed by means other than tangible storage media.

(40) "Use" means the exercise of any right or power over tangible personal property incident to the ownership of the property including, but not limited to, the sale at retail of the property in the regular course of business.

(41) "Use tax" includes the use, consumption, distribution, and storage of tangible personal property as defined in this article.

(42) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(43) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

**History.**

Ga. L. 1951, p. 360, §§ 3, 4; Ga. L. 1960, p. 153, § 3; Ga. L. 1971, p. 85, § 1; Ga. L. 1978, p. 1664, § 1; Code 1933, § 91A-4501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 81-84; Ga. L. 1980, p. 10, § 22; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 1243, § 1; Ga. L. 1992, p. 1521, § 1; Ga. L. 1994, p. 928, § 4A; Ga. L. 1995, p. 10, § 48; Ga. L. 1996, p. 220, § 7; Ga. L. 1998, p. 124, § 3; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 975, § 1; Ga. L. 2003, p. 355, § 3; Ga. L. 2003, p. 665, § 10; Ga. L. 2005, p. 788, § 1/HB 22; Ga. L. 2006, p. 59, § 1/HB 111; Ga. L. 2007, p. 309, § 1/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 1/HB 1221; Ga. L. 2011, p. 38, §§ 2, 3/HB 168; Ga. L. 2011, p. 674, §§ 1-2, 1-3/HB 117; Ga. L. 2012, p. 257, § 6-1/HB 386; Ga. L. 2012, p. 694, § 3/HB 729; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 700, § 1/HB 816; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2015, p. 5, § 48/HB 90; Ga. L. 2015, p. 236, § 5-2/HB 170; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 154, § 1/HB 117; Ga. L. 2018, p. 259, § 1/HB 61; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2018, Ex. Sess., p. ES7, § 3-1/HB 5EX; Ga. L. 2019, p. 282, § 1/HB 182; Ga. L. 2020, p. 1, § 1/HB 276; Ga. L. 2023, p. 335, § 3-1/SB 56, effective January 1, 2024; Ga. L. 2024, p. 1052, § 5(47)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2023 amendment,** effective January 1, 2024, added paragraphs (11.2), (11.3), (11.4), (15.1), (16.05), (20.05), subparagraph (31)(E.1), and paragraphs (34.1) and (39.2).

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in subdivision (8)(I)(i)(III), in division (8)(M)(i), and in paragraph (39); in paragraph (34.1), deleted the former subparagraph (A) designation and redesignated former divisions (i), (ii), and (iii) as present subparagraphs (A), (B), and (C), respectively; and in paragraph (39), substituted "Such term" for "The term telecommunications service" at the beginning of the second sentence and substituted "Such term" for "Telecommunications service" at the beginning of the third sentence.

**Cross references.**

Limitations on contracting with state agencies by dealers refusing to pay sales tax, § 50-5-82.

**Code Commission notes.**

The amendment of this Code section by Ga. L. 2003, p. 355, § 3, irreconcilably conflicted with and was treated as superseded by Ga. L. 2003, p. 665, § 10. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2012, "This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date" was substituted for "This subparagraph shall take effect 90 days after the effective date of this Act and shall apply to sales made, uses occurring, and services rendered on or after the effective date of this subparagraph without regard to the date" in subparagraph (8)(M)(ii).

**Editor's notes.**

Ga. L. 1992, p. 1521, § 4, not codified by the General Assembly, provides: "This Act [which amended this Code section] shall stand repealed in its entirety on January 1, 1996, and shall be void and of no effect

and the provisions affected by this Act shall be specifically revived as such provisions stood before the enactment of this Act, as amended by laws other than this Act."

Ga. L. 1994, p. 834, § 4, not codified by the General Assembly, repeals Ga. L. 1992, p. 1521, § 4, which had provided for the repeal of this Code section as affected by that 1992 Act effective January 1, 1996.

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2011, p. 674 provided for the automatic repeal of subparagraph (31)(H) and paragraphs (30.1) and (34.1), effective June 30, 2014.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act." This Act became effective October 1, 2012.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act." This Act became effective October 1, 2012.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2017, p. 154, § 2/HB 117, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all sales made on or after July 1, 2017.

Ga. L. 2018, p. 259, § 3/HB 61, not codified by the General Assembly, provides that the addition of subparagraphs (8)(M.1) and (8)(M.2) shall apply to all sales made on or after January 1, 2019.

Ga. L. 2019, p. 282, § 3/HB 182, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all sales made on or after January 1, 2020.

Ga. L. 2020, p. 1, § 3/HB 276, not codified by the General Assembly, provides, in part, that the addition of subparagraph (8)(M.3) and paragraphs (18.1) and (18.2) shall apply to all sales occurring on or after April 1, 2020.

**Law reviews.**

For comment on Colonial Stores v. Undercofler, 223 Ga. 105, 153 S.E.2d 549 (1967), see 4 Ga. St. B. J. 132 (1967).

For article, "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989).

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 249 (1994).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50

of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

For article on the 2018 amendment of this Code section, see 35 Georgia St. U.L. Rev. 187 (2018).

For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

## JUDICIAL DECISIONS

### Analysis

General Consideration
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### General Consideration

**Dealer's representational standing to claim refund.** — Because a dealer had statutorily granted representational standing under amended O.C.G.A. § 48-2-35.1 to recover wrongfully paid sales taxes from the state on behalf of the dealer's customers, and the amendment was procedural and could be applied retroactively, the dealer had standing to file a claim for any taxes for periods before the statute was amended. New Cingular Wireless PCS, LLC v. Dep't of Revenue, 308 Ga. 729, 843 S.E.2d 431, 2020 Ga. LEXIS 350 (2020).

### Business

**Intent is to tax sales carried on as a business or occupation.** — From Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), taken as a whole, the intention is clear that it is the gross proceeds from retail sales carried on as a business or occupation which is designed to be taxed. Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**No definitive distinction can be drawn between the definition of "business" and the term's common and accepted meaning.** Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**Definition of "business" is closely identifiable with the definition of that word given by Black's Law Dictionary,** which defines business as "that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit," and which is the commonly accepted meaning of the term. Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**Words "engaged in business" imply an element of continuity or habitual practice.** Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**Definition of "business" does not say "any act engaged in for gain," but rather, "any activity."** Novak v.

Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**Whether activity amounts to business is to be construed in taxpayer's favor.** — Since revenue statutes are to be construed strictly so as to resolve doubt in favor of the taxpayer, and since their meaning is not to be extended by implication, and under this rule, any doubt as to whether the definition of "business" as "any activity engaged in" was meant to narrow the word down to include a single transaction, instead of the word's ordinary meaning of continuity of transactions, should be resolved in favor of the taxpayer. Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

**Exemption of casual and isolated sales.** — Casual and isolated sale made by one not engaged in the business of selling tangible personal property at retail is not taxable. Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954); State v. Dyson, 89 Ga. App. 791, 81 S.E.2d 217, 1954 Ga. App. LEXIS 581 (1954).

**Term "casual sales" is from case law and revenue regulations.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) does not define or even mention "casual sales." The term comes from case law and revenue regulations. Newscopters, Inc. v. Blackmon, 125 Ga. App. 130, 186 S.E.2d 759, 1971 Ga. App. LEXIS 761 (1971).

**Disposal of business fixtures after ceasing to be engaged in that business.** — Sale of business fixtures and equipment, after an owner has ceased to do business, is not a transaction by one engaged in the business of buying and selling such business fixtures and equipment, and is not taxable. Novak v. Redwine, 89 Ga. App. 755, 81 S.E.2d 222, 1954 Ga. App. LEXIS 571 (1954).

### Cost Price

**"Cost price" may be taken as synonymous with the term "sales price,"** insofar as "sales price" relates to the sale of tangible personal property rather than to the sale of services. Colonial Pipeline Co. v. Undercofler, 115 Ga. App. 58, 153 S.E.2d 592, 1967 Ga. App. LEXIS 998 (1967).

**Services incident to sale of tangible personal property.** — When the vendor furnishes services incidental to the sale of tangible personal property, such as delivery to the purchaser, and no additional charge is made for the services so as to constitute a separate sale of services, the services are included in the sale price or cost price of the property for the purpose of computing the applicable sales or use tax. Colonial Pipeline Co. v. Undercofler, 115 Ga. App. 58, 153 S.E.2d 592, 1967 Ga. App. LEXIS 998 (1967).

### Dealer

**Person who is president and treasurer of a corporation which sells at retail is a dealer.** Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

**Contractor not a dealer as to building materials used by contractor in construction.** — Contractor who buys building material is not one who buys and sells — a trader. The contractor is not a dealer, or one who habitually and constantly, as in business, deals in and sells any given commodity. The contractor is a user and consumer of such materials and is liable for sales and use tax, even though title to materials finally vests in the customer. J.W. Meadors & Co. v. State, 89 Ga. App. 583, 80 S.E.2d 86, 1954 Ga. App. LEXIS 519 (1954).

### Lease or Rental

**"Rental" is the equivalent of "resale."** Undercofler v. Macon Linen Serv., Inc., 114 Ga. App. 231, 150 S.E.2d 703, 1966 Ga. App. LEXIS 694 (1966).

**What included in charges for rooms, lodgings, and accommodations.** — Sale or charges for any room or rooms, lodgings, or accommodations furnished to transients encompasses whatever is rented, whether one room or several, whether bare or elaborately appointed. Atlanta Americana Motor Hotel Corp. v. Undercofler, 222 Ga. 295, 149 S.E.2d 691, 1966 Ga. LEXIS 461 (1966).

**Lease or Rental** (Cont'd)

**For-hire car services.** — Trial court's grant of summary judgment to the Georgia Department of Revenue on a limousine company's petition for a refund and declaration was upheld as no part of the Georgia Limousine Carrier Act, including O.C.G.A. § 40-1-168, barred the imposition and collection of state or local-option sales taxes from for-hire car services such as the limousine company for the rental of its limousines or cars. Exec. Limousine Transp., Inc. v. Curry, 361 Ga. App. 626, 865 S.E.2d 217, 2021 Ga. App. LEXIS 522 (2021).

**Lease of advertising signs is taxable.** Register Mobile Adv., Inc. v. Strickland, 242 Ga. 604, 250 S.E.2d 468, 1978 Ga. LEXIS 1296 (1978).

**Leases of tangible personal property are to be treated the same as sales** under sales and use tax laws. Strickland v. Sperry Rand Corp., 248 Ga. 535, 285 S.E.2d 1, 1981 Ga. LEXIS 1094 (1981).

### Retail Sale

**All retail sales except those specifically exempted are taxable** under Ga. L. 1951, p. 360 (see now O.C.G.A. T. 48, C. 8, A. 1). Undercofler v. VFW Post 4625, 110 Ga. App. 711, 139 S.E.2d 776, 1964 Ga. App. LEXIS 748 (1964).

**Test is whether sale is last sale.** — Definition of a retail sale as a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property does not confine retail sales to sales made to consumers only. The chief element of the definition is that such a sale shall not be followed by a resale, or another retail sale, but shall be the last of a possible series of sales. Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952).

**Not all items reflected in price charged are deemed held for resale or rental.** — Although all costs of a company's operations are reflected in the rental or contract price charged the company's customers, including the costs of the equipment used by the company for storage, this circumstance does not in itself operate to show a resale or rental of these items so as to render the items' sale to the company other than a taxable transaction. Undercofler v. Macon Linen Serv., Inc., 114 Ga. App. 231, 150 S.E.2d 703, 1966 Ga. App. LEXIS 694 (1966).

**When sale deemed completed in this state.** — Sale is completed in this state when the customer acquires the right to the property even though the delivery of the property is delayed and even though actual delivery does not take place in the state. Meade Corp. v. Blackmon, 129 Ga. App. 526, 199 S.E.2d 839, 1973 Ga. App. LEXIS 1040 (1973).

**Sports or entertainment events held or sponsored by charitable organizations.** — Horse show is an event of sports or of entertainment, and that it was held by or sponsored by a charitable organization with tax-exempt status does not relieve it from the payment of the tax. Atlanta Hunter-Jumper Classic, Inc. v. Blackmon, 125 Ga. App. 38, 186 S.E.2d 434, 1971 Ga. App. LEXIS 728 (1971).

**Admission price taxable even if otherwise partially tax deductible.** — There is no authority in Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) to exempt portions of amounts required to be paid to reserve admissions to a sporting event simply because a portion of the amount is designated by the sponsor in the sponsor's advertisements as "tax deductible." Atlanta Hunter-Jumper Classic, Inc. v. Blackmon, 125 Ga. App. 38, 186 S.E.2d 434, 1971 Ga. App. LEXIS 728 (1971).

**Sale of steel dies to a manufacturer is not a personal service transaction** when such dies are used by the manufacturer until disposed of. Mead Corp. v. Strickland, 247 Ga. 495, 276 S.E.2d 586, 1981 Ga. LEXIS 718 (1981).

**Sale or purchase of chances or plays in a lottery.** — Term "retail sale" applies to the sale and purchase of chances or plays in a lottery known as the numbers game, which tickets or chances are taxable under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). Chilivis v. Fleming, 139 Ga. App. 295, 228 S.E.2d 178, 1976 Ga. App. LEXIS 1771 (1976).

**Operation of slot machines and one-armed bandits is taxable.** — Operation of coin operated gaming devices known as slot machines or one-armed

bandits by depositing a coin therein is a transaction amounting to a taxable sale. Undercofler v. VFW Post 4625, 110 Ga. App. 711, 139 S.E.2d 776, 1964 Ga. App. LEXIS 748 (1964).

**Slot machines are not excluded from this section merely because it amounts to an illegal transaction.** Undercofler v. American Legion Post 69, 112 Ga. App. 27, 143 S.E.2d 684, 1965 Ga. App. LEXIS 593 (1965).

**Treatment of wholesale transactions as retail sales.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) authorizes the commissioner to treat some wholesale transactions as retail sales and to make regulations requiring certain sellers to collect sales tax on wholesale transactions. Independent Publishing Co. v. Hawes, 119 Ga. App. 858, 168 S.E.2d 904, 1969 Ga. App. LEXIS 1280 (1969).

**Purchase of merchandise to be given in exchange for trading stamps.** — Transactions between merchant and customers with reference to trading stamps and premium merchandise are sales since stamps issued to customers in consideration of purchases represent right to premium merchandise. The purchase of premium merchandise by the merchant is a purchase for purposes of resale, and is therefore not taxable. Colonial Stores v. Undercofler, 223 Ga. 105, 153 S.E.2d 549, 1967 Ga. LEXIS 429 (1967) (commented on in 4 Ga. St. B.J. 132 (1967)).

**Transfer of advertising materials to distributors together with product.** — Brewing company must pay use tax on advertising materials that accompany malt liquor transferred to distributors because the absence of a separate charge for the advertising indicates that the advertising does not fall within the resale exemption and because the advertising materials will in fact never be sold at any time during the distribution chain. Carling Brewing Co. v. Blackmon, 131 Ga. App. 211, 205 S.E.2d 492, 1974 Ga. App. LEXIS 1376 (1974).

**Taxation of airline meals.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) imposes a tax on the sale of airline meals included in the in-state sale of a ticket to a passenger, but not on the purchase of the meals from a supplier by the airline since such purchases are held for resale to passengers. Undercofler v. Eastern Air Lines, 221 Ga. 824, 147 S.E.2d 436, 1966 Ga. LEXIS 713 (1966).

### Sale

**Tax is on total consideration, regardless of number of sources.** — It is the consideration for the transfer of personal property which is taxed. The consideration may come from more than one source, but the total consideration is the total of all amounts. The total amount, or gross sales price, is taxable. Davis v. Chilivis, 142 Ga. App. 679, 237 S.E.2d 2, 1977 Ga. App. LEXIS 1447 (1977).

**"First use" means first use in this state.** — When Ga. L. 1951, p. 360, § 8 is read in pari materia with Ga. L. 1951, p. 360, § 3 it is apparent that the first use referred to in Ga. L. 1951, p. 360, § 8 means the first use in this state. Ingalls Iron Works Co. v. Chilivis, 237 Ga. 479, 228 S.E.2d 866, 1976 Ga. LEXIS 1276 (1976).

**Construction of "holding for resale."** — Phrase "holding for resale" must be construed to cover those situations when the seller is engaged in the business of selling or leasing property on a continual and habitual basis. Chilivis v. Bradley, 142 Ga. App. 793, 237 S.E.2d 200, 1977 Ga. App. LEXIS 1375 (1977).

**Judicial sale is not exempt** from the tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). Hopkins v. West Publishing Co., 106 Ga. App. 596, 127 S.E.2d 849, 1962 Ga. App. LEXIS 782 (1962).

**For examples of what constitutes furnishing by consumer of materials used in fabrication** see Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**Passage of title required.** — When a company is denominated as the seller in the company's sales contracts, there must be a sale within the meaning of O.C.G.A. § 48-8-2(8) from the manufacturer to the company so that the company can pass the title to the purchaser, even though the company contends the company is only the sales representative for the

**Sale** (Cont'd)

manufacturer. Adrian Hous. Corp. v. Collins, 253 Ga. 263, 319 S.E.2d 852, 1984 Ga. LEXIS 884 (1984).

### Sales Price

**Gross sales price of a new product is subject to a sales tax.** Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**What constitutes remodeling or repairing property sold.** — Charges by a taxpayer to its customers for modifications in equipment sold by the taxpayer to its customers, but retained and used by the taxpayer to manufacture products for the customers, such charges representing the costs to the taxpayer of tax-free services generally obtained from a third party, without any specific charge for the negligible use of materials, are charges for services rendered in remodeling or repairing property sold and are therefore properly excluded from the sales price for tax purposes. Undercofler v. Thompson Indus., Inc., 114 Ga. App. 497, 151 S.E.2d 844, 1966 Ga. App. LEXIS 816 (1966).

**Inclusion of other taxes in sales price for purposes of calculating sales tax.** — If the imposition of other taxes, such as those on cigarettes, falls upon the consumer or the incident of the sale by the retailer to the consumer they are not included as part of the retail sale price for calculating the sales and use tax. If, however, the tax is imposed at a time prior to the point of retail sale or other consumer transaction, it is an element of the cost of the property sold and must be included as part of the retail sale price for purposes of calculating the sales and use tax. Blackmon v. Coastal Serv., Inc., 125 Ga. App. 28, 186 S.E.2d 441, 1971 Ga. App. LEXIS 727 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372, 1972 Ga. LEXIS 654 (1972).

**State cigarette tax imposed by former Code 1933, Ch. 92-22** is not an element of the cost of the property sold and is not, therefore, included in "gross sales" and "sales price" upon which the sales and use tax is calculated. Blackmon v. Coastal Serv., Inc., 125 Ga. App. 28, 186 S.E.2d 441, 1971 Ga. App. LEXIS 727 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372, 1972 Ga. LEXIS 654 (1972).

**Federal cigarette tax imposed by Subtitle E, Ch. 52 of the Internal Revenue Code of 1954** is an element of the cost of property sold and is therefore included in "gross sales" and "sales price." Blackmon v. Coastal Serv., Inc., 125 Ga. App. 28, 186 S.E.2d 441, 1971 Ga. App. LEXIS 727 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372, 1972 Ga. LEXIS 654 (1972).

**Federal manufacturer's excise tax imposed by § 4061 of the Internal Revenue Code of 1954** is an element of the cost of property sold and is therefore included in gross sales and sale price. Undercofler v. Capital Auto. Co., 111 Ga. App. 709, 143 S.E.2d 206, 1965 Ga. App. LEXIS 1076 (1965).

**Federal excise tax on gasoline is properly includable as a part of the retail sales price** on which the sales and use tax is to be calculated. State v. Thoni Oil Magic Benzol Gas Stations, Inc., 121 Ga. App. 454, 174 S.E.2d 224, 1970 Ga. App. LEXIS 1252, aff'd, 226 Ga. 883, 178 S.E.2d 173, 1970 Ga. LEXIS 724 (1970).

**State motor fuel tax is not taxable.** — Motor fuel taxes imposed by former Code 1933, Ch. 92-14 are levied upon the incident of the sale to the consumer and should not be included as a part of the retail sales price for calculating the sales and use tax. State v. Thoni Oil Magic Benzol Gas Stations, Inc., 121 Ga. App. 454, 174 S.E.2d 224, 1970 Ga. App. LEXIS 1252, aff'd, 226 Ga. 883, 178 S.E.2d 173, 1970 Ga. LEXIS 724 (1970).

**Discounts to employees on meals.** — Discounts to employees on the price of meals, subsequently paid to cafeteria management by the employer, are subject to Ga. L. 1951, p. 360 (see now O.C.G.A. Art 1, Ch. 8, T. 48). Davis v. Chilivis, 142 Ga. App. 679, 237 S.E.2d 2, 1977 Ga. App. LEXIS 1447 (1977).

### Tangible Personal Property

**Fixtures which pass by conveyance of realty are exempt.** — All fixtures which would pass by a conveyance of an interest in realty as a part thereof, in the absence of provisions in the sales contract to the contrary, are exempt from the tax

imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). State v. Dyson, 89 Ga. App. 791, 81 S.E.2d 217, 1954 Ga. App. LEXIS 581 (1954).

**Video tape is tangible personal property.** — Video tape can be seen and is perceptible to the senses and thereby satisfies the definition of tangible property. Turner Communications Corp. v. Chilivis, 239 Ga. 91, 236 S.E.2d 251, 1977 Ga. LEXIS 823 (1977).

**Telephone system is not tangible personal property.** — Sale of a complete, operating telephone system, including rights-of-way to which other equipment is attached, is not a sale of tangible personal property such as would be subject to sales tax. State v. Dyson, 89 Ga. App. 791, 81 S.E.2d 217, 1954 Ga. App. LEXIS 581 (1954).

**Architectural plans.** — Architectural plan, in its physical form, is obviously tangible, its finite mass lending weight and sensory perception. State Farm Fire & Cas. Ins. Co. v. White, 777 F. Supp. 952, 1991 U.S. Dist. LEXIS 16556 (N.D. Ga. 1991).

**Modular homes.** — Although modular homes may become realty when those modular homes are affixed to the purchaser's lot, when those modular homes are transferred as partial units on trailers those modular homes are properly considered tangible personal property within the meaning of O.C.G.A. § 48-8-2(11). Adrian Hous. Corp. v. Collins, 253 Ga. 263, 319 S.E.2d 852, 1984 Ga. LEXIS 884 (1984).

### Use Tax

**Purchase outside state of tangible personal property to be transferred incident to service contract.** — If a purchase is made outside the state and a transfer is then made incidental to performing a service within the state, the purchase is subject to a use tax. L.M. Berry & Co. v. Blackmon, 231 Ga. 659, 203 S.E.2d 520, 1974 Ga. LEXIS 1176 (1974).

**Direct mail advertising materials** purchased by a corporation outside the state for distribution to residents within the state were subject to use tax. Collins v. J.C. Penney Co., 218 Ga. App. 405, 461 S.E.2d 582, 1995 Ga. App. LEXIS 750 (1995).

**Preprinted newspaper advertising inserts** purchased by a corporation did not become a component or integral part of the newspaper through which the inserts were distributed and were subject to use tax. Collins v. J.C. Penney Co., 218 Ga. App. 405, 461 S.E.2d 582, 1995 Ga. App. LEXIS 750 (1995).

## OPINIONS OF THE ATTORNEY GENERAL

**Analysis**

General Consideration
Dealer
Lease or Rental
Retail Sale
Sale
Sales Price
Tangible Personal Property
Use Tax

### General Consideration

**Constitutionality.** — Imposition of use tax upon "cost price," as defined by O.C.G.A. § 48-8-2(2), does not violate the commerce clause (U.S. Const., Art. 1, Sec. 8, Cl. 3) as it treats taxpayers printing own material out-of-state and taxpayers printing own material within the state equally. 1981 Op. Att'y Gen. No. 81-93.

**Purchase of material from out-of-state printers for distribution in Georgia constitutes "use."** — Purchase by department stores within Georgia of advertising materials from out-of-state printers, shipped by printers

to designated in-state direct mailing services, and distributed by such services to the stores' customers in Georgia constitutes "use" in Georgia by the stores within the meaning of O.C.G.A. § 48-8-2(12). 1981 Op. Att'y Gen. No. 81-93.

### Dealer

**Dual operator liable for tax on property consumed in performance of contract.** — Since a dual operator, or person who, as a retail dealer, sells tangible personal property in performing contracts, is a consumer of the property used in performing contracts, irrespective of where the contracts may be performed, the person would owe sales tax in this state with respect to the purchase of such property in this state and would owe this state a use tax with respect to such property purchased outside this state and then brought to rest in this state. 1968 Op. Att'y Gen. No. 68-96.

**Nonresident subsidiary not made liable by resident subsidiary of same parent.** — Resident subsidiary does not cause a nonresident mail order subsidiary of the same parent corporation to be subject to Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1969 Op. Att'y Gen. No. 69-132.

### Lease or Rental

**Legislative intent as to distinction between services and leases or rentals.** — Analytically, if inquiry be pursued to the limit of its logic, it might be said that every lease or rental involves some element of service, while every service involves some utilization of personal property; but here as in all cases, the law does not deal in absolutes for the General Assembly has, by employing two concepts differing in their consequences, manifested the General Assembly's intention that a line is to be drawn somewhere separating the areas of taxability and nontaxability. 1963-65 Ga. Op. Att'y Gen. 172.

**What constitutes rental charge.** — Rental charges mean the actual charges made for the leasing of tangible personal property without any deductions on account of the cost of materials used, service cost, or any other expenses, even though separately stated. 1970 Op. Att'y Gen. No. U70-47.

**Sales tax is only based upon gross proceeds from rentals and is not to be imposed upon payment of royalties.** 1954-56 Ga. Op. Att'y Gen. 845.

**Control is test as to whether property deemed leased.** — Use of bank computers by customers for consideration, when customers have complete control over operation for an allotted time, is a lease or rental of computers and is subject to sales and use tax. 1969 Op. Att'y Gen. No. 69-128.

**Bulldozer operator rendering personal services.** — When the owner of a bulldozer furnishing earth-moving services is at all times in complete control and direction of the machine, such transaction constitutes merely the rendition of personal services and is not a leasing of the property so as to be subject to payment of the state sales tax. 1952-53 Ga. Op. Att'y Gen. 236.

**Rental contracts which are completed fully within this state are subject to Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.),** notwithstanding the fact that physical possession of the rented property is delivered outside this state. 1969 Op. Att'y Gen. No. 69-146.

**Lease or rental of vehicles not considered as rendering of transportation services.** — Leasing or renting of trucks by lumber companies is subject to payment of the state sales tax, notwithstanding the fact that the goods transported are in interstate commerce, since it cannot be considered the rendering of transportation services, but is, in effect, a lease. 1952-53 Ga. Op. Att'y Gen. 242.

### Retail Sale

**Property bought for purposes of leasing or renting is bought for resale** and the transaction is excluded as a sale subject to sales and use tax. 1960-61 Ga. Op. Att'y Gen. 551.

**Personal service transactions in which no sales are involved** are not "retail sales" or "sales at retail." 1952-53 Ga. Op. Att'y Gen. 236.

**Taxation of sales to out-of-state locations.** — When property is delivered pursuant to sales to out-of-state locations by a means of transportation which is leased or rented by the buyer, the sales occur in this state and are taxable under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1969 Op. Att'y Gen. No. 69-146.

**Automobile parts and accessories purchased by rental agency are held for purpose of resale.** — Taxpayer engaged in the business of renting automobiles is exempt from the payment of sales tax upon automobiles, automobile accessories, tires and parts purchased by the taxpayer, since such property is purchased for the purpose of resale. 1952-53 Ga. Op. Att'y Gen. 482.

**Sheriff making a sale of inventory and fixtures under fi. Fa. Is required to collect sales tax thereon** unless the purchaser of such goods intends to resell the property purchased, in which case the purchaser should present a resale certificate. 1952-53 Ga. Op. Att'y Gen. 241.

**Municipal corporation engaged in business of buying and distributing natural gas** to customers in municipality is not exempt from paying sales and use tax. 1954-56 Ga. Op. Att'y Gen. 860.

**Meals sold by restaurants and hotels to employees are taxable.** 1950-51 Ga. Op. Att'y Gen. 420.

**Admission charges to educational concerts are subject to state sales tax.** 1952-53 Ga. Op. Att'y Gen. 228.

**Schools must collect sales tax on admissions to school-sponsored functions.** 1954-56 Ga. Op. Att'y Gen. 868.

**State sales tax is imposed upon all sums deposited in pinball and music box machines,** and is not limited to the share of receipts due either the owner of the vending machine or the party owning the premises where located. 1952-53 Ga. Op. Att'y Gen. 483.

**Admission on basis of membership tantamount to purchase of tickets.** — Membership in a theatrical corporation, members of which are entitled to admission to all productions, is tantamount to the purchasing of tickets and is therefore subject to payment of the state sales tax. 1952-53 Ga. Op. Att'y Gen. 228.

**Admission fees charged by carnivals are subject to payment of the state sales tax,** including charges for any rides or shows within the carnival. 1952-53 Ga. Op. Att'y Gen. 228.

**Green fees or admission fees to golf courses are subject to sales tax,** although no ticket or item of tangible personal property is issued. 1954-56 Ga. Op. Att'y Gen. 830.

**Decision as to whether county-wide buying club constitutes a retail outlet for food stamp purposes.** — Whether a county-wide buying club constitutes a retail outlet so as to qualify as a retail food store for the purpose of redeeming federal food stamps is a decision for the United States Secretary of Agriculture to make. 1970 Op. Att'y Gen. No. U70-81.

**Sale**

**Sales tax applies to any transfer of title or possession, including that accomplished by barter.** 1954-56 Ga. Op. Att'y Gen. 835.

**Exemption is unavailable when otherwise exempt party furnishes materials to contractor for own benefit.** — When the party contracting for construction enjoys exemption or immunity from sales and use taxes and purchases tangible personal property for the party's own use, the sale and use are exempt from the tax, but when such party purchases tangible personal property for the use of the party's contractor in the performance of the contract, even though the completed construction will be for the benefit of such party, it is not purchasing for the party's own use, and the exemption or immunity, otherwise available, does not apply. 1957 Ga. Op. Att'y Gen. 322.

**Sales tax applies to purchase of machinery by an out-of-state purchaser if title passes in this state,** even if the property is immediately removed from the state. 1971 Op. Att'y Gen. No. U71-92.

**Sales of equipment delivered to purchasers outside state by common carrier.** — Sales of equipment which is delivered by common carriers procured by

the seller to the out-of-state residences of the buyers are taxable. 1969 Op. Att'y Gen. No. 69-147.

### Sales Price

**Transportation costs as element of sales price.** — Transportation costs are properly included in the total amount for which the property is sold as services which are part of the sale. The exemption provided for in Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) applies solely to those charges made for transportation services by a carrier, not incident to a sale of goods by the carrier. 1970 Op. Att'y Gen. No. 70-94.

### Tangible Personal Property

**Water is tangible personal property** and the sale of water at retail is subject to sales tax, unless specifically exempted. 1963-65 Ga. Op. Att'y Gen. 294.

### Use Tax

**Tax on use of machinery belonging to nonresident corporation.** — Use of machinery by a Georgia corporation, which machinery belongs to a nonresident corporation and for which the Georgia corporation pays a royalty, is subject to use tax. 1954-56 Ga. Op. Att'y Gen. 846.

**Use tax on advertising materials purchased outside state.** — Manufacturer who buys advertising materials outside state, ships those materials directly to dealers, at no cost to dealers, with dealers using the materials to promote local sales, is liable for use tax on such materials. 1962 Ga. Op. Att'y Gen. 556.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, §§ 50 et seq., 123.

**ALR.**

What amounts to "sale at retail" within Sales Tax Act, 98 A.L.R. 837; 111 A.L.R. 943; 115 A.L.R. 491; 139 A.L.R. 372; 163 A.L.R. 276; 171 A.L.R. 697.

Deductibility of freight charges in determining amount of gross sales or receipts for purposes of statutes making gross sales or receipts the subject or measure of a tax, 102 A.L.R. 768.

Computation of sales tax, 150 A.L.R. 1311.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 A.L.R. 276; 171 A.L.R. 697.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repair, as sale at retail within tax statute or ordinance, 171 A.L.R. 697.

What transactions constitute a "sale" within operation of sales tax law provision defining a sale as including a transfer of possession, license to use, or words to that effect, 172 A.L.R. 1317.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 A.L.R.2d 862.

Sale by wholly owned subsidiary to parent corporation, or vice versa, as within retail sales tax, or similar, statute, 64 A.L.R.2d 769.

Redemption of trading stamps or the like for merchandise as sale at retail within taxing statute, 80 A.L.R.2d 1221.

Sales or use tax: deduction or exemption of discount or premium in computing amount of sales, 90 A.L.R.2d 338.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

Applicability of sales or use taxes to motion pictures and video tapes, 10 A.L.R.4th 1209.

Cable television equipment or services as subject to sales or use tax, 23 A.L.R.6th 165.

**48-8-3. (Effective until January 1, 2025.) Exemptions.**

The sales and use taxes levied or imposed by this article shall not apply to:

(1)(A) Sales to the United States government, this state, any county or municipality of this state, fire districts which have elected governing bodies and are supported by, in whole or in part, ad valorem taxes, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds; or

(B) Sales to any authority created by local law enacted by the General Assembly or local constitutional amendment, which authority provides public water or sewer service;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provision of this article. No exemption is granted with respect to tangible personal property installed to serve a particular property site;

(3) The federal retailers' excise tax if the tax is billed to the consumer separately from the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this title relating to motor fuel taxes;

(4) Sales by counties and municipalities arising out of their operation of any public transit facility and sales by public transit authorities or charges by counties, municipalities, or public transit authorities for the transportation of passengers upon their conveyances;

(5)(A) Fares and charges, except charges for charter and sightseeing service, collected by an urban transit system for the transportation of passengers.

(B) As used in this paragraph, the term:

(i) "Public transit system primarily urban in character" shall include a transit system operated by any entity which provides passenger transportation services by means of motor vehicles having passenger-carrying capacity within or between standard metropolitan areas and urban areas, as those terms are defined in Code Section 32-2-3, of this state.

(ii) "Urban transit system" means a public transit system primarily urban in character which is operated by a street railroad company or a motor carrier, is subject to the jurisdiction of the Department of Public Safety, and whose fares and charges are regulated by the Department of Public Safety, or is operated pursuant to a franchise contract with a municipality of this state so that its fares and charges are regulated by or are subject to the approval of the municipality. An urban transit system certificate shall be issued by the Department of Public Safety, or by the municipality which has regulatory authority, upon an affirmative showing that the applicant operates an urban transit system. The certificate shall be obtained and filed with the commissioner and shall continue in effect so long as the holder of such certificate qualifies as an urban transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(6.2) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes;

(6.3) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) Sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public

Health Service Act, 42 U.S.C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to intellectually disabled persons, when such organization is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.3)(A) Sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by

such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner.

(B) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(A) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(B) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(C) Is paid for by government funds of a foreign country; and

(D) Is an instrumentality, agency, department, or branch of a

foreign government operating through a permanent location in this state;

(12) Food and food ingredients and prepared food sold and served to pupils and employees of public schools as part of a school lunch program;

(13) Sales of prepared food and food and food ingredients consumed by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property, including, but not limited to, charges for accessorial services such as refrigeration, switching, storage, and demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) Transportation that is subject to the tax imposed by Article 8 of Chapter 13 of this title;

(26) Reserved;

(27) Reserved;

(28) Reserved;

(29) Reserved;

(30) The sale of a vehicle to a service connected disabled veteran when the veteran received a grant from the United States Department of Veterans Affairs to purchase and specially adapt the vehicle to his disability;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1) Sales of mechanically propelled watercraft by a dealer licensed under this article to an individual who resides outside of this state, provided that:

(A) Such watercraft is to be taken immediately by such individual outside of this state and used exclusively outside of this state; and

(B) The purchaser provides documentation of his or her residency to the dealer on a form to be prescribed by the commissioner, which shall be filed with the commissioner together with a copy of the bill of sale;

(34) Reserved;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth $5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth $5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, "remanufacture of aircraft engines or aircraft engine parts or components" means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3) Reserved;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) "Alternative fuel facility" means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) "Used in or for the construction" means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products have begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35) Reserved;

(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equip-

ment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) "Qualified water conservation facility" means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) "Water conservation" means a minimum 10 percent reduction resulting in the relinquishment of transfer of annual permitted water usage from existing ground-water sources due to increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) Reserved;

(38) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph (2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 27 of Title 50;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks and organ procurement organizations as defined in Code Section 44-5-141 having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code. Each organ procurement organization exempt under this paragraph shall submit an annual report to the Department of Community Health which includes the number of donors and transplants facilitated by such organization in the organization's previous fiscal year;

(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons, the sale or use of insulin regardless of whether the insulin is dispensable only by prescription, and the sale or use of prescription eyeglasses and contact lenses including, without limitation, prescription contact lenses distributed by the manufacturer to licensed dispensers as free samples not intended for resale and labeled as such; and

(ii) The sale or use of drugs lawfully dispensable by prescription for the treatment of natural persons which are dispensed or distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor; and the use of drugs and durable medical equipment lawfully dispensed or distributed without charge solely for the purposes of a clinical trial approved by either the United States Food and Drug Administration or by an institutional review board.

(B) For purposes of this paragraph, the term:

(i) "Drug" means the same as provided in Code Section 48-8-2 but shall not include over-the-counter drugs or tobacco.

(ii) "Institutional review board" means an institutional review board as provided in 21 C.F.R. Section 56.

(C) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(48) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs;

(49) Reserved;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

(50) Sales of insulin syringes and blood glucose level measuring strips dispensed without a prescription;

(51) Sales of oxygen prescribed by a licensed physician;

(52) The sale or use of hearing aids;

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) Sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(57)(A) The sale of food and food ingredients to an individual consumer for off-premises human consumption, to the extent provided in this paragraph.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include prepared food, drugs, or over-the-counter drugs.

(C) The exemption provided for in this paragraph shall not apply to the sale or use of food and food ingredients when purchased for any use in the operation of a business.

(D)(i) Except in counties in which a tax authorized under Part 1 of Article 3 of this chapter in connection with an equalized homestead option sales tax pursuant to Part 2 of Article 2A of this chapter is imposed, the exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(ii) For the purposes of this subparagraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to any article of this chapter but shall not mean a tax authorized under Part 1 of Article 3 of this chapter in connection with an equalized homestead option sales tax pursuant to Part 2 of Article 2A of this chapter.

(E) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(57.1)(A) Sales of food and food ingredients to a qualified food bank.

(B) As used in this paragraph, the term "qualified food bank" means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low-income persons residing in this state.

(C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of clients served in the previous calendar year, total pounds of food donated by retailers, and total amount of exempt purchases made in the preceding year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of clients served, total pounds of food donated by retailers, and total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year.

(D) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) The use of food and food ingredients donated to a qualified nonprofit agency and used for hunger relief or disaster relief purposes.

(B) As used in this paragraph, the term "qualified nonprofit agency" means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(D) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) The use of food and food ingredients which is donated following a natural disaster and which is used for disaster relief purposes.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58) Reserved;

(59)(A) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

(B) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fund-raising activities of any such council;

(60) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17;

(64) Reserved;

(65)(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(68) (Reserved effective December 31, 2028.)

(A)(i) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under the 2017 North American Industrial Classification System code 334413, 334614, 511210, 517311, 517312, 517410, 517911, 517919, 518210, 522320, 541330, 541511, 541512, 541513, 541519, 541713, 541715, or 541720, provided that the exemption allowed under this paragraph shall be limited to those purchases or leases made by such a high-technology company for calendar years during which the high-technology company made taxable purchases or leases of at least $15 million worth of such computer equipment.

(ii) Notwithstanding the provisions of division (i) of this subparagraph to the contrary, on and after January 1, 2024, the exemption allowed under this paragraph shall be limited such that each person claiming the exemption allowed by this paragraph shall be subject to paying 10 percent of all taxes imposed by this chapter on the first $15 million of its eligible purchases or leases for which an exemption is claimed under this paragraph.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term "computer equipment" means any individual computer or organized assembly of hardware or software, including, but not limited to, a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting

of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) Such term shall not include:

(I) Telephone central office equipment or other voice data transport technology, including any wireline or wireless telecommunication system;

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process;

(III) Computers or devices issued to employees, which shall include, but not be limited to, smartphones, tablets, wearables, personal computers, and laptops; or

(IV) Prewritten computer software.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation.

(E) Each high-technology company that has been issued a certificate of exemption pursuant to this paragraph shall report annually to the commissioner a list of the facilities for which all computer equipment exempted by this paragraph during the preceding calendar year was incorporated, as well as the amount of taxes exempted under this paragraph during the preceding calendar year. Such report shall be filed within 90 days after the end of the calendar year for which the high-technology company utilized a certificate of exemption pursuant to this paragraph and shall be subject to the confidentiality provisions of Code Section 48-2-15. The commissioner shall not issue a certificate of exemption under this paragraph for the calendar year next succeeding the reporting date to any high-technology company that has failed to comply with the reporting required by this subparagraph.

(F) The commissioner shall promulgate such rules and regulations as are necessary to implement the provisions of this paragraph.

(G) This paragraph shall stand repealed and reserved by operation of law at the last moment of December 31, 2028;

(68.1) (Repealed effective January 1, 2032.)

(A) For the period commencing on July 1, 2018, and ending on December 31, 2031, high-technology data center equipment to be incorporated or used in a high-technology data center that meets the high-technology data center minimum investment threshold and other conditions provided in this paragraph.

(B) Any person making a sale or lease of high-technology data center equipment shall collect the tax imposed on such sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that such sale or lease is exempted pursuant to this paragraph.

(C)(i) The commissioner shall not issue a certificate of exemption from sales and use tax to a high-technology data center or high-technology data center customer as provided in this paragraph unless the commissioner makes a determination that the high-technology data center will more likely than not meet the high-technology data center minimum investment threshold.

(ii) The commissioner may require any information necessary to determine if such high-technology data center is in compliance with its investment budgeting plan to meet the high-technology data center minimum investment threshold.

(iii)(I) Within 60 days after the end of the seventh year following its exemption start date, a high-technology data center shall file a final report with the commissioner listing the expenditures incurred that count toward its minimum investment threshold, the number of new quality jobs created, and any other information that the commissioner may reasonably require to determine whether the high-technology data center has met the minimum investment threshold.

(II) If the commissioner determines that a high-technology data center failed to meet its high-technology data center minimum investment threshold, such high-technology data center shall be required to repay all taxes exempted or refunded pursuant to its certificate of exemption issued pursuant to this paragraph within 90 days after notification of such failure. Interest shall be due with such repayment at the rate specified in Code Section 48-2-40 computed from the date such taxes would have been due but for this exemption. Such repayment shall be calculated notwithstanding otherwise applicable periods of limitation for assessment of taxes under Code Section 48-2-49.

(iv)(I) As a condition precedent to the issuance of a certificate of exemption, the commissioner, at his or her discretion,

may require a good and valid bond with a surety company authorized to do business in this state, in an amount fixed by the commissioner not to exceed $20 million. The commissioner shall consider past performance and in-state investment when determining the value of the bond, if one is required.

(II) The bond that may be required by this division shall be forfeited and paid to the general fund in an amount representing all taxes and interest required to be repaid pursuant to division (iii) of this subparagraph if the high-technology data center fails to meet the high-technology data center minimum investment threshold prior to the expiration of the seven-year period.

(v) The commissioner shall have the authority to revoke the certificate of exemption at any time he or she believes that the high-technology data center is not likely to meet its high-technology minimum investment threshold.

(vi) Each high-technology data center that has been issued a certificate of exemption pursuant to this paragraph shall provide a list of high-technology data center customers that are deploying high-technology data center equipment in its facility and shall notify the commissioner within 30 days of any change to the list.

(D)(i) The commissioner shall require annual reporting by the high-technology data center of the amount of taxes exempted under this paragraph, the number of new quality jobs, and the total payroll resulting from construction, maintenance, and operation in and on its facility during the preceding year.

(ii) The commissioner shall issue an annual report to the chairperson of the Senate Finance Committee and the chairperson of the House Committee on Ways and Means concerning the exemption allowed by this paragraph. Notwithstanding the confidentiality provisions of Code Section 48-2-15, such report shall include, for the prior calendar year for each high-technology data center issued a certificate of exemption pursuant to this paragraph, the amount of tax exempted and the number of new quality jobs created by each high-technology data center.

(E) The commissioner shall promulgate such rules and regulations as are necessary to implement the provisions of this paragraph.

(F) A high-technology data center shall not be entitled to claim any credit authorized under Code Sections 48-7-40 through

48-7-40.33 or Code Section 36-62-5.1 on its tax return if it has received a certificate of exemption from the commissioner pursuant to this paragraph. If a determination is made by the commissioner pursuant to division (iii) of subparagraph (C) of this paragraph that the high-technology data center must repay all taxes exempted or refunded pursuant to this paragraph, such high-technology data center may file amended income tax returns claiming any credit to which it would have been entitled under the foregoing Code sections but for having claimed the exemption under this paragraph.

(G) As used in this paragraph, the term:

(i) "Exemption start date" means the date on or after July 1, 2018, chosen by the high-technology data center and indicated on its application filed on or after January 1, 2019, which begins the seven-year period during which the minimum investment threshold must be met. A refund claim must be filed for taxes paid on purchases qualifying for this exemption for any period on or after July 1, 2018, during which the high-technology data center has not yet applied for and received its certificate of exemption from the commissioner.

(ii) "High-technology data center" means a facility, campus of facilities, or array of interconnected facilities in this state that is developed to power, cool, secure, and connect its own equipment or the computer equipment of high-technology data center customers and that has an investment budget plan which meets the high-technology data center minimum investment threshold.

(iii) "High-technology data center customer" means a client, tenant, licensee, or end user of a high-technology data center that signs at least a 36 month contract for service with the high-technology data center.

(iv) "High-technology data center equipment" means computer equipment as defined in paragraph (68) of this Code section of a high-technology data center or such equipment of a high-technology data center customer to be used or deployed in the high-technology data center; and the materials, components, machinery, hardware, software, or equipment, including, but not limited to, emergency backup generators, air handling units, cooling towers, energy storage or energy efficiency technology, switches, power distribution units, switching gear, peripheral computer devices, routers, batteries, wiring, cabling, or conduit, which equipment or materials are used to:

(I) Create, manage, facilitate, or maintain the physical and digital environments for computer equipment;

(II) Protect the high-technology data center equipment from physical, environmental, or digital threats; or

(III) Generate or provide constant delivery of power, environmental conditioning, air cooling, or telecommunications services for the high-technology data center.

Such term shall not include real property as defined in Code Section 48-8-3.2. A high-technology data center may not count high-technology data center equipment that it purchases or that is purchased by the high-technology data center customer and subsequently leased to another party more than once for purposes of satisfying the high-technology data center minimum investment threshold.

(v) "High-technology data center minimum investment threshold" means:

(I) For high-technology data centers located in a county in this state having a population greater than 50,000 according to the United States decennial census of 2010 or any future such census, the creation of 25 new quality jobs and $250 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and December 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center;

(II) For high-technology data centers located in a county in this state having a population greater than 30,000 and less than 50,001 according to the United States decennial census of 2010 or any future such census, the creation of ten new quality jobs and $75 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and December 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center; and

(III) For high-technology data centers located in a county in this state having a population less than 30,001 according to the United States decennial census of 2010 or any future such census, the creation of five new quality jobs and $25 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and De-

cember 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center.

(vi) "New quality jobs" shall have the same meaning as provided in paragraph (2) of subsection (a) of Code Section 48-7-40.17.

(H) This paragraph shall stand repealed by operation of law on January 1, 2032;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first $7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first $2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first $1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first $1.44 per gallon of the sales price or cost price of propane, the first $57.90 per ton of petroleum coke, the first $57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(72) The sale or use of all mobility enhancing equipment prescribed by a physician;

(73) Reserved;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) "Digital broadcast equipment" means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) "Federally licensed commercial or public radio or television broadcast station" means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of eligible property. The exemption provided by this paragraph applies only to sales occurring during the period commencing at 12:01 A.M. on July 30, 2016, and concluding at 12:00 Midnight on July 31, 2016.

(B) As used in this paragraph, the term:

(i) "Clothing" means all human wearing apparel suitable for general use and includes footwear. The term "clothing" excludes belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies, including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; sewing materials that become part of clothing, including but not limited to buttons, fabric, lace, thread, yarn, and zippers; and clothing accessories or equipment.

(ii) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing.

(iii) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. The term "computer" excludes cellular phones.

(iv) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(v) "Eligible property" means:

(I) Articles of clothing with a sales price of $100.00 or less per item;

(II) Computers, computer components, and prewritten computer software purchased for noncommercial home or personal use with a sales price of $1,000.00 or less per item; and

(III) School supplies, school art supplies, school computer supplies, and school instructional materials purchased for noncommercial use with a sales price of $20.00 or less per item.

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(vii) "School art supply" means an item commonly used by a student in a course of study for artwork.

(viii) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used.

(ix) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught.

(x) "School supply" means an item commonly used by a student in a course of study.

(C) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76)(A) The sale or use of tangible personal property used for or in the renovation or expansion of an aquarium located in this state that charges for admission and that is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, to the extent provided in this paragraph.

(B) This exemption shall apply from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax refunded pursuant to this paragraph exceeds $4.5 million, whichever occurs first. A qualifying aquarium must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph will not include interest.

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

(D) Items qualifying for exemption include all tangible personal property that will remain at the aquarium facility after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the aquarium facility. The exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction.

(E) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, by June 30 each year, any taxpayer seeking to claim the exemption provided for in subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of visitors admitted, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the

House Committee on Ways and Means and the Senate Finance Committee containing such information;

(77) Reserved;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 5, 2004, until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is $200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) Reserved;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 17, 2004, until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term "corporate attraction" means any tourist attraction facility constructed on or after May 17, 2004, dedicated to the history and products of a corporation which costs exceeds $50 million, is greater than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on the ground, and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier

operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of Energy Star Qualified Products or WaterSense Products with a sales price of $1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during the period commencing at 12:01 A.M. on September 30, 2016, and concluding at 12:00 Midnight on October 2, 2016.

(B) As used in this paragraph, the term:

(i) "Energy Star Qualified Product" means any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

(ii) "WaterSense Product" means a product authorized to bear the United States Environmental Protection Agency WaterSense label.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of Energy Star Qualified Products or WaterSense Products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term "biomass material" means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan

shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term "national infantry museum and heritage park facility" means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85) Reserved;

(86) The sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state, so long as such aircraft is not registered in this state;

(87)(A) The sale or use of tangible personal property used for or in the renovation or expansion of a zoological institution to the extent provided in this paragraph.

(B) As used in this paragraph, the term "zoological institution" means a nonprofit wildlife park, terrestrial institution, or facility which:

(i) Is open to the public, charges for admission, exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Is located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) This exemption shall apply from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax refunded

pursuant to this paragraph exceeds $800,000.00, whichever occurs first. A qualifying zoological institution shall pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

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

(E) Items qualifying for exemption include all tangible personal property that will remain at the zoological institution after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the zoological institution. This exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term "civil rights museum" means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 40,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public;

(89) For the period commencing on July 1, 2009, and ending on

June 30, 2011, the sale or use of an airplane flight simulation training device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) Internet access service;

(91) The sale of prewritten computer software transferred electronically to the purchaser or delivered to the purchaser by means of load and leave; provided, however, that the exemption granted by this paragraph shall not include sales of specified digital products, other digital goods, or digital codes;

(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales to an organization defined by the Internal Revenue Service as an instrumentality of the states relating to the holding of an annual meeting in this state;

(93)(A) For the period commencing January 1, 2012, until December 31, 2026, sales of tangible personal property used for and in the construction of a competitive project of regional significance.

(B) The exemption provided in subparagraph (A) of this paragraph shall apply to purchases made during the entire time of construction of the competitive project of regional significance so long as such project meets the definition of a competitive project of regional significance within the period commencing January 1, 2012, until December 31, 2026.

(C) The department shall not be required to pay interest on any refund claims filed for local sales and use taxes paid on purchases made prior to the implementation of this paragraph.

(D) As used in this paragraph, the term "competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in this state where the commissioner of economic development determines that the project would have a significant regional impact. The commissioner of economic development shall promulgate regulations in accordance with the provisions of this paragraph outlining the guidelines to be applied in making such determination;

(94) The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use;

(95) The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. Except

as otherwise provided in this paragraph, this exemption shall not apply to rentals of motor vehicles for periods of 31 or fewer consecutive days. Lease payments for a motor vehicle that is leased for more than 31 consecutive days for which a state and local title ad valorem tax is paid shall be exempt from sales and use taxes as provided for in this paragraph. No sales and use taxes shall be imposed upon state and local title ad valorem tax fees imposed pursuant to Chapter 5C of this title as a part of the purchase price of a motor vehicle or any portion of a lease or rental payment that is attributable to payment of state and local title ad valorem tax fees under Chapter 5C of this title;

(96)(A) The sale or use of construction materials used for or in the construction of buildings at a private college to the extent provided in subparagraphs (B) and (C) of this paragraph. As used in this paragraph, the term "private college" means a college in this state which is operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and has an enrollment of between 1,000 and 3,000 students.

(B) This exemption shall apply from July 1, 2015, until June 30, 2016, or until the aggregate state sales and use tax refunded pursuant to this paragraph exceeds $350,000.00, whichever occurs first. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from state sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(C)(i) This exemption shall apply from July 1, 2015, until June 30, 2016. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from local sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(ii) For purposes of this subparagraph, local sales and use tax shall be defined as any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

(D) Notwithstanding any provision of Code Section 48-8-63 to

the contrary, purchases by a contractor may qualify for the exemption provided for in this paragraph. However, when a contractor purchases qualifying construction materials, the contractor shall pay the tax at the time of purchase or at the time of first use in this state; and the ultimate owner of the property may file a claim for refund of the tax paid on the qualifying property.

(E) Items qualifying for exemption include all construction materials that will remain at the private college after completion of construction and all construction materials that become incorporated into the real property structures of the private college. This exemption excludes all items that remain in the possession of a contractor after the completion of construction;

(97)(A) Sales of admissions to nonrecurring major sporting events in this state expected to generate over $50 million in the host locality.

(B) As used in this paragraph, the term "major sporting event" means the National Football League championship game; any semifinal game or championship game of a national collegiate tournament; a Major League Baseball, Major League Soccer, or National Basketball Association all-star game; any match of a FIFA World Cup; or any other nonrecurring major sporting event determined by the commissioner of economic development and the state revenue commissioner to be a major sporting event.

(C) As used in this paragraph, the term "nonrecurring" means not occurring in this state more than once every three years.

(D) The revenue projections for purposes of this paragraph shall include, but not be limited to, lodging, meals, vehicle rentals, and admissions to tourist attractions.

(E) Determinations made under this paragraph by the commissioners on or after July 1, 2016, shall be made prior to the date of the convening of the General Assembly immediately preceding the awarding of the sales tax exemption for a major sporting event. Such a determination shall become effective either 30 days prior to the major sporting event or on the first fiscal day of the fiscal year immediately following a year during which such determination was made, whichever is earlier. Such a determination may be rendered null and void by a joint resolution passed by both chambers of the General Assembly. In the event that the presiding officers of the General Assembly, in their discretion, choose to introduce such a joint resolution, a special committee in each respective chamber of the General Assembly will be appointed by the presiding officers of both chambers of the General

Assembly for the purpose of considering such a joint resolution, subject to the rules of both respective chambers.

(F) This paragraph shall stand automatically repealed on December 31, 2031; provided, however, that this repeal shall not apply to any event for which an application has been submitted prior to December 31, 2031;

(98)(A) For the period beginning July 1, 2017, and ending June 30, 2020, sales of tangible personal property and services to a qualified job training organization when such organization obtains an exemption determination letter from the commissioner.

(B) For the purposes of this paragraph, the term "qualified job training organization" means an organization which:

(i) Is located in this state;

(ii) Is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code;

(iii) Specializes in the retail sale of donated items;

(iv) Provides job training and employment services to individuals with workplace disadvantages and disabilities, including, but not limited to, reentry citizens who shall be persons released from incarceration, persons with disabilities, and veterans; and

(v) Uses a majority of its revenues for job training and placement programs.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, Article 2A, Part 1 or Part 2 of Article 3, Article 4, or Article 5 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any qualified job training organization which is granted an exemption under this paragraph shall provide an annual report to the department which contains, but is not limited to, the following:

(i) The number of individuals trained in the program;

(ii) The number of individuals employed by the organization after receiving such training; and

(iii) The number of individuals employed in full-time positions outside the organization after such training.

Such data shall be compiled by the department and presented to the House Committee on Ways and Means and the Senate Finance Committee for consideration prior to any renewal or extension of the exemption provided by this paragraph.

(E) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

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

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

(C) This exemption shall apply from July 1, 2017, until January 1, 2019, to any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

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

may file a claim for refund of the tax paid on the qualifying property.

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

(100) (Repealed effective December 31, 2027.)

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

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

(C) This paragraph shall stand repealed and reserved on December 31, 2027;

(101)(A) The sale or use of noncommercial written materials or mailings by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, if the organization is located in this state and provides such materials to charity supporters for educational, charitable, religious, or fundraising purposes, to the extent provided in subparagraph (B) of this paragraph.

(B) This exemption shall apply from July 1, 2018, until July 1, 2026. A qualifying organization must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use taxes by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest;

(102)(A) Fifty percent of the sales price of a manufactured home if such manufactured home is installed pursuant to Code Section 8-2-160 and will be converted to real property pursuant to Code Section 8-2-183.1 within 30 days of the retail sale.

(B) As used in this paragraph, the term "manufactured home" means a structure built on a permanent chassis that:

(i) Is designed to be used as a dwelling;

(ii) Is transportable in one or more sections;

(iii) Contains plumbing, heating, air-conditioning, and electrical systems; and

(iv) Is designed to have an angled roof and contain an area of at least 650 square feet.

(C) Within 30 days of a sale exempted as provided for in subparagraph (A) of this paragraph, the seller shall complete the requirements of Code Section 8-2-183.1 and properly file a copy of the Certificate of Permanent Location with the clerk of superior court, or the commissioner shall recover from the seller 1.5 times the amount of tax exempted by this paragraph.

(D) A manufactured home that is exempted as provided in subparagraph (A) of this paragraph shall not be eligible for a Certificate of Removal from Permanent Location provided in Part 4 of Article 2 of Chapter 2 of Title 8, or any other manner of a return to tangible personal property unless the amount exempted pursuant to subparagraph (A) of this paragraph is paid to the commissioner.

(E) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any sales and use tax levied or imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to:

(i) Constitutional amendment;

(ii) Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or

(iii) Article 2, 2A, 3, 4, 5, or 5A of this chapter;

(103) Reserved;

(104) Sales to or by any nonprofit organization which has as its primary purpose providing poultry diagnostic and disease monitoring services if such organization qualifies as a tax-exempt organization under Section 501(c)(5) of the Internal Revenue Code; or

(105) Sales to or by an eligible recipient, as defined in Code Section 31-8-300, which provides pharmacy related services only for the purpose of dispensing donated or purchased drugs pursuant to the drug

repository program established under Article 10 of Chapter 8 of Title 31, if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code or is an organization that is treated for federal income tax purposes as a disregarded entity of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

**History.**

Ga. L. 1951, p. 360, §§ 3, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 182, §§ 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 191, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 192, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 194, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 199, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 301, § 1; Ga. L. 1960, p. 153, § 2; Ga. L. 1963, p. 13, § 1; Ga. L. 1963, p. 132, § 1; Ga. L. 1963, p. 613, § 1; Ga. L. 1964, p. 57, § 3; Ga. L. 1964, p. 206, § 1; Ga. L. 1964, p. 672, § 1; Ga. L. 1965, p. 13, § 1; Ga. L. 1966, p. 211, § 1; Ga. L. 1966, p. 507, § 1; Ga. L. 1966, p. 537, §§ 1, 2; Ga. L. 1967, p. 282, § 1; Ga. L. 1967, p. 283, § 1; Ga. L. 1967, p. 286, § 1; Ga. L. 1968, p. 129, § 1; Ga. L. 1968, p. 136, § 1; Ga. L. 1968, p. 201, § 1; Ga. L. 1968, p. 545, § 1; Ga. L. 1968, p. 559, § 1; Ga. L. 1970, p. 16, § 1; Ga. L. 1970, p. 252, § 2; Ga. L. 1970, p. 254, § 1; Ga. L. 1970, p. 460, § 1; Ga. L. 1970, p. 631, § 1; Ga. L. 1971, p. 80, § 1; Ga. L. 1971, p. 265, § 1; Ga. L. 1971, p. 474, § 1; Ga. L. 1971, p. 653, § 1; Ga. L. 1972, p. 457, § 1; Ga. L. 1972, p. 504, § 1; Ga. L. 1973, p. 276, § 1; Ga. L. 1976, p. 411, § 1; Ga. L. 1976, p. 672, § 1; Ga. L. 1976, p. 987, § 1; Ga. L. 1977, p. 590, § 1; Code 1933, § 91A-4503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1160, §§ 1-4; Ga. L. 1978, p. 1634, § 1; Ga. L. 1978, p. 1664, § 2; Ga. L. 1978, p. 1666, § 1; Ga. L. 1979, p. 5, §§ 85-92; Ga. L. 1979, p. 1278, §§ 1, 2; Ga. L. 1980, p. 10, §§ 25, 26; Ga. L. 1980, p. 586, § 1; Ga. L. 1980, p. 805, § 1; Ga. L. 1980, p. 1188, § 1; Ga. L. 1981, p. 1857, § 41; Ga. L. 1984, p. 1466, § 1; Ga. L. 1985, p. 491, § 1; Ga. L. 1985, p. 624, § 1; Ga. L. 1985, p. 625, § 1; Ga. L. 1985, p. 1177, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1464, § 2; Ga. L. 1986, p. 1467, §§ 1, 2; Ga. L. 1986, p. 1584, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 62, §§ 2, 3; Ga. L. 1989, p. 622, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 87, § 2; Ga. L. 1992, p. 1276, § 1; Ga. L. 1992, p. 1521, § 2; Ga. L. 1992, p. 3173, § 1; Ga. L. 1994, p. 132, § 1; Ga. L. 1994, p. 552, § 1; Ga. L. 1994, p. 928, §§ 5, 6; Ga. L. 1994, p. 1269, § 1; Ga. L. 1995, p. 364, § 1; Ga. L. 1995, p. 585, § 8; Ga. L. 1995, p. 991, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1996, p. 1, § 1; Ga. L. 1996, p. 220, §§ 8-10; Ga. L. 1996, p. 738, § 1; Ga. L. 1996, p. 1025, § 2; Ga. L. 1996, p. 1643, §§ 1-3; Ga. L. 1997, p. 157, § 1; Ga. L. 1997, p. 1295, § 1; Ga. L. 1997, p. 1412, §§ 1, 2; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 602, §§ 1-3; Ga. L. 1999, p. 634, §§ 1, 2; Ga. L. 2000, p. 409, § 1; Ga. L. 2000, p. 411, § 1; Ga. L. 2000, p. 414, § 1; Ga. L. 2000, p. 415, § 1; Ga. L. 2000, p. 468, § 1; Ga. L. 2000, p. 485, § 1; Ga. L. 2000, p. 615, §§ 1-3; Ga. L. 2000, p. 1202, §§ 1, 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 202, §§ 1, 2; Ga. L. 2001, p. 984, §§ 13-16; Ga. L. 2001, p. 1049, § 1; Ga. L. 2001, p. 1068, § 1; Ga. L. 2002, p. 6, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 575, § 1; Ga. L. 2002, p. 804, § 1; Ga. L. 2002, p. 855, § 1; Ga. L. 2002, p. 954, § 3; Ga. L. 2002, p. 984, § 1; Ga. L. 2003, p. 337, § 1; Ga. L. 2003, p. 665, §§ 11, 12; Ga. L. 2004, p. 154, § 1; Ga. L. 2004, p. 328, § 1; Ga. L. 2004, p. 403, § 1; Ga. L. 2004, p. 628, § 1; Ga. L. 2004, p. 690, § 22; Ga. L. 2004, p. 947, § 1; Ga. L. 2004, p. 1073, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 142, §§ 1, 2/HB 487; Ga. L. 2005, p. 334, § 29-6/HB 501; Ga. L. 2005, p. 725, §§ 1, 2, 3, 4/HB 341; Ga. L. 2005, p. 794, § 1/HB 559; Ga. L. 2005, p. 983, § 1/HB 5; Ga. L. 2006, p. 222, § 1/HB 1014; Ga. L. 2006, p. 263, § 1/HB 1018; Ga. L. 2006, p. 419, § 1/HB 834; Ga. L. 2006, p. 471, § 1/HB 1301; Ga. L. 2006, p. 524, §§ 1, 2/HB 1219; Ga. L. 2006, p. 527, § 1/HB 1121; Ga. L. 2006, p. 538, § 1/HB 841; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2007, p. 207, §§ 1, 2/HB 128; Ga. L. 2007, p. 419, § 1/HB 186; Ga. L. 2007, p. 594, § 1/HB

169; Ga. L. 2007, p. 604, § 1/HB 282; Ga. L. 2007, p. 709, § 1/HB 193; Ga. L. 2008, p. 316, § 1/HB 1178; Ga. L. 2008, p. 340, §§ 1, 2/HB 948; Ga. L. 2008, p. 644, § 3-1/SB 342; Ga. L. 2008, p. 739, §§ 1, 2, 3/HB 957; Ga. L. 2008, p. 773, § 1/HB 1078; Ga. L. 2008, p. 1148, § 1/HB 1023; Ga. L. 2008, p. 1151, § 1/HB 1110; Ga. L. 2008, p. 1160, § 1/HB 237; Ga. L. 2008, p. 1163, § 1/HB 272; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 79, § 2/HB 59; Ga. L. 2009, p. 636, § 1/HB 116; Ga. L. 2009, p. 637, §§ 1, 2/HB 120; Ga. L. 2009, p. 642, § 1/HB 212; Ga. L. 2009, p. 650, § 1/HB 358; Ga. L. 2009, p. 651, § 1/HB 395; Ga. L. 2009, p. 777, § 1/HB 129; Ga. L. 2009, p. 794, § 1/HB 349; Ga. L. 2009, p. 795, § 1/HB 364; Ga. L. 2010, p. 662, § 2/HB 1221; Ga. L. 2011, p. 38, § 4/HB 168; Ga. L. 2011, p. 47, § 1/HB 322; Ga. L. 2011, p. 302, § 1/HB 234; Ga. L. 2012, p. 257, §§ 1-5, 4-1, 5-1, 5-5, 5-6, 6-2/HB 386; Ga. L. 2012, p. 580, § 18/HB 865; Ga. L. 2012, p. 694, § 4/HB 729; Ga. L. 2012, p. 775, § 48/HB 942; Ga. L. 2012, p. 1348, § 2/HB 743; Ga. L. 2013, p. 7, § 4/HB 266; Ga. L. 2013, p. 37, § 2-2/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 190, § 1/HB 164; Ga. L. 2013, p. 243, § 6.1/HB 318; Ga. L. 2014, p. 51, § 2/HB 958; Ga. L. 2014, p. 633, § 1/HB 933; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2015, p. 236, § 5-3/HB 170; Ga. L. 2015, p. 284, § 1/HB 428; Ga. L. 2015, p. 385, § 4-17/HB 252; Ga. L. 2015, p. 1219, § 26/HB 202; Ga. L. 2015, p. 1262, § 7/HB 225; Ga. L. 2015, p. 1313, §§ 1, 1A/HB 426; Ga. L. 2016, p. 62, § 1/HB 951; Ga. L. 2016, p. 758, § 4/SB 379; Ga. L. 2016, p. 772, § 1/HB 937; Ga. L. 2016, p. 796, § 1/HB 763; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 46, § 2/HB 265; Ga. L. 2017, p. 530, § 1/SB 156; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 307, § 1/HB 697; Ga. L. 2018, p. 624, § 1/HB 696; Ga. L. 2018, p. 644, § 4/HB 217; Ga. L. 2018, p. 674, § 1/HB 871; Ga. L. 2018, p. 1075, §§ 1, 2/HB 793; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2018, Ex. Sess., p. ES7, § 3-2/HB 5EX; Ga. L. 2019, p. 90, § 1/HB 35; Ga. L. 2019, p. 892, § 1/HB 352; Ga. L. 2019, p. 1044, § 1/HB 168; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 792, § 1/SB 104; Ga. L. 2020, p. 903, § 2-1/HB 105; Ga. L. 2021, p. 289, §§ 5-1, 5-2, 7-2/SB 6; Ga. L. 2021, p. 511, § 1/HB 374; Ga. L. 2021, p. 602, § 1-1/HB 498; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2022, p. 285, § 1/HB 1034; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2022, p. 655, §§ 1, 3/HB 1291; Ga. L. 2022, p. 741, § 1/HB 586; Ga. L. 2022, p. 655, § 2/HB 1291; Ga. L. 2023, p. 335, § 3-2/SB 56, effective January 1, 2024; Ga. L. 2023, p. 344, §§ 1, 2/HB 86, effective July 1, 2023; Ga. L. 2023, p. 727, § 1/HB 408, effective July 1, 2023; Ga. L. 2024, p. HB 1072, § 2-6/HB 1072, effective April 23, 2024; Ga. L. 2024, p. 1052, § 5(48)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-8-3 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

**Amendments.**

**The first 2022 amendment,** effective July 1, 2022, inserted "any match of a FIFA World Cup;" in subparagraph (97)(B), and substituted "December 31, 2031" for "December 31, 2022" twice in subparagraph (97)(F).

**The second 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, designated paragraph (103) as "Reserved; or".

**The third 2022 amendment,** effective May 9, 2022, substituted "December 31, 2023" for "June 30, 2023" in subparagraph (68)(G), substituted "December 31, 2031" for "December 31, 2028" in subparagraph (68.1)(A), and in subdivisions (68.1)(A)(v)(I), (68.1)(A)(v)(II), and (68.1)(A)(v)(III), deleted "the creation of 20 new quality jobs and" from the end of division (68.1)(A)(v), inserted "the creation of 25 new quality jobs and" in subdivision (68.1)(A)(v)(I), substituted "the creation of ten new quality jobs and $75 million" for "$150 million" in subdivision (68.1)(A)(v)(II), substituted "the creation of five new quality jobs and $25 million" for "$100 million" in subdivision (68.1)(A)(v)(III), and substituted "January 1, 2032" for "January 1, 2029" in subparagraph (68.1)(H).

**The fourth 2022 amendment,** effective May 10, 2022, substituted "December 31, 2027" for "December 31, 2022" in subparagraph (100)(C).

**The fifth 2022 amendment,** effective January 1, 2024, substituted the current provisions of subparagraph (68)(A) for the former provisions, which read: "The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under the 2017 North American Industrial Classification System code 334413, 334614, 511210, 517311, 517312, 517410, 517911, 517919, 518210, 522320, 541330, 541511, 541512, 541513, 541519, 541713, 541715, or 541720 where such sale of computer equipment for any calendar year exceeds $15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds $15 million.", substituted "including, but not limited do," for "such as" near the beginning of division (68)(C)(i), substituted "Such term" for "The term" at the beginning of division (68)(C)(ii), deleted "or" from the end of subdivision (68)(C)(ii)(I), substituted a semicolon for a period at the end of subdivision (68)(C)(ii)(II), added subdivisions (68)(C)(ii)(III) and (68)(C)(ii)(IV), and substituted "December 31, 2028" for "June 30, 2023" at the end of subparagraph (68)(G). See Editor's notes for applicability.

**The first 2023 amendment,** effective January 1, 2024, substituted "Internet access service" for "Reserved" in paragraph (90), and substituted the current provisions of paragraph (91) for the former provisions, which read: "The sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave;". See Editor's notes for applicability.

**The second 2023 amendment,** effective July 1, 2023, in paragraph (76), deleted "subparagraphs (B) and (C) of" following "extent provided in" in subparagraph (76)(A), in subparagraph (76)(B), substituted "apply from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax," for "apply from July 1, 2018, until January 1, 2022, or until the aggregate state sales and use tax" in the first sentence, and deleted "state" following "exemption from" in the second sentence, deleted former subparagraph (76)(C), which read: "This exemption shall apply from July 1, 2018, until January 1, 2022, to any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, 5, or 5A of this chapter.", and redesignated former subparagraphs (76)(D) through (76)(F) as present subparagraphs (76)(C) through (76)(E); and, in paragraph (87), deleted "subparagraphs (B) and (C) of" following "to the extent provided in" in subparagraph (87)(A), added the subparagraph (87)(B) designation, and divided former subparagraph (87)(A) into present subparagraphs (87)(A) and (87)(B), redesignated former subparagraph (87)(B) as present subparagraph (87)(C), and, in subparagraph (87)(C), substituted "from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax" for "from July 1, 2016, until June 30, 2018, or until the aggregate state sales and use tax" and substituted "$800,000.00" for "$350,000.00" in the first sentence, and deleted "state" following "exemption from" in the second sentence; deleted former subparagraph (87)(C), which read: "(C)(i) This exemption shall apply from July 1, 2016, until June 30, 2018. A qualifying zoological institution shall pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from local sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

"(ii) For purposes of this subparagraph, local sales and use tax shall be defined as any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such taxes as authorized

by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter."

**The third 2023 amendment**, effective July 1, 2023, substituted "until December 31, 2026" for "until June 30, 2023" in subparagraphs (93)(A) and (93)(B).

**The first 2024 amendment,** effective April 23, 2024, deleted "or" from the end of paragraph (103); substituted "; or" for a period at the end of paragraph (104); and added paragraph (105). See Editor's notes for applicability.

**The second 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraphs (68)(G) and (68.1)(H), and in division (75)(B)(vi).

**Code Commission notes.**

Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1467, §§ 1, 2; and Ga. L. 1986, p. 1584, § 1; each of which became effective July 1, 1986, each deleted "or" at the end of paragraph (47), substituted a semicolon for a period and added "or" at the end of paragraph (48), and added differing language designated paragraph (49). Pursuant to Code Section 28-9-5, in 1986, "or" was deleted at the end of paragraph (47); a semicolon was substituted for a period at the end of paragraph (48); the paragraphs added by the four Acts listed above were designated as paragraphs (49)-(52), respectively; semicolons were substituted for periods at the end of paragraphs (49)-(51); and "or" was added at the end of paragraph (51). A fifth 1986 Act (Ga. L. 1986, p. 1464, § 2) also enacted a new paragraph (49) different from those enacted by the other 1986 Acts. However, due to its delayed effective date (October 1, 1987), the paragraph (49) added by Ga. L. 1986, p. 1464, § 2 was not incorporated in this Code section. In 1987, however, the "or" added following paragraph (51) was deleted, a semicolon and "or" was substituted for the period following paragraph (52), and the paragraph (49) added by Ga. L. 1986, p. 1464, § 2 was redesignated as paragraph (53).

Pursuant to Code Section 28-9-5, in 1992, "Chapter 17" was substituted for "Chapter 16" in paragraph (43); "or" was deleted at the end of paragraph (53); and "; or" was substituted for the period at the end of paragraph (54); and the paragraph (54) added by Ga. L. 1992, p. 3173, § 1, was redesignated as paragraph (55), since Ga. L. 1992, p. 1276, § 2, also added a paragraph (54).

Pursuant to Code Section 28-9-5, in 1994, the paragraph (39) added by Ga. L. 1994, p. 132, § 1 was redesignated as paragraph (39.1).

Pursuant to Code Section 28-9-5, in 1996, the paragraph (58) enacted by Ga. L. 1996, p. 1643, was redesignated as paragraph (59) and related stylistic changes were made.

Pursuant to Code Section 28-9-5, in 2000, "or" was deleted at the end of paragraph (63) and a semicolon was substituted for a period at the end of paragraph (64).

Pursuant to Code Section 28-9-5, in 2000, paragraph (64), as enacted by Ga. L. 2000, p. 415, § 1, was redesignated as paragraph (65), a semicolon was substituted for a period at the end of subparagraph (65)(B), and "or" was deleted at the end of paragraph (63).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64) and (65), as enacted by Ga. L. 2000, p. 485, § 1, were redesignated as paragraphs (66) and (67); "or" was deleted at the end of newly redesignated paragraph (66), and a semicolon was substituted for a period at the end of newly redesignated paragraph (67).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64) and (65), as enacted by Ga. L. 2000, p. 615, § 1, were redesignated as paragraphs (68) and (69); "or" was deleted at the end of newly redesignated paragraph (68), and a semicolon was substituted for a period at the end of newly redesignated paragraph (69).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64), (65), and (66) as enacted by Ga. L. 2000, p. 1202, § 2, were redesignated as paragraphs (70), (71), and (72), respectively.

Ga. L. 2002, p. 575, § 1 and Ga. L. 2002, p. 855, § 1 both added a paragraph (6.2). Pursuant to Code Section 28-9-5, in 2002, the paragraph (6.2) added by Ga. L. 2002, p. 855, § 1 was redesignated as paragraph (6.3).

Pursuant to Code Section 28-9-5, in 2003, paragraph (76), as added by Ga. L. 2003, p. 337, § 1, was redesignated as paragraph (77), "or" was deleted at the end of paragraph (75), and "; or" was substituted for a period at the end of paragraph (76).

Pursuant to Code Section 28-9-5, in 2004, paragraph (78) as added by Ga. L. 2004, p. 403, § 1 was redesignated as paragraph (79); paragraph (78) as added by Ga. L. 2004, p. 1073, § 1 was redesignated as paragraph (80); "or" was deleted at the end of paragraph (77); and "; or" was substituted for a period at the end of paragraph (79).

Pursuant to Code Section 28-9-5, in 2005, in subparagraph (59)(B), "fund-raising" was substituted for "fundraising", "or" was deleted at the end of paragraph (80), "; or" was substituted for the period at the end of paragraph (81), and paragraph (81), as enacted by Ga. L. 2005, p. 794, § 1, was redesignated as paragraph (82).

Pursuant to Code Section 28-9-5, in 2006, "flourescent" was changed to "fluorescent" in subparagraph (82)(B).

Pursuant to Code Section 28-9-5, in 2006, paragraph (83), as enacted by Ga. L. 2006, p. 527, § 1, was redesignated as paragraph (84).

Pursuant to Code Section 28-9-5, in 2006, paragraph (83), as enacted by Ga. L. 2006, p. 538, § 1, was redesignated as paragraph (85).

Pursuant to Code Section 28-9-5, in 2006, "or" was deleted from the end of paragraph (82), a semicolon was substituted for a period at the end of paragraph (83), and "; or" was added at the end of paragraph (84).

Pursuant to Code Section 28-9-5, in 2006, "July 1, 2006" was substituted for "the effective date of this paragraph" in subparagraph (84)(B).

Pursuant to Code Section 28-9-5, in 2007, paragraph (33.2), as enacted by Ga. L. 2007, p. 709, § 1, was redesignated as paragraph (33.1).

Pursuant to Code Section 28-9-5, in 2007, a semicolon was substituted for a period at the end of paragraph (34.4).

Pursuant to Code Section 28-9-5, in 2008, in paragraph (7.05)(A), a comma was deleted following "pursuant to" and in division (70.1)(C)(i), "or" was inserted preceding "by or" near the end.

Pursuant to Code Section 28-9-5, in 2009, paragraph (87), as enacted by Ga. L. 2009, p. 794, § 1, was redesignated as paragraph (88); paragraph (87), as enacted by Ga. L. 2009, p. 795, § 1, was redesignated as paragraph (89); and related stylistic changes were made.

Pursuant to Code Section 28-9-5, in 2010, "May 5, 2004" was substituted for "the effective date of this paragraph" in paragraph (78), "May 17, 2004" was substituted for "the effective date of this paragraph" in subparagraph (80)(A), and "May 17, 2004," was substituted for "the effective date of this paragraph" in subparagraph (80)(B).

Pursuant to Code Section 28-9-3, in 2012, the amendment of subparagraph (33.1)(C) of this Code section by Ga. L. 2012, p. 257, § 5-6/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 1348, § 2/HB 743, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2012, "Code Section 48-5C-1" was substituted for "Code Section 48-5B-1" in paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, punctuation changes were made at the end of paragraphs (91) through (93), "; or" was substituted for a period at the end of paragraph (94), and a period was substituted for a semicolon at the end of paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, paragraph (92), as enacted by Ga. L. 2012, p. 257, § 5-5/HB 386, was redesignated as paragraph (93); paragraph (92), as enacted by Ga. L. 2012, p. 1348, § 2/HB 743, was redesignated as paragraph (94); and paragraph (92), as enacted by Ga. L. 2012, p. 257, § 1-5/HB 386, was redesignated as paragraph (95).

Pursuant to Code Section 28-9-5, in 2015, a comma was deleted following "intellectually disabled" in paragraph (7.1).

Pursuant to Code Section 28-9-5, in 2016, "July 1, 2016," was substituted for "the effective date of this paragraph" in subparagraph (97)(E).

Pursuant to Code Section 28-9-5, in 2017, a period was substituted for a comma at the end of subparagraph (99)(B).

Pursuant to Code Section 28-9-5, in 2018, "; or" was deleted at the end of paragraph (100), a semicolon was substituted for a period at the end of subparagraph (101)(B) and "; or" was substituted for a period at the of division (102)(E)(iii).

Pursuant to Code Section 28-9-5, in 2018, paragraph (101), as added by Ga. L. 2018, p. 674, § 1/HB 871, was redesignated as paragraph (102).

Pursuant to Code Section 28-9-5, in 2018, paragraph (101), as added by Ga. L. 2018, p. 1075, § 2/HB 793, was redesignated as paragraph (103).

**Editor's notes.**

Ga. L. 1986, p. 1464, § 1, not codified by the General Assembly, provides that: "It is the intention of the General Assembly by the passage of this Act to comply fully with federal law which conditions state participation in the food stamp program and WIC program on the provision of an exemption from state and local taxes for purchases made with food stamps or WIC coupons."

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that that Act applies to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1992, p. 1276, § 2, not codified by the General Assembly, provides, in part: "This Act shall not be construed to authorize the refund of any sales and use tax paid with respect to the sale or use of durable medical equipment and prosthetic devices prior to January 1, 1993."

Ga. L. 1992, p. 1521, § 4, not codified by the General Assembly, provides: "This Act [which amended this Code section] shall stand repealed in its entirety on January 1, 1996, and shall be void and of no effect and the provisions affected by this Act shall be specifically revived as such provisions stood before the enactment of this Act, as amended by laws other than this Act."

Ga. L. 1994, p. 834, § 4, not codified by the General Assembly, repeals Ga. L. 1992, p. 1521, § 4, which had provided for the repeal of this Code section as affected by that 1992 Act.

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2008, p. 1160, § 2(b)/HB 237, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility under paragraph (34.3) of Code Section 48-8-3 of the Official Code of Georgia Annotated, as amended by Section 1 of this Act, for any period prior to January 1, 2009, shall not be affected by the passage of this Act and shall continue to be governed by the provisions of said paragraph as it existed immediately prior to January 1, 2009."

Former paragraph (85) was repealed on its own terms effective July 1, 2010.

Former paragraph (58) was repealed on its own terms effective January 1, 2011, and was reserved by Ga. L. 2012, p. 775, § 48/HB 942.

Ga. L. 2011, p. 302, § 3/HB 234, not codified by the General Assembly, provides for severability.

Ga. L. 2012, p. 257, § 7-1(b)/HB 386, approved by the Governor April 19, 2012, provided that the effective date of the amendment to this Code section is January 1, 2012. See Op. Atty. Gen. No.

76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2024, no such finding has been issued.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Ga. L. 2016, p. 62, § 2/HB 951, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2016, and shall be applicable to admissions purchased on or after January 1, 2017. This Act shall only apply to events secured on or after the effective date of this Act."

Ga. L. 2017, p. 530, § 4(c)/SB 156, not codified by the General Assembly, provides: "Sections 1 and 3 of this Act shall apply to all equalized homestead option sales and use taxes which are implemented on and after the effective date specified in subsection (a) of this section and to all county special purpose local option sales taxes which are implemented in conjunction with an equalized homestead option sales and use tax implemented on and after such date." Subsection (a) of this section provides that the Act becomes effective upon approval of the Governor which occurred on May 8, 2017.

Former paragraph (25) was repealed on its own terms effective July 1, 2017.

Ga. L. 2018, p. 624, § 2/HB 696, not codified by the General Assembly, provides that this Act "shall be applicable to transactions occurring on or after July 1, 2018."

Former paragraph (100) was repealed on its own terms effective July 1, 2020.

Ga. L. 2020, p. 903, § 4-1/HB 105, not codified by the General Assembly, provides that the addition of paragraph (25) applies to sales of transportation on or after April 1, 2020.

Ga. L. 2020, p. 903, § 4-1/HB 105, approved by the Governor August 5, 2020, provided that the amendment of this Code section is effective April 1, 2020. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides that: "Part V of this Act shall be known and may be cited as the 'Georgia Economic Recovery Act of 2021.'"

Ga. L. 2021, p, 602, § 3-2/HB 498, not codified by the General Assembly, provides that: "In accordance with the requirements of Article VII, Section II, Paragraph II(a)(1) of the Constitution of the State of Georgia, Part II of this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives."

Ga. L. 2021, p. 922, § 54(e)/HB 497, not codified by the General Assembly, provides that: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2021 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to paragraph (33.1) of this Code section by Ga. L. 2021, p. 922, § 48/HB 497, was not given effect.

Ga. L. 2022, p. 655, § 4/HB 1291, not codified by the General Assembly, makes paragraph (68) of this Code section applicable to transactions occurring on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall become effective on January 1, 2024, and shall be applicable to transactions occurring on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "'Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2024, p. 347, § 3-1/HB 1072, not codified by the General Assembly, makes the amendment to paragraphs (103) and (104), and the addition of paragraph (105), applicable to taxable years beginning on or after January 1, 2025.

**U.S. Code.**

Section 501 of the Internal Revenue Code, referred to in subparagraph (11)(A) of this Code section, is codified at 26 U.S.C. § 501.

**Law reviews.**

For article discussing tax exemptions and deductions as incentives for establishment of foreign business in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For survey article on recent developments in Georgia state and local taxation, see 34 Mercer L. Rev. 400 (1982).

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For article, "Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B. J. 82 (1985).

For article, "Georgia Sales and Use Tax Exemptions for Manufacturers," see 29 Ga. St. B. J. 19 (1992).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 213 (2015).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

For note on 1991 amendment of this Code section, see 8 Georgia St. U.L. Rev. 190 (1992).

For note on the 1994 amendment of this Code section, see 11 Georgia St. U.L. Rev. 249 (1994).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

## JUDICIAL DECISIONS

**Analysis**

General Consideration
Sales to State or Federal Government
Property Furnished for Work on Water, Gas, or Sewage System
Federal Excise Tax
Transportation Charges
Inconsequential Sales Incident to Service Transactions
Agricultural Machinery
Aircraft, etc., Used by Common Carriers in Interstate Commerce
Machinery Directly Used in Manufacturing
Industrial Materials, Packaging, etc.
Sale of Antipollution Machinery and Equipment
Pollutant Waste Used in Recycling or Burning Process
Drugs Dispensed by Prescription and Prescription Eyeglasses and Contact Lenses

### General Consideration

**Scrivener's error in paragraph (42).** — Since there is no specific indication that the legislature intended to change the preexisting law when the legislature adopted the Official Code, the court views alterations of the Code Revision Commission in redrafting the statute and in substituting the words "common ownership of the property" for "persons under 100% common ownership," as merely a scrivener's error, and the court applies the substantive law in effect at the time of enactment of the 1982 Code. Charter Medical Info. Servs. v. Collins, 266 Ga. 720, 470 S.E.2d 655, 1996 Ga. LEXIS 247 (1996).

**Intent to exempt must be clear and distinct.** — Exemption will not be held to be conferred unless the terms under which the exemption is granted clearly and distinctly show that such was the intention of the General Assembly. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960).

Grant of exemption from sales and use taxation to taxpayer for amount it paid to lease certain of business equipment was properly reversed because O.C.G.A. § 48-8-3(43) contained no clear and unambiguous expression of exemption applicable to taxpayer's lease payments to non-party. Funvestment Group, LLC v. Crittenden, 364 Ga. App. 447, 875 S.E.2d 436, 2022 Ga. App. LEXIS 323 (2022), rev'd in part, 317 Ga. 288, 893 S.E.2d 60, 2023 Ga. LEXIS 202 (2023).

**Exemptions from taxation must be strictly construed.** Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601, 1960 Ga. LEXIS 281 (1960); In re Ga. Air, Inc., 345 F. Supp. 636, 1972 U.S. Dist. LEXIS 13075 (N.D. Ga. 1972).

**Fixtures which pass by conveyance of realty are exempt.** — All fixtures which would pass by a conveyance of an interest in realty as a part thereof, in the

absence of provisions in the sales contract to the contrary, are exempt from the tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). State v. Dyson, 89 Ga. App. 791, 81 S.E.2d 217, 1954 Ga. App. LEXIS 581 (1954).

**Provision on religious book unconstitutional.** — O.C.G.A. § 48-8-3(15)(A) and (16), which exempt from sales tax certain religious books and papers, are unconstitutional as violative of the free speech and establishment clauses of the First Amendment when the exemptions are based on content and there is no showing of a compelling interest or that the exemptions are narrowly tailored; thus, the state revenue commissioner was enjoined from enforcing those provisions. Budlong v. Graham, 414 F. Supp. 2d 1222, 2006 U.S. Dist. LEXIS 9767 (N.D. Ga.), vacated in part, 488 F. Supp. 2d 1245, 2006 U.S. Dist. LEXIS 96203 (N.D. Ga. 2006).

On a challenge by the plaintiffs, a former librarian and a book retailer, O.C.G.A. § 48-8-3(15)(A), which exempted sales and use taxes on certain religious papers, was held unconstitutional under the First Amendment's free press clause because the statute drew a line between religious and non-religious papers, thus requiring official scrutiny of content as a basis for imposing a tax, and a permanent injunction enjoining the defendant state revenue commissioner from continuing to enforce the provision was issued; under O.C.G.A. § 48-8-3(15)(A), a calendar published by a religious institution would presumably not qualify as a "religious paper" and the statute thus discriminated between religious and non-religious writings and, furthermore under O.C.G.A. § 48-8-3(16), books with critiques of the Bible might or might not be exempted, depending on whether the state found the materials were "commonly recognized" as "Holy Scripture". Budlong v. Graham, 488 F. Supp. 2d 1252, 2007 U.S. Dist. LEXIS 36101 (N.D. Ga. 2007).

**Application to lease of coin operated amusement machines (COAMs).** — Because the plain language of O.C.G.A. § 48-8-3(43) applies to revenues generated by coin operated amusement machines (COAMs), which includes revenues generated from the lease of COAMs and revenues generated from the participation plays of COAMs, the Georgia Court of Appeals erred in concluding that the exemption did not apply to the lease revenues generated. Funvestment Group, LLC v. Crittenden, 317 Ga. 288, 893 S.E.2d 60, 2023 Ga. LEXIS 202 (2023).

**Standard of review.** — In a case challenging the denial of sales tax refunds, the trial court's ruling was vacated because while the court stated the correct standard of review in the court's decision, the court summarily disregarded certain of Georgia Tax Tribunal's explicit factual findings, which if there was any evidence to support those findings, contravened the deferential legal framework to be applied therefrom. T-Mobile South v. Crittenden, 364 Ga. App. 523, 875 S.E.2d 524, 2022 Ga. App. LEXIS 338 (2022).

### Sales to State or Federal Government

**General Assembly did not intend to exempt any body politic** other than those specifically described in this section. Oxford v. Housing Auth., 104 Ga. App. 797, 123 S.E.2d 175, 1961 Ga. App. LEXIS 805 (1961).

**General Assembly intended to exempt foreign municipal corporations** doing business and serving residents of this state from sales and use taxes on purchases of tangible personal property which the foreign municipality uses in conducting the corporation's business within the state. City of Chattanooga v. State, 246 Ga. 99, 269 S.E.2d 5, 1980 Ga. LEXIS 978 (1980).

**When foreign municipality treated as municipality of this state.** — Foreign municipality permitted to enter this state and carry on proprietary function by providing services to residents of this state is a municipality of this state for purposes of this exemption. City of Chattanooga v. State, 246 Ga. 99, 269 S.E.2d 5, 1980 Ga. LEXIS 978 (1980).

**Housing authorities are taxable.** — Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is an all inclusive statute which includes a housing authority as a taxpayer since no provision appears to

**Sales to State or Federal Government** (Cont'd)

exclude a housing authority. Oxford v. Housing Auth., 104 Ga. App. 797, 123 S.E.2d 175, 1961 Ga. App. LEXIS 805 (1961).

**Sales to a water authority are taxable.** Blackmon v. Cobb County-Marietta Water Auth., 126 Ga. App. 459, 191 S.E.2d 128, 1972 Ga. App. LEXIS 1183 (1972).

**Property Furnished for Work on Water, Gas, or Sewage System**

**Exemption applies to subcontractors.** — Exemption applies not only to use of county pipe by a prime contractor with the county, but also use by a subcontractor performing an included portion of the work. Blackmon v. DeKalb Pipeline Co., 127 Ga. App. 395, 193 S.E.2d 635, 1972 Ga. App. LEXIS 898 (1972).

**Considerations as to whether installed to serve particular property site.** — Water mains are not installed to serve a particular property site under this exemption when the water mains are the property of the county prior to and after installation; are installed upon property over which the county gains a permanent easement; when, once operational, the water mains serve new residential customers; when the water mains are installed in such a way as readily to permit extensions to adjoining areas as the need arises; when, as the county is developed, the water mains are extended and become an additional network of the county water system; and when, once installed, the water mains are part of the general water system of the county used for general distribution purposes. Blackmon v. DeKalb Pipeline Co., 127 Ga. App. 395, 193 S.E.2d 635, 1972 Ga. App. LEXIS 898 (1972).

**Federal Excise Tax**

**Section does not apply to excise taxes included in sales price and gross price.** — This section is construed in harmony with other provisions of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), so that federal excise taxes as used in this section refer only to those federal excise taxes which are not included in sale price and gross sales. Undercofler v. Capital Auto. Co., 111 Ga. App. 709, 143 S.E.2d 206, 1965 Ga. App. LEXIS 1076 (1965).

**Tax Injunction Act.** — Tax Injunction Act, 28 U.S.C. § 1341, did not bar jurisdiction for a court to consider a challenge to O.C.G.A. § 48-8-3 and the statute's exemption from sales tax of certain religious books and papers because the plaintiffs did not seek to rewrite Georgia law but only asked the court to restrain further application of the exemption, which would actually enrich the state's coffers rather than deplete those coffers. Budlong v. Graham, 414 F. Supp. 2d 1222, 2006 U.S. Dist. LEXIS 9767 (N.D. Ga.), vacated in part, 488 F. Supp. 2d 1245, 2006 U.S. Dist. LEXIS 96203 (N.D. Ga. 2006).

Although a preliminary injunction was properly entered in a challenge to exemptions of religious items from sales tax of O.C.G.A. § 48-8-3(15)(A), and (16) without a hearing because the state tax official was not denied an opportunity to present contentions, it was error to consolidate the matter with final disposition without a hearing under Fed. R. Civ. P. 65(a)(2) without consent of the official; thus, a motion to reconsider was appropriate to set aside the consolidation pursuant to N.D. Ga. R. 7.2(E). Budlong v. Graham, 488 F. Supp. 2d 1245, 2006 U.S. Dist. LEXIS 96203 (N.D. Ga. 2006).

**Transportation Charges**

**Purpose of exemption for transportation charges.** — Purpose of Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 is merely to exclude the sale of such services from the sales tax, not from use tax. Colonial Pipeline Co. v. Undercofler, 115 Ga. App. 58, 153 S.E.2d 592, 1967 Ga. App. LEXIS 998 (1967).

**Inconsequential Sales Incident to Service Transactions**

**When skilled service is the object of transaction, property incidentally furnished is exempt.** — When the furnishing of tangible personal property constitutes part of a personal service transaction in which skilled service in the preparation thereof is more the object of

the transaction than inconsequential items of tangible personal property for which no separate charges are made, such items are exempt from sales tax. Hawes v. Dimension, Inc., 122 Ga. App. 190, 176 S.E.2d 602, 1970 Ga. App. LEXIS 829 (1970).

**Purchase to be transferred to another** in providing a service is a taxable retail transaction, even though the actual consumption of the item is made by the recipient of the service or by the recipient's customer. Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952); L.M. Berry & Co. v. Blackmon, 129 Ga. App. 347, 199 S.E.2d 610, 1973 Ga. App. LEXIS 1000 (1973), aff'd, 231 Ga. 659, 203 S.E.2d 520, 1974 Ga. LEXIS 1176 (1974).

**Subject to sales tax when purchased in state.** — Purchase of property to be used in providing a service is a retail purchase, and if made within the state it is a taxable purchase subject to the sales tax on retail sales within the state. L.M. Berry & Co. v. Blackmon, 231 Ga. 659, 203 S.E.2d 520, 1974 Ga. LEXIS 1176 (1974).

**Subject to use tax when purchased outside state.** — Purchase of tangible personal property in another state to be transferred to one in this state in the course of providing a service under a contract executed and performed in this state is subject to use tax, even though the transfer incident to the service transaction is exempt under Ga. L. 1951, p. 360. L.M. Berry & Co. v. Blackmon, 231 Ga. 659, 203 S.E.2d 520, 1974 Ga. LEXIS 1176 (1974).

**Actual cost or monetary value of materials used is not determinative.** — In determining whether sale of materials used is an inconsequential element of the service transaction, or whether the service rendered is part of the sale, the actual cost or monetary value of materials used is not determinative. Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952).

**Shoe repairs may reasonably be said to fall within the category of personal service transactions.** Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952).

**Sale of steel dies** to a manufacturer is not a personal service transaction when such dies are used by the manufacturer until disposed of. Mead Corp. v. Strickland, 247 Ga. 495, 276 S.E.2d 586, 1981 Ga. LEXIS 718 (1981).

### Agricultural Machinery

**Intent as to exemption of portable multipurpose drying barns.** — This section reveals no distinct and clear intention on the part of the General Assembly to exempt from taxation portable multipurpose drying barns used for the storage of crops. Chilivis v. Dixon, 234 Ga. 703, 217 S.E.2d 283, 1975 Ga. LEXIS 1230 (1975).

**Portable crop drying units** (tobacco barns) are not farm equipment exclusively used in harvesting crops and are, therefore, not exempt from sales tax. Nimmer v. Strickland, 242 Ga. 430, 249 S.E.2d 233, 1978 Ga. LEXIS 1240 (1978).

### Aircraft, etc., Used by Common Carriers in Interstate Commerce

**Determination as to whether carrier is private or common.** — If there is a question as to whether a carrier is a private or common carrier, it is to be determined by facts relating to whether the business is public business or employment, and whether the service is to be rendered to all indifferently, and whether one has held oneself out as so engaged, so as to make the carrier liable for a refusal to accept the employment offered. In re Ga. Air, Inc., 345 F. Supp. 636, 1972 U.S. Dist. LEXIS 13075 (N.D. Ga. 1972).

**Status as a common carrier is a factual question** and cannot be forced on one by legislative fiat. In re Ga. Air, Inc., 345 F. Supp. 636, 1972 U.S. Dist. LEXIS 13075 (N.D. Ga. 1972).

### Machinery Directly Used in Manufacturing

**Term "machinery"** in O.C.G.A. § 48-8-3 is more expansive than the term "machine," in that the term "machinery" embraces both those parts of a machine which do generate or distribute power, as

**Machinery Directly Used in Manufacturing** (Cont'd)

well as those parts of a machine which do not generate or distribute power. Amoena Corp. v. Strickland, 248 Ga. 496, 283 S.E.2d 894, 1981 Ga. LEXIS 1055 (1981).

**Molds** are not machines in themselves, but are part of tax-exempt machinery under O.C.G.A. § 48-8-3, used in manufacturing prosthetic devices. Amoena Corp. v. Strickland, 248 Ga. 496, 283 S.E.2d 894, 1981 Ga. LEXIS 1055 (1981).

**Repair and replacement parts.** — Since the 2000 version of O.C.G.A. § 48-8-3 for the first time expressly exempted repair and replacement parts from taxation, it followed that such parts were not exempt under the 1994 version; consequently, the trial court properly granted the Department of Revenue partial summary judgment on the issue. Inland Paperboard & Packaging, Inc. v. Ga. Dep't of Revenue, 274 Ga. App. 101, 616 S.E.2d 873, 2005 Ga. App. LEXIS 686 (2005), cert. denied, No. S05C1809, 2005 Ga. LEXIS 697 (Ga. Oct. 11, 2005).

The 1997 version of O.C.G.A. § 48-8-3 does not exempt machinery repair parts from sales tax but at best the language might have created some ambiguity that "replacement components" could include repair parts, but an exemption had to be expressed unambiguously; furthermore, in 2000, the legislature made it clear that the 1997 statute did not extend the exemption to machinery repair parts. Ga. Dep't of Revenue v. Owens Corning, 283 Ga. 489, 660 S.E.2d 719, 2008 Ga. LEXIS 356 (2008).

**This section is intended to create tax advantages** for machinery purchased for new or expanded industry. Hawes v. Institutional Packers of Am., Inc., 117 Ga. App. 243, 160 S.E.2d 459, 1968 Ga. App. LEXIS 1047 (1968).

**Exemption construed in taxing authority's favor.** — Application of this exemption has been narrowly restricted in accordance with the general proposition that in interpreting tax exemptions all doubts must be resolved in favor of the taxing authority. Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**Direct use is measured by actual use, not essentialness to operation.** — Test of whether equipment is used directly within the meaning of this exemption is not whether the property is essential to the operation of the plant, but whether it is an actual part of the process of manufacture. Blackmon v. Screven County Indus. Dev. Auth., 131 Ga. App. 265, 205 S.E.2d 497, 1974 Ga. App. LEXIS 1395 (1974).

**Absence of intervening agency, not whether machinery actually touches or affects product.** — Test as to direct use is not whether the substance generated by the machinery in question touched or directly affected the product. Rather, one test for direct use in manufacture is the absence of such an intervening agency. Blackmon v. Screven County Indus. Dev. Auth., 131 Ga. App. 265, 205 S.E.2d 497, 1974 Ga. App. LEXIS 1395 (1974).

**One test for direct use in manufacture is the absence of an intervening agency.** Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**Devices used to affect the environment of goods** in manufacture are not used directly in manufacturing. Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**Definition of "manufacturing process."** — For this section, the manufacturing process has been defined by the commissioner consisting of a series of separate operations at a fixed location whereby, through the application of machines and labor to raw material or materials at any stage of becoming finished, tangible, personal property, the form or composition of the material or materials is significantly changed. Chilivis v. Marble Prods. Co., 135 Ga. App. 187, 217 S.E.2d 441, 1975 Ga. App. LEXIS 1610 (1975).

**What constitutes direct use.** — When the machinery does not directly effect the chemical change in the raw material, but rather, the electrical current

creates an electron imbalance within the electrolytic cell, which causes a chemical and physical change in the raw material, and the machinery simply modifies and transmits this electrical current, the equipment is not used directly in the manufacture of tangible personal property. Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**Industrial Materials, Packaging, etc.**

**Intent.** — Intention of the General Assembly is that materials merely used in processing should not be excluded from the operation of Ga. L. 1951, p. 360. Undercofler v. Macon Linen Serv., Inc., 114 Ga. App. 231, 150 S.E.2d 703, 1966 Ga. App. LEXIS 694 (1966).

**Growth of living substances can be part of an industrial process** when it is but one stage in the development of the end product and when the growth itself is so artificially controlled as to be unnatural. Blackmon v. J.D. Jewell, Inc., 126 Ga. App. 679, 191 S.E.2d 621, 1972 Ga. App. LEXIS 1249 (1972).

**Lithographic plates used by printing company are not exempt.** Chilivis v. Stein, 141 Ga. App. 536, 233 S.E.2d 881, 1977 Ga. App. LEXIS 1980 (1977).

**Sale of scrap copper is exempt, but sale of the new product to the customer is taxable** as a sale of tangible personal property at retail. Southwire Co. v. Chilivis, 139 Ga. App. 329, 228 S.E.2d 295, 1976 Ga. App. LEXIS 1790 (1976).

**Laundering operations** are in the nature of maintenance or service operations and the starch is not "impregnated into the product at any stage of its processing". Undercofler v. Macon Linen Serv., Inc., 114 Ga. App. 231, 150 S.E.2d 703, 1966 Ga. App. LEXIS 694 (1966).

**Industrial materials used to coat or impregnate a product** at any stage of the product's manufacture are exempt even if the materials may later be removed in another manufacturing process. Hawes v. Bibb Mfg. Co., 224 Ga. 141, 160 S.E.2d 355, 1968 Ga. LEXIS 694 (1968).

**What constitutes packaging for shipment or sale.** — Cabinets and dispensers furnished by a linen company to the company's customers are not containers used for packaging personal property for shipment or sale within the meaning of this section's exemption. Undercofler v. Macon Linen Serv., Inc., 114 Ga. App. 231, 150 S.E.2d 703, 1966 Ga. App. LEXIS 694 (1966).

**Bottles and cases for milk and soft drinks are exempt containers** used for packaging tangible personal property for shipment and sale. Undercofler v. Buck, 107 Ga. App. 870, 132 S.E.2d 157, 1963 Ga. App. LEXIS 1009 (1963).

**Sale of Antipollution Machinery and Equipment**

**Exemption applies to ultimate owner, not contractor.** — Contractor purchasing waste water treatment equipment, who is not the ultimate owner of the water pollution control facility, is subject to sales tax. Indian River Constr. Co. v. Beloit Passavant Corp., 241 Ga. 282, 244 S.E.2d 814, 1978 Ga. LEXIS 981 (1978).

**Regulations permitting payment of tax by contractor and refund to ultimate owner.** — This section is broad enough to authorize the commissioner to issue regulations requiring the contractor to remit the tax on pollution control equipment and allowing the ultimate owner to file a claim for refund since the contractor will presumably be able to pass this cost on to the ultimate owner. Eimco BSP Servs. Co. v. Chilivis, 241 Ga. 263, 244 S.E.2d 829, 1978 Ga. LEXIS 985 (1978).

**Pollutant Waste Used in Recycling or Burning Process**

**Legislative intent.** — This exemption is intended for industrial raw materials used in the process of manufacturing tangible personal property for sale, which previously became wasteful by-products, but which now, with the advent of stricter pollution control standards, are being recycled or burned and used as a source of energy. Eimco BSP Servs. Co. v. Chilivis, 241 Ga. 263, 244 S.E.2d 829, 1978 Ga. LEXIS 985 (1978).

### Drugs Dispensed by Prescription and Prescription Eyeglasses and Contact Lenses

**Contact lenses must be pursuant to prescription.** — O.C.G.A. § 48-8-3(47) applies only to transactions involving a sale of contact lenses pursuant to a prescription. CIBA Vision Corp. v. Jackson, 248 Ga. App. 688, 548 S.E.2d 431, 2001 Ga. App. LEXIS 378 (2001), cert. denied, No. S01C1022, 2001 Ga. LEXIS 699 (Ga. Sept. 7, 2001).

## OPINIONS OF THE ATTORNEY GENERAL

**Analysis**

General Consideration
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Sale of Seed, Fertilizer, Animal Feed, and Related Goods
Industrial Materials, Packaging, and Other Items
Sale of Antipollution Machinery and Equipment

### General Consideration

**Sale of natural gas by a municipality is not exempt from the sales tax.** 1950-51 Ga. Op. Att'y Gen. 407.

**Agricultural commodity commissions** are subject to taxes imposed under Ga. L. 1951, p. 360. 1975 Op. Att'y Gen. No. 75-136.

**Sale of electricity to subscribers** by a rural electric membership corporation is subject to sales tax at the rate of 3 percent of the total charges billed to such subscribers for electric service, regardless of whether the corporation utilizes 20 percent of such revenues to amortize federal loans or otherwise. 1967 Op. Att'y Gen. No. 67-377.

**Middle Georgia Coliseum Authority** is subject to Ga. L. 1951, p. 360 unless exempted by some provision of law. 1965-66 Op. Att'y Gen. No. 65-46.

### Sales to State or Federal Government

**Purpose of exemption.** — Basic purpose of the exemption in this section is to relieve public institutions from the imposition and payment of the sales and use taxes and to exempt sales when the sale is to or the use is by a public instrumentality, i.e., an instrumentality of the state, city, or county. 1954-56 Ga. Op. Att'y Gen. 867.

**Nonprofit corporation** which does not receive any governmental appropriation is not exempt from taxation. 1971 Op. Att'y Gen. No. U71-112.

**Sale made directly to department of this state** is immune, and it may not pay erroneously imposed sales tax. 1970 Op. Att'y Gen. No. 70-28.

**Sales to a contractor for use in performing a contract with the United States are not exempt,** though sales to the United States are. 1960-61 Ga. Op. Att'y Gen. 553.

**Subcontractor doing work for state owes sales tax.** — Independent contractor who receives a subcontract from one who is doing work for the state must pay sales taxes on materials purchased. 1954-56 Ga. Op. Att'y Gen. 841.

**Departments of state liable for**

**taxes imposed by other jurisdictions.** — Sales occurring in other states are subject to foreign statutes, which may or may not exempt sales made to a sister state. Absent such exemption, departments of this state are liable for payment of sales taxes imposed by other states. 1970 Op. Att'y Gen. No. 70-28.

**What entities within exemption.** — Federal credit unions are not subject, as consumers, to sales and use taxes. 1954-56 Ga. Op. Att'y Gen. 848.

Incorporated athletic associations, that are managed by public high school authorities, that are instrumentalities of the school board, and that derive at least some of their financial support from public funds, are exempt from payment of sales tax. 1954-56 Ga. Op. Att'y Gen. 867.

Purchases made by schools of supplies for their own use are not subject to sales tax. 1954-56 Ga. Op. Att'y Gen. 868.

Southern Governors' Conference is a cooperative agency of the chief executives of the southern states, and purchases by its various agencies are equivalent to purchases by the Executive Department of this state, and are exempt from sales and use tax. 1960-61 Ga. Op. Att'y Gen. 547.

Officer and noncommissioned officer clubs are instrumentalities of the United States and immune from state taxation. 1960-61 Ga. Op. Att'y Gen. 550.

Purchases by the nonappropriated Athletic Fund of the Board of Corrections are not subject to sales tax. 1960-61 Ga. Op. Att'y Gen. 551 (decided under Ga. L. 1951, p. 360).

Purchases by Southern Interstate Nuclear Board are equivalent to purchases by state and are exempt from sales and use taxes. 1962 Ga. Op. Att'y Gen. 555.

Sales to the University Hospital, Augusta, Georgia, are exempt. 1954-56 Ga. Op. Att'y Gen. 850.

**American National Red Cross is not liable for Georgia sales tax** on its purchases because it is a federal instrumentality for purposes of immunity from state taxation. 1980 Op. Att'y Gen. No. 80-28.

**Purchases by a corporation operating a golfing facility on a municipally-owned course** are subject to sales tax. 1969 Op. Att'y Gen. No. 69-208.

**Georgia Seed Development Commission taxable.** — Since the Georgia Seed Development Commission does not operate with appropriated government funds, it is subject to taxes imposed under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1971 Op. Att'y Gen. No. 71-72.

### Federal Excise Tax

**Federal gallonage tax on intoxicating liquors is an excise tax.** Therefore, it is excluded in computation of gross sales for sales tax purposes, provided that it is billed to the consumer separately from the selling price. 1954-56 Ga. Op. Att'y Gen. 851.

### Sales to Nonprofit Hospitals, Nursing Homes, etc.

**Registration with commissioner necessary for exempt status.** — Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes. When the organization is not registered with the commissioner as a dealer, one who sells to it must collect the tax. 1971 Op. Att'y Gen. No. U71-143.

### Sales to University System of Georgia

**Exemption of purchases made with donated funds.** — Since the Woman's College of Georgia is an educational unit of the University System of Georgia, it can make purchases tax free from any funds which the Foundation of the Woman's College of Georgia, Inc. might donate to it. 1965-66 Op. Att'y Gen. No. 66-221.

### Sales to Private Colleges or Universities

**Category of sales transactions exempted.** — Exemption for sales of property to be used exclusively for educational purposes by certain colleges and universities does not exempt a type of property but a category of sales transactions. The sales tax is a transaction tax imposed upon retail sales of tangible personal property and not a property tax. Thus, this exemption

applies only to sales transactions in which the purchaser is a private college or university within the meaning of the provision who uses the property or services exclusively for educational purposes. 1980 Op. Att'y Gen. No. 80-101.

### Sales to Private Elementary and Secondary Schools

**Instruction must be considered equal substitute for that received in public schools.** — School which does not provide general instruction for children which could be considered an equal substitute for instruction received in public schools is not entitled to a sales tax exemption. 1968 Op. Att'y Gen. No. 68-270.

### Sales by Religious Institutions or Denominations

**Exemption of sales of religious papers inapplicable to purchases by publishing organization.** — Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 does not provide an exemption of purchases made by organizations publishing religious papers. Only the sale of the religious paper itself is exempted. 1952-53 Ga. Op. Att'y Gen. 480; 1954-56 Ga. Op. Att'y Gen. 866.

### Sale of Fuel and Supplies Used by Ships

**Exemption inapplicable to fishing ships.** — This section relieves such ships as are engaged in trade between ports in this state and ports in other states of the United States or its possessions. Even assuming that fishing ships ply the high seas, such ships do not fall within the exemption provided in this section. 1954-56 Ga. Op. Att'y Gen. 853.

### Sales of Transportation Equipment

**Apparent intent behind O.C.G.A. § 48-8-3(32)** was to provide for situations when due to size or other reasons the vehicle could not reasonably be removed by means other than its own motive power. The exemption would prevent the purchaser from being deemed to have taken delivery in Georgia (so as to incur tax liability) and put the purchaser on the same basis as other nonresident purchasers taking delivery outside Georgia. 1980 Op. Att'y Gen. No. 80-164.

**Ordinary meaning of the phrase "under its own power"** is "under its own motive power." 1980 Op. Att'y Gen. No. 80-164.

**Trailer could not qualify for exemption.** 1980 Op. Att'y Gen. No. 80-164.

### Transportation Charges

**Exemption inapplicable to transportation services incident to a sale.** — Transportation costs are properly included in the total amount for which the property is sold as services which are part of the sale. The exemption provided for in Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 applies solely to those charges made for transportation services by a carrier, not incident to a sale of goods by the carrier. 1970 Op. Att'y Gen. No. 70-94.

**Lease or rental of vehicles not considered as rendering of transportation services.** — Leasing or renting of trucks by lumber companies is subject to payment of the state sales tax, notwithstanding the fact that the goods transported are in interstate commerce, since it cannot be considered the rendering of transportation services, but is, in effect, a lease. 1952-53 Ga. Op. Att'y Gen. 242.

### Inconsequential Sales Incident to Service Transactions

**Personal service transactions which involve no sales are not within the meaning of "retail sales" or "sales at retail."** 1952-53 Ga. Op. Att'y Gen. 236.

**Control is test as to whether property deemed leased or used in rendering personal service.** — When the owner of a bulldozer furnishing earth-moving services is at all times in complete control and direction of the machine, the transaction constitutes merely the rendition of personal services and is not a leasing of the property so as to be subject to payment of the state sales tax. 1952-53 Ga. Op. Att'y Gen. 236.

**"Color separations"** purchased by department stores for use in printing various advertising materials do not fall within sales and use tax exception of O.C.G.A. § 48-8-3. 1981 Op. Att'y Gen. No. 81-93.

**Use of bank computers by customers for consideration,** when customers have complete control over operation for an allotted time, is a lease or rental of computers and is subject to Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1969 Op. Att'y Gen. No. 69-128.

### Sale of Seed, Fertilizer, Animal Feed, and Related Goods

**What constitutes feed for livestock.** — Block salt constitutes feed for livestock and is therefore exempt from payment of state sales tax. 1952-53 Ga. Op. Att'y Gen. 236.

Dog food is feed for a pet and not for livestock, and hence is not exempt from sales tax. 1957 Ga. Op. Att'y Gen. 318.

Food for bees kept for production of honey is not exempt since bees are not considered livestock within the legislative intent in granting an exemption. 1962 Ga. Op. Att'y Gen. 553.

**What property exempt.** — Portable feed mill does not fall within Ga. L. 1951, p. 360, nor any other exemption. 1954-56 Ga. Op. Att'y Gen. 831.

**Use of seeds and fertilizer to maintain a golf course is not exempt.** 1969 Op. Att'y Gen. No. 69-208.

### Industrial Materials, Packaging, and Other Items

**Test for exemption of property used in industrial processes.** — In order for tangible personal property to be exempt under Ga. L. 1951, p. 360, it must meet three tests: (1) it must be industrial material; (2) it must not be machinery or machinery repair parts; and (3) it must be used directly in the fabrication, converting, or processing of articles of tangible personal property or parts thereof for resale. 1950-51 Ga. Op. Att'y Gen. 414.

If the functional purpose of the material is product-related either as a component or as coating or impregnating material, even though removed prior to sale, it is exempt. Use for some other and distinct purpose is not sufficient for this exemption, even though the material is incidentally absorbed or coated upon the product. 1970 Op. Att'y Gen. No. 70-100.

**What constitutes exempt industrial materials.** — Filtering cloths used in manufacturing processes are not exempt from application of sales and use tax. To be entitled to an exempt status, the material must be coated upon or impregnated into the finished product. 1962 Ga. Op. Att'y Gen. 557.

**Natural gas used in producing barium carbonate** is not exempt under the sales tax. 1950-51 Ga. Op. Att'y Gen. 416.

**Knitting needles and "jacks"** are not such industrial materials as are exempt under Ga. L. 1951, p. 360. 1950-51 Ga. Op. Att'y Gen. 417.

**Applicability of sales and use taxes to containers should be dealt with by regulations of the commissioner.** 1957 Ga. Op. Att'y Gen. 320.

**What constitutes packaging.** — Milk bottles and cartons are exempt from the sales tax. 1950-51 Ga. Op. Att'y Gen. 410.

**Advertising supplements purchased by department stores for insertion into local newspapers** do not fall within the sales and use tax exception provided for certain "industrial materials" by O.C.G.A. § 48-8-3. 1981 Op. Att'y Gen. No. 81-93.

Advertising supplement does not become a component part of the newspaper for purposes of O.C.G.A. § 48-8-3; it is a finished product when completed by the printer, and the advertising's inclusion within the newspaper is only for distribution purposes. 1981 Op. Att'y Gen. No. 81-93.

**Purchase of material from out-of-state printers for distribution in Georgia.** — Purchase by department stores within Georgia of advertising materials from out-of-state printers, shipped by printers to designated in-state direct mailing services, and distributed by such services to the stores' customers in Georgia constitutes "use" in Georgia by the stores within the meaning of O.C.G.A. § 48-8-2(12). 1981 Op. Att'y Gen. No. 81-93.

### Sale of Antipollution Machinery and Equipment

**Mere certification by pollution control agency insufficient when primary purpose is not pollution control.** — Board of tax assessors must exempt property used in or a part of any facility which has been certified by a pollution control agency as necessary and adequate to eliminate or reduce air or water pollution, if it finds from all the circumstances surrounding the case that the facility was installed for the primary purpose of eliminating or reducing pollution. If it finds that the facility, even though certified, was not installed or constructed for that primary purpose, but for another purpose, such as increasing production, with only an incidental intent to control pollution, then it must find that the exemption does not apply. 1969 Op. Att'y Gen. No. 69-325.

**What constitutes antipollution machinery or equipment.** — Purchase of soda ash (commercial anhydrous sodium carbonate) for use in reducing or eliminating water pollution is not exempt from sales tax as soda ash is neither machinery nor equipment. 1973 Op. Att'y Gen. No. U73-18.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, §§ 86, 90, 91, 96, 99 et seq.

**ALR.**

State tax on goods purchased by, or for the benefit of, the federal government, or on the privilege of conducting the business in connection with which the sales are made, 56 A.L.R. 587; 140 A.L.R. 621.

Co-operative corporations or associations formed by producers of agricultural products as within provisions of taxing statutes regarding agricultural products or producers, 100 A.L.R. 439.

Deductibility of freight charges in determining amount of gross sales or receipts for purposes of statutes making gross sales or receipts the subject or measure of a tax, 102 A.L.R. 768.

Exemption of charitable organization from taxation or special assessment, 108 A.L.R. 284.

What is a municipal corporation within constitutional or statutory tax exemption provisions, 108 A.L.R. 577.

Construction and application of terms in tax statute, "compounding," "preparing," "distilling," and the like, descriptive of the production or processing of food, drugs, or other chemical products, 108 A.L.R. 1074.

Hospital as within tax exemption provision not specifically naming hospitals, 144 A.L.R. 1483.

Computation of sales tax, 150 A.L.R. 1311.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 A.L.R. 895.

Construction and application of exemption or deduction provision of general sales tax act, 157 A.L.R. 804.

What transactions constitute a "sale" within operation of sales tax law provision defining a sale as including a transfer of possession, license to use, or words to that effect, 172 A.L.R. 1317.

Tax exemptions and the contract clause, 173 A.L.R. 15.

Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes, 1 A.L.R.2d 465.

Applicability of sales tax to judicial or bankruptcy sales, 27 A.L.R.2d 1219.

Items or materials exempt from use tax as used in manufacturing, processing, or the like, 30 A.L.R.2d 1439.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 A.L.R.2d 1031.

Validity of use tax exemption having no complementary exemption under sales tax, 85 A.L.R.2d 1043.

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 A.L.R.2d 811.

Sales or use tax: deduction or exemption of discount or premium in computing amount of sales, 90 A.L.R.2d 338.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

Sales and use taxes: exemption of casual, isolated, or occasional sales, 42 A.L.R.3d 292.

Exemption of religious organization from sales or use tax, 54 A.L.R.3d 1204.

Validity of municipal admission tax for college football games or other college sponsored public events, 60 A.L.R.3d 1027.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

What constitutes direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property, 3 A.L.R.4th 1129.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

Architectural drawings or illustrations as exempt from sales or use tax, 27 A.L.R.5th 794.

Sales and use tax exemption for medical supplies, 30 A.L.R.5th 494.

Exemption of charitable or educational organization from sales or use tax, 69 A.L.R.5th 477.

Items or materials exempt from use tax as becoming component part or ingredient of manufactured or processed article, 89 A.L.R.5th 493.

Parts and supplies used in repair as subject to sales and use taxes, 113 A.L.R.5th 313.

Cable television equipment or services as subject to sales or use tax, 23 A.L.R.6th 165.

Validity, construction, and application of sales, use, and utility taxes on retail transactions of internet sellers and internet access providers, 30 A.L.R.6th 341.

Sales and Use Tax Exemption for Kitchen Equipment or Supplies, 62 A.L.R.7th 4.

Manufacturing Machinery and Equipment (MM&E) Exclusion or Exemption Under State Tax Laws — Integrated Plant Doctrine, 90 A.L.R.7th 9.

## 48-8-3. (Effective January 1, 2025.) Exemptions.

The sales and use taxes levied or imposed by this article shall not apply to:

(1)(A) Sales to the United States government, this state, any county or municipality of this state, fire districts which have elected governing bodies and are supported by, in whole or in part, ad valorem taxes, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds; or

(B) Sales to any authority created by local law enacted by the General Assembly or local constitutional amendment, which authority provides public water or sewer service;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provision of this article. No exemption is granted with respect to

tangible personal property installed to serve a particular property site;

(3) The federal retailers' excise tax if the tax is billed to the consumer separately from the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this title relating to motor fuel taxes;

(4) Sales by counties and municipalities arising out of their operation of any public transit facility and sales by public transit authorities or charges by counties, municipalities, or public transit authorities for the transportation of passengers upon their conveyances;

(5)(A) Fares and charges, except charges for charter and sightseeing service, collected by an urban transit system for the transportation of passengers.

(B) As used in this paragraph, the term:

(i) "Public transit system primarily urban in character" shall include a transit system operated by any entity which provides passenger transportation services by means of motor vehicles having passenger-carrying capacity within or between standard metropolitan areas and urban areas, as those terms are defined in Code Section 32-2-3, of this state.

(ii) "Urban transit system" means a public transit system primarily urban in character which is operated by a street railroad company or a motor carrier, is subject to the jurisdiction of the Department of Public Safety, and whose fares and charges are regulated by the Department of Public Safety, or is operated pursuant to a franchise contract with a municipality of this state so that its fares and charges are regulated by or are subject to the approval of the municipality. An urban transit system certificate shall be issued by the Department of Public Safety, or by the municipality which has regulatory authority, upon an affirmative showing that the applicant operates an urban transit system. The certificate shall be obtained and filed with the commissioner and shall continue in effect so long as the holder of such certificate qualifies as an urban transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(6.2) (Reserved effective December 31, 2029.)

(A) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(6.3) (Reserved effective December 31, 2029.)

(A) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) Sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public Health Service Act, 42 U.S.C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this

paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to intellectually disabled persons, when such organization is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) (Reserved effective December 31, 2029.)

(A) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(7.3)(A) Sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner.

(B) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of

patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) (Reserved effective December 31, 2029.)

(A) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(i) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(ii) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(iii) Is paid for by government funds of a foreign country; and

(iv) Is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in this state.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(12) Food and food ingredients and prepared food sold and served to pupils and employees of public schools as part of a school lunch program;

(13) Sales of prepared food and food and food ingredients consumed by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) (Reserved effective December 31, 2029.)

(A) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) (Repealed effective December 31, 2029.)

(A) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(B) This paragraph shall stand repealed on December 31, 2029;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property, including, but not limited to, charges for accessorial services such as refrigeration, switching, storage, and demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) Transportation that is subject to the tax imposed by Article 8 of Chapter 13 of this title;

(26) Reserved;

(27) Reserved;

(28) Reserved;

(29) Reserved;

(30) (Reserved effective December 31, 2029.)

(A) The sale of a vehicle to a service connected disabled veteran when the veteran received a grant from the United States Department of Veterans Affairs to purchase and specially adapt the vehicle to his or her disability.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1) Sales of mechanically propelled watercraft by a dealer licensed under this article to an individual who resides outside of this state, provided that:

(A) Such watercraft is to be taken immediately by such individual outside of this state and used exclusively outside of this state; and

(B) The purchaser provides documentation of his or her residency to the dealer on a form to be prescribed by the commissioner, which shall be filed with the commissioner together with a copy of the bill of sale;

(34) Reserved;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth $5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth $5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2) (Reserved effective December 31, 2029.)

(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, “remanufacture of aircraft engines or aircraft engine parts or components” means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax.

(C) This paragraph shall stand repealed and reserved on December 31, 2029;

(34.3) Reserved;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) "Alternative fuel facility" means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) "Used in or for the construction" means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products have begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35) Reserved;

(36) (Reserved effective December 31, 2029.)

(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax.

(C) This paragraph shall stand repealed and reserved on December 31, 2029;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) "Qualified water conservation facility" means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted groundwater sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) "Water conservation" means a minimum 10 percent reduction resulting in the relinquishment of transfer of annual

permitted water usage from existing ground-water sources due to increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) Reserved;

(38) (Reserved effective December 31, 2029.)

(A) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph (2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 27 of Title 50;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks and organ procurement organizations as defined in Code Section 44-5-141 having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code. Each organ procurement organization exempt under this paragraph shall submit an annual report to the Department of Community Health which includes the number of donors and transplants facilitated by such organization in the organization's previous fiscal year;

(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons, the sale or use of insulin regardless of whether the insulin is dispensable only by prescription, and the sale or use of prescription eyeglasses and contact lenses including, without limitation, prescription contact lenses distributed by the manufacturer to licensed dispensers as free samples not intended for resale and labeled as such; and

(ii) The sale or use of drugs lawfully dispensable by prescription for the treatment of natural persons which are dispensed or distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor; and the use of drugs and durable medical equipment lawfully dispensed or distributed without charge solely for the purposes of a clinical trial approved by either the United States Food and Drug Administration or by an institutional review board.

(B) For purposes of this paragraph, the term:

(i) "Drug" means the same as provided in Code Section 48-8-2 but shall not include over-the-counter drugs or tobacco.

(ii) "Institutional review board" means an institutional review board as provided in 21 C.F.R. Section 56.

(C) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(48) (Reserved effective December 31, 2029.)

(A) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(49) Reserved;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to consti-

tutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

(50) Sales of insulin syringes and blood glucose level measuring strips dispensed without a prescription;

(51) Sales of oxygen prescribed by a licensed physician;

(52) The sale or use of hearing aids;

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) (Reserved effective December 31, 2029.)

(A) Sales by any parent-teacher organization qualified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(57)(A) The sale of food and food ingredients to an individual consumer for off-premises human consumption, to the extent provided in this paragraph.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include prepared food, drugs, or over-the-counter drugs.

(C) The exemption provided for in this paragraph shall not apply to the sale or use of food and food ingredients when purchased for any use in the operation of a business.

(D)(i) Except in counties in which a tax authorized under Part 1 of Article 3 of this chapter in connection with an equalized homestead option sales tax pursuant to Part 2 of Article 2A of

this chapter is imposed, the exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(ii) For the purposes of this subparagraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to any article of this chapter but shall not mean a tax authorized under Part 1 of Article 3 of this chapter in connection with an equalized homestead option sales tax pursuant to Part 2 of Article 2A of this chapter.

(E) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(57.1)(A) Sales of food and food ingredients to a qualified food bank.

(B) As used in this paragraph, the term "qualified food bank" means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low-income persons residing in this state.

(C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of clients served in the previous calendar year, total pounds of food donated by retailers, and total amount of exempt purchases made in the preceding year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of clients served, total pounds of food donated by retailers, and total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year.

(D) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) The use of food and food ingredients donated to a

qualified nonprofit agency and used for hunger relief or disaster relief purposes.

(B) As used in this paragraph, the term "qualified nonprofit agency" means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(D) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) The use of food and food ingredients which is donated following a natural disaster and which is used for disaster relief purposes.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58) Reserved;

(59)(A) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

(B) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council;

(60) (Reserved effective December 31, 2029.)

(A) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) (Reserved effective December 31, 2029.)

(A) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(64) Reserved;

(65) (Reserved effective December 31, 2029.)

(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax.

(C) This paragraph shall stand repealed and reserved on December 31, 2029;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) (Reserved effective December 31, 2029.)

(A) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(68) (Reserved effective December 31, 2028.)

(A)(i) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under the 2017 North American Industrial Classification System code 334413, 334614, 511210, 517311, 517312, 517410, 517911, 517919, 518210, 522320, 541330, 541511, 541512, 541513, 541519, 541713, 541715, or 541720, provided that the exemption allowed under this paragraph shall be limited to those purchases or leases made by such a high-technology company for calendar years during which the high-technology company made taxable purchases or leases of at least $15 million worth of such computer equipment.

(ii) Notwithstanding the provisions of division (i) of this subparagraph to the contrary, on and after January 1, 2024, the exemption allowed under this paragraph shall be limited such that each person claiming the exemption allowed by this paragraph shall be subject to paying 10 percent of all taxes imposed by this chapter on the first $15 million of its eligible purchases or leases for which an exemption is claimed under this paragraph.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term "computer equipment" means any individual computer or organized assembly of hardware or software, including, but not limited to, a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as

a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) Such term shall not include:

(I) Telephone central office equipment or other voice data transport technology, including any wireline or wireless telecommunication system;

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process;

(III) Computers or devices issued to employees, which shall include, but not be limited to, smartphones, tablets, wearables, personal computers, and laptops; or

(IV) Prewritten computer software.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation.

(E) Each high-technology company that has been issued a certificate of exemption pursuant to this paragraph shall report annually to the commissioner a list of the facilities for which all computer equipment exempted by this paragraph during the preceding calendar year was incorporated, as well as the amount of taxes exempted under this paragraph during the preceding calendar year. Such report shall be filed within 90 days after the end of the calendar year for which the high-technology company utilized a certificate of exemption pursuant to this paragraph and shall be subject to the confidentiality provisions of Code Section 48-2-15. The commissioner shall not issue a certificate of exemption under this paragraph for the calendar year next succeeding the reporting date to any high-technology company that has failed to comply with the reporting required by this subparagraph.

(F) The commissioner shall promulgate such rules and regulations as are necessary to implement the provisions of this paragraph.

(G) This paragraph shall stand repealed and reserved by operation of law at the last moment of December 31, 2028;

(68.1) (Repealed effective January 1, 2032.)

(A) For the period commencing on July 1, 2018, and ending on December 31, 2031, high-technology data center equipment to be incorporated or used in a high-technology data center that meets the high-technology data center minimum investment threshold and other conditions provided in this paragraph.

(B) Any person making a sale or lease of high-technology data center equipment shall collect the tax imposed on such sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that such sale or lease is exempted pursuant to this paragraph.

(C)(i) The commissioner shall not issue a certificate of exemption from sales and use tax to a high-technology data center or high-technology data center customer as provided in this paragraph unless the commissioner makes a determination that the high-technology data center will more likely than not meet the high-technology data center minimum investment threshold.

(ii) The commissioner may require any information necessary to determine if such high-technology data center is in compliance with its investment budgeting plan to meet the high-technology data center minimum investment threshold.

(iii)(I) Within 60 days after the end of the seventh year following its exemption start date, a high-technology data center shall file a final report with the commissioner listing the expenditures incurred that count toward its minimum investment threshold, the number of new quality jobs created, and any other information that the commissioner may reasonably require to determine whether the high-technology data center has met the minimum investment threshold.

(II) If the commissioner determines that a high-technology data center failed to meet its high-technology data center minimum investment threshold, such high-technology data center shall be required to repay all taxes exempted or refunded pursuant to its certificate of exemption issued pursuant to this paragraph within 90 days after notification of such failure. Interest shall be due with such repayment at the rate specified in Code Section 48-2-40 computed from the date such taxes would have been due but for this exemption. Such repayment shall be calculated notwithstanding otherwise applicable periods of limitation for assessment of taxes under Code Section 48-2-49.

(iv)(I) As a condition precedent to the issuance of a certifi-

cate of exemption, the commissioner, at his or her discretion, may require a good and valid bond with a surety company authorized to do business in this state, in an amount fixed by the commissioner not to exceed $20 million. The commissioner shall consider past performance and in-state investment when determining the value of the bond, if one is required.

(II) The bond that may be required by this division shall be forfeited and paid to the general fund in an amount representing all taxes and interest required to be repaid pursuant to division (iii) of this subparagraph if the high-technology data center fails to meet the high-technology data center minimum investment threshold prior to the expiration of the seven-year period.

(v) The commissioner shall have the authority to revoke the certificate of exemption at any time he or she believes that the high-technology data center is not likely to meet its high-technology minimum investment threshold.

(vi) Each high-technology data center that has been issued a certificate of exemption pursuant to this paragraph shall provide a list of high-technology data center customers that are deploying high-technology data center equipment in its facility and shall notify the commissioner within 30 days of any change to the list.

(D)(i) The commissioner shall require annual reporting by the high-technology data center of the amount of taxes exempted under this paragraph, the number of new quality jobs, and the total payroll resulting from construction, maintenance, and operation in and on its facility during the preceding year.

(ii) The commissioner shall issue an annual report to the chairperson of the Senate Finance Committee and the chairperson of the House Committee on Ways and Means concerning the exemption allowed by this paragraph. Notwithstanding the confidentiality provisions of Code Section 48-2-15, such report shall include, for the prior calendar year for each high-technology data center issued a certificate of exemption pursuant to this paragraph, the amount of tax exempted and the number of new quality jobs created by each high-technology data center.

(E) The commissioner shall promulgate such rules and regulations as are necessary to implement the provisions of this paragraph.

(F) A high-technology data center shall not be entitled to claim any credit authorized under Code Sections 48-7-40 through

48-7-40.33 or Code Section 36-62-5.1 on its tax return if it has received a certificate of exemption from the commissioner pursuant to this paragraph. If a determination is made by the commissioner pursuant to division (iii) of subparagraph (C) of this paragraph that the high-technology data center must repay all taxes exempted or refunded pursuant to this paragraph, such high-technology data center may file amended income tax returns claiming any credit to which it would have been entitled under the foregoing Code sections but for having claimed the exemption under this paragraph.

(G) As used in this paragraph, the term:

(i) "Exemption start date" means the date on or after July 1, 2018, chosen by the high-technology data center and indicated on its application filed on or after January 1, 2019, which begins the seven-year period during which the minimum investment threshold must be met. A refund claim must be filed for taxes paid on purchases qualifying for this exemption for any period on or after July 1, 2018, during which the high-technology data center has not yet applied for and received its certificate of exemption from the commissioner.

(ii) "High-technology data center" means a facility, campus of facilities, or array of interconnected facilities in this state that is developed to power, cool, secure, and connect its own equipment or the computer equipment of high-technology data center customers and that has an investment budget plan which meets the high-technology data center minimum investment threshold.

(iii) "High-technology data center customer" means a client, tenant, licensee, or end user of a high-technology data center that signs at least a 36 month contract for service with the high-technology data center.

(iv) "High-technology data center equipment" means computer equipment as defined in paragraph (68) of this Code section of a high-technology data center or such equipment of a high-technology data center customer to be used or deployed in the high-technology data center; and the materials, components, machinery, hardware, software, or equipment, including, but not limited to, emergency backup generators, air handling units, cooling towers, energy storage or energy efficiency technology, switches, power distribution units, switching gear, peripheral computer devices, routers, batteries, wiring, cabling, or conduit, which equipment or materials are used to:

(I) Create, manage, facilitate, or maintain the physical and digital environments for computer equipment;

(II) Protect the high-technology data center equipment from physical, environmental, or digital threats; or

(III) Generate or provide constant delivery of power, environmental conditioning, air cooling, or telecommunications services for the high-technology data center.

Such term shall not include real property as defined in Code Section 48-8-3.2. A high-technology data center may not count high-technology data center equipment that it purchases or that is purchased by the high-technology data center customer and subsequently leased to another party more than once for purposes of satisfying the high-technology data center minimum investment threshold.

(v) "High-technology data center minimum investment threshold" means:

(I) For high-technology data centers located in a county in this state having a population greater than 50,000 according to the United States decennial census of 2010 or any future such census, the creation of 25 new quality jobs and $250 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and December 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center;

(II) For high-technology data centers located in a county in this state having a population greater than 30,000 and less than 50,001 according to the United States decennial census of 2010 or any future such census, the creation of ten new quality jobs and $75 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and December 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center; and

(III) For high-technology data centers located in a county in this state having a population less than 30,001 according to the United States decennial census of 2010 or any future such census, the creation of five new quality jobs and $25 million in aggregate expenditures incurred over any consecutive seven-year period between July 1, 2018, and De-

cember 31, 2031, on the design and construction of the high-technology data center and high-technology data center equipment to be used or incorporated in the high-technology data center.

(vi) "New quality jobs" shall have the same meaning as provided in paragraph (2) of subsection (a) of Code Section 48-7-40.17.

(H) This paragraph shall stand repealed by operation of law on January 1, 2032;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first $7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first $2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first $1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first $1.44 per gallon of the sales price or cost price of propane, the first $57.90 per ton of petroleum coke, the first $57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) (Reserved effective December 31, 2029.)

(A) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(72) (Reserved effective December 31, 2029.)

(A) The sale or use of all mobility enhancing equipment prescribed by a physician.

(B) This paragraph shall stand repealed and reserved on December 31, 2029;

(73) Reserved;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) "Digital broadcast equipment" means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) "Federally licensed commercial or public radio or television broadcast station" means any entity or enterprise, either commercial or noncommercial, which operates under a license

granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of eligible property. The exemption provided by this paragraph applies only to sales occurring during the period commencing at 12:01 A.M. on July 30, 2016, and concluding at 12:00 Midnight on July 31, 2016.

(B) As used in this paragraph, the term:

(i) "Clothing" means all human wearing apparel suitable for general use and includes footwear. The term "clothing" excludes belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies, including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; sewing materials that become part of clothing, including but not limited to buttons, fabric, lace, thread, yarn, and zippers; and clothing accessories or equipment.

(ii) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing.

(iii) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. The term "computer" excludes cellular phones.

(iv) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(v) "Eligible property" means:

(I) Articles of clothing with a sales price of $100.00 or less per item;

(II) Computers, computer components, and prewritten computer software purchased for noncommercial home or personal use with a sales price of $1,000.00 or less per item; and

(III) School supplies, school art supplies, school computer supplies, and school instructional materials purchased for noncommercial use with a sales price of $20.00 or less per item.

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(vii) "School art supply" means an item commonly used by a student in a course of study for artwork.

(viii) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used.

(ix) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught.

(x) "School supply" means an item commonly used by a student in a course of study.

(C) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76)(A) The sale or use of tangible personal property used for or in the renovation or expansion of an aquarium located in this state that charges for admission and that is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, to the extent provided in this paragraph.

(B) This exemption shall apply from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax refunded pursuant to this paragraph exceeds $4.5 million, whichever occurs first. A qualifying aquarium must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph will not include interest.

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

(D) Items qualifying for exemption include all tangible personal property that will remain at the aquarium facility after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the aquarium facility. The exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction.

(E) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, by June 30 each year, any taxpayer seeking to claim the exemption provided for in subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of visitors admitted, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee containing such information;

(77) Reserved;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 5, 2004, until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is $200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) Reserved;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 17, 2004, until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term "corporate attraction" means any tourist attraction facility constructed on or after May 17, 2004, dedicated to the history and products of a corporation which costs exceeds $50 million, is greater than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on the ground, and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of Energy Star Qualified Products or WaterSense Products with a sales price of $1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during the period commencing at 12:01 A.M. on September 30, 2016, and concluding at 12:00 Midnight on October 2, 2016.

(B) As used in this paragraph, the term:

(i) "Energy Star Qualified Product" means any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

(ii) "WaterSense Product" means a product authorized to bear the United States Environmental Protection Agency WaterSense label.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of Energy Star Qualified Products or WaterSense Products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including

without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term "biomass material" means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term "national infantry museum and heritage park facility" means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85) Reserved;

(86) The sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state, so long as such aircraft is not registered in this state;

(87)(A) The sale or use of tangible personal property used for or in the renovation or expansion of a zoological institution to the extent provided in this paragraph.

(B) As used in this paragraph, the term "zoological institution" means a nonprofit wildlife park, terrestrial institution, or facility which:

(i) Is open to the public, charges for admission, exhibits and

cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Is located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) This exemption shall apply from July 1, 2023, until December 31, 2026, or until the aggregate sales and use tax refunded pursuant to this paragraph exceeds $800,000.00, whichever occurs first. A qualifying zoological institution shall pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

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

(E) Items qualifying for exemption include all tangible personal property that will remain at the zoological institution after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the zoological institution. This exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term "civil rights museum" means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 40,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax

imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public;

(89) For the period commencing on July 1, 2009, and ending on June 30, 2011, the sale or use of an airplane flight simulation training device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) Internet access service;

(91) The sale of prewritten computer software transferred electronically to the purchaser or delivered to the purchaser by means of load and leave; provided, however, that the exemption granted by this paragraph shall not include sales of specified digital products, other digital goods, or digital codes;

(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales to an organization defined by the Internal Revenue Service as an instrumentality of the states relating to the holding of an annual meeting in this state;

(93)(A) For the period commencing January 1, 2012, until December 31, 2026, sales of tangible personal property used for and in the construction of a competitive project of regional significance.

(B) The exemption provided in subparagraph (A) of this paragraph shall apply to purchases made during the entire time of construction of the competitive project of regional significance so long as such project meets the definition of a competitive project of regional significance within the period commencing January 1, 2012, until December 31, 2026.

(C) The department shall not be required to pay interest on any refund claims filed for local sales and use taxes paid on purchases made prior to the implementation of this paragraph.

(D) As used in this paragraph, the term "competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in this state where the commissioner of economic development determines that the project would have a significant regional impact. The commissioner of economic development shall promulgate regulations in accordance with the provisions of this paragraph outlining the guidelines to be applied in making such determination;

(94) The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use;

(95) The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. Except as otherwise provided in this paragraph, this exemption shall not apply to rentals of motor vehicles for periods of 31 or fewer consecutive days. Lease payments for a motor vehicle that is leased for more than 31 consecutive days for which a state and local title ad valorem tax is paid shall be exempt from sales and use taxes as provided for in this paragraph. No sales and use taxes shall be imposed upon state and local title ad valorem tax fees imposed pursuant to Chapter 5C of this title as a part of the purchase price of a motor vehicle or any portion of a lease or rental payment that is attributable to payment of state and local title ad valorem tax fees under Chapter 5C of this title;

(96)(A) The sale or use of construction materials used for or in the construction of buildings at a private college to the extent provided in subparagraphs (B) and (C) of this paragraph. As used in this paragraph, the term "private college" means a college in this state which is operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and has an enrollment of between 1,000 and 3,000 students.

(B) This exemption shall apply from July 1, 2015, until June 30, 2016, or until the aggregate state sales and use tax refunded pursuant to this paragraph exceeds $350,000.00, whichever occurs first. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from state sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(C)(i) This exemption shall apply from July 1, 2015, until June 30, 2016. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from local sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(ii) For purposes of this subparagraph, local sales and use tax shall be defined as any local sales and use tax levied or

imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

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

(E) Items qualifying for exemption include all construction materials that will remain at the private college after completion of construction and all construction materials that become incorporated into the real property structures of the private college. This exemption excludes all items that remain in the possession of a contractor after the completion of construction;

(97) (Repealed effective December 31, 2031.)

(A) Sales of admissions to nonrecurring major sporting events in this state expected to generate over $50 million in the host locality.

(B) As used in this paragraph, the term "major sporting event" means the National Football League championship game; any semifinal game or championship game of a national collegiate tournament; a Major League Baseball, Major League Soccer, or National Basketball Association all-star game; any match of a FIFA World Cup; or any other nonrecurring major sporting event determined by the commissioner of economic development and the state revenue commissioner to be a major sporting event.

(C) As used in this paragraph, the term "nonrecurring" means not occurring in this state more than once every three years.

(D) The revenue projections for purposes of this paragraph shall include, but not be limited to, lodging, meals, vehicle rentals, and admissions to tourist attractions.

(E) Determinations made under this paragraph by the commissioners on or after July 1, 2016, shall be made prior to the date of the convening of the General Assembly immediately preceding the awarding of the sales tax exemption for a major sporting

event. Such a determination shall become effective either 30 days prior to the major sporting event or on the first fiscal day of the fiscal year immediately following a year during which such determination was made, whichever is earlier. Such a determination may be rendered null and void by a joint resolution passed by both chambers of the General Assembly. In the event that the presiding officers of the General Assembly, in their discretion, choose to introduce such a joint resolution, a special committee in each respective chamber of the General Assembly will be appointed by the presiding officers of both chambers of the General Assembly for the purpose of considering such a joint resolution, subject to the rules of both respective chambers.

(F) This paragraph shall stand automatically repealed on December 31, 2031; provided, however, that this repeal shall not apply to any event for which an application has been submitted prior to December 31, 2031;

(98)(A) For the period beginning July 1, 2017, and ending June 30, 2020, sales of tangible personal property and services to a qualified job training organization when such organization obtains an exemption determination letter from the commissioner.

(B) For the purposes of this paragraph, the term "qualified job training organization" means an organization which:

(i) Is located in this state;

(ii) Is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code;

(iii) Specializes in the retail sale of donated items;

(iv) Provides job training and employment services to individuals with workplace disadvantages and disabilities, including, but not limited to, reentry citizens who shall be persons released from incarceration, persons with disabilities, and veterans; and

(v) Uses a majority of its revenues for job training and placement programs.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of

1965"; or by or pursuant to Article 2, Article 2A, Part 1 or Part 2 of Article 3, Article 4, or Article 5 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any qualified job training organization which is granted an exemption under this paragraph shall provide an annual report to the department which contains, but is not limited to, the following:

(i) The number of individuals trained in the program;

(ii) The number of individuals employed by the organization after receiving such training; and

(iii) The number of individuals employed in full-time positions outside the organization after such training.

Such data shall be compiled by the department and presented to the House Committee on Ways and Means and the Senate Finance Committee for consideration prior to any renewal or extension of the exemption provided by this paragraph.

(E) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

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

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

(C) This exemption shall apply from July 1, 2017, until January 1, 2019, to any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized

by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

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

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

(100) (Reserved effective December 31, 2027.)

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

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

(C) This paragraph shall stand repealed and reserved on December 31, 2027;

(101)(A) The sale or use of noncommercial written materials or mailings by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, if the organization is located in this state and provides such materials to charity supporters for educational, charitable, religious, or fundraising purposes, to the extent provided in subparagraph (B) of this paragraph.

(B) This exemption shall apply from July 1, 2018, until July 1, 2026. A qualifying organization must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use taxes by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest;

(102)(A) Fifty percent of the sales price of a manufactured home if such manufactured home is installed pursuant to Code Section 8-2-160 and will be converted to real property pursuant to Code Section 8-2-183.1 within 30 days of the retail sale.

(B) As used in this paragraph, the term "manufactured home" means a structure built on a permanent chassis that:

(i) Is designed to be used as a dwelling;

(ii) Is transportable in one or more sections;

(iii) Contains plumbing, heating, air-conditioning, and electrical systems; and

(iv) Is designed to have an angled roof and contain an area of at least 650 square feet.

(C) Within 30 days of a sale exempted as provided for in subparagraph (A) of this paragraph, the seller shall complete the requirements of Code Section 8-2-183.1 and properly file a copy of the Certificate of Permanent Location with the clerk of superior court, or the commissioner shall recover from the seller 1.5 times the amount of tax exempted by this paragraph.

(D) A manufactured home that is exempted as provided in subparagraph (A) of this paragraph shall not be eligible for a Certificate of Removal from Permanent Location provided in Part 4 of Article 2 of Chapter 2 of Title 8, or any other manner of a return to tangible personal property unless the amount exempted pursuant to subparagraph (A) of this paragraph is paid to the commissioner.

(E) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any sales and use tax levied or imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to:

(i) Constitutional amendment;

(ii) Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or

(iii) Article 2, 2A, 3, 4, 5, or 5A of this chapter;

(103) Reserved;

(104) (Reserved effective December 31, 2029.)

(A) Sales to or by any nonprofit organization which has as its primary purpose providing poultry diagnostic and disease monitoring services if such organization qualifies as a tax-exempt organization under Section 501(c)(5) of the Internal Revenue Code.

(B) This paragraph shall stand repealed and reserved on December 31, 2029; or

(105) Sales to or by an eligible recipient, as defined in Code Section 31-8-300, which provides pharmacy related services only for the purpose of dispensing donated or purchased drugs pursuant to the drug repository program established under Article 10 of Chapter 8 of Title 31, if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code or is an organization that is treated for federal income tax purposes as a disregarded entity of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

**History.**

Ga. L. 1951, p. 360, §§ 3, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 182, §§ 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 191, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 192, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 194, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 199, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 301, § 1; Ga. L. 1960, p. 153, § 2; Ga. L. 1963, p. 13, § 1; Ga. L. 1963, p. 132, § 1; Ga. L. 1963, p. 613, § 1; Ga. L. 1964, p. 57, § 3; Ga. L. 1964, p. 206, § 1; Ga. L. 1964, p. 672, § 1; Ga. L. 1965, p. 13, § 1; Ga. L. 1966, p. 211, § 1; Ga. L. 1966, p. 507, § 1; Ga. L. 1966, p. 537, §§ 1, 2; Ga. L. 1967, p. 282, § 1; Ga. L. 1967, p. 283, § 1; Ga. L. 1967, p. 286, § 1; Ga. L. 1968, p. 129, § 1; Ga. L. 1968, p. 136, § 1; Ga. L. 1968, p. 201, § 1; Ga. L. 1968, p. 545, § 1; Ga. L. 1968, p. 559, § 1; Ga. L. 1970, p. 16, § 1; Ga. L. 1970, p. 252, § 2; Ga. L. 1970, p. 254, § 1; Ga. L. 1970, p. 460, § 1; Ga. L. 1970, p. 631, § 1; Ga. L. 1971, p. 80, § 1; Ga. L. 1971, p. 265, § 1; Ga. L. 1971, p. 474, § 1; Ga. L. 1971, p. 653, § 1; Ga. L. 1972, p. 457, § 1; Ga. L. 1972, p. 504, § 1; Ga. L. 1973, p. 276, § 1; Ga. L. 1976, p. 411, § 1; Ga. L. 1976, p. 672, § 1; Ga. L. 1976, p. 987, § 1; Ga. L. 1977, p. 590, § 1; Code 1933, § 91A-4503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1160, §§ 1-4; Ga. L. 1978, p. 1634, § 1; Ga. L. 1978, p. 1664, § 2; Ga. L. 1978, p. 1666, § 1; Ga. L. 1979, p. 5, §§ 85-92; Ga. L. 1979, p. 1278, §§ 1, 2; Ga. L. 1980, p. 10, §§ 25, 26; Ga. L. 1980, p. 586, § 1; Ga. L. 1980, p. 805, § 1; Ga. L. 1980, p. 1188, § 1; Ga. L. 1981, p. 1857, § 41; Ga. L. 1984, p. 1466, § 1; Ga. L. 1985, p. 491, § 1; Ga. L. 1985, p. 624, § 1; Ga. L. 1985, p. 625, § 1; Ga. L. 1985, p. 1177, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1464, § 2; Ga. L. 1986, p. 1467, §§ 1, 2; Ga. L. 1986, p. 1584, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 62, §§ 2, 3; Ga. L. 1989, p. 622, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 87, § 2; Ga. L. 1992, p. 1276, § 1; Ga. L. 1992, p. 1521, § 2; Ga. L. 1992, p. 3173, § 1; Ga. L. 1994, p. 132, § 1; Ga. L. 1994, p. 552, § 1; Ga. L. 1994, p. 928, §§ 5, 6; Ga. L. 1994, p. 1269, § 1; Ga. L. 1995, p. 364, § 1; Ga. L. 1995, p. 585, § 8; Ga. L. 1995, p. 991, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1996, p. 1, § 1; Ga. L. 1996, p. 220, §§ 8-10; Ga. L. 1996, p. 738, § 1; Ga. L. 1996, p. 1025, § 2; Ga. L. 1996, p. 1643, §§ 1-3; Ga. L.

1997, p. 157, § 1; Ga. L. 1997, p. 1295, § 1; Ga. L. 1997, p. 1412, §§ 1, 2; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 602, §§ 1-3; Ga. L. 1999, p. 634, §§ 1, 2; Ga. L. 2000, p. 409, § 1; Ga. L. 2000, p. 411, § 1; Ga. L. 2000, p. 414, § 1; Ga. L. 2000, p. 415, § 1; Ga. L. 2000, p. 468, § 1; Ga. L. 2000, p. 485, § 1; Ga. L. 2000, p. 615, §§ 1-3; Ga. L. 2000, p. 1202, §§ 1, 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 202, §§ 1, 2; Ga. L. 2001, p. 984, §§ 13-16; Ga. L. 2001, p. 1049, § 1; Ga. L. 2001, p. 1068, § 1; Ga. L. 2002, p. 6, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 575, § 1; Ga. L. 2002, p. 804, § 1; Ga. L. 2002, p. 855, § 1; Ga. L. 2002, p. 954, § 3; Ga. L. 2002, p. 984, § 1; Ga. L. 2003, p. 337, § 1; Ga. L. 2003, p. 665, §§ 11, 12; Ga. L. 2004, p. 154, § 1; Ga. L. 2004, p. 328, § 1; Ga. L. 2004, p. 403, § 1; Ga. L. 2004, p. 628, § 1; Ga. L. 2004, p. 690, § 22; Ga. L. 2004, p. 947, § 1; Ga. L. 2004, p. 1073, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 142, §§ 1, 2/HB 487; Ga. L. 2005, p. 334, § 29-6/HB 501; Ga. L. 2005, p. 725, §§ 1, 2, 3, 4/HB 341; Ga. L. 2005, p. 794, § 1/HB 559; Ga. L. 2005, p. 983, § 1/HB 5; Ga. L. 2006, p. 222, § 1/HB 1014; Ga. L. 2006, p. 263, § 1/HB 1018; Ga. L. 2006, p. 419, § 1/HB 834; Ga. L. 2006, p. 471, § 1/HB 1301; Ga. L. 2006, p. 524, §§ 1, 2/HB 1219; Ga. L. 2006, p. 527, § 1/HB 1121; Ga. L. 2006, p. 538, § 1/HB 841; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2007, p. 207, §§ 1, 2/HB 128; Ga. L. 2007, p. 419, § 1/HB 186; Ga. L. 2007, p. 594, § 1/HB 169; Ga. L. 2007, p. 604, § 1/HB 282; Ga. L. 2007, p. 709, § 1/HB 193; Ga. L. 2008, p. 316, § 1/HB 1178; Ga. L. 2008, p. 340, §§ 1, 2/HB 948; Ga. L. 2008, p. 644, § 3-1/SB 342; Ga. L. 2008, p. 739, §§ 1, 2, 3/HB 957; Ga. L. 2008, p. 773, § 1/HB 1078; Ga. L. 2008, p. 1148, § 1/HB 1023; Ga. L. 2008, p. 1151, § 1/HB 1110; Ga. L. 2008, p. 1160, § 1/HB 237; Ga. L. 2008, p. 1163, § 1/HB 272; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 79, § 2/HB 59; Ga. L. 2009, p. 636, § 1/HB 116; Ga. L. 2009, p. 637, §§ 1, 2/HB 120; Ga. L. 2009, p. 642, § 1/HB 212; Ga. L. 2009, p. 650, § 1/HB 358; Ga. L. 2009, p. 651, § 1/HB 395; Ga. L. 2009, p. 777, § 1/HB 129; Ga. L. 2009, p. 794, § 1/HB 349; Ga. L. 2009, p. 795, § 1/HB 364; Ga. L. 2010, p. 662, § 2/HB 1221; Ga. L. 2011, p. 38, § 4/HB 168; Ga. L. 2011, p. 47, § 1/HB 322; Ga. L. 2011, p. 302, § 1/HB 234; Ga. L. 2012, p. 257, §§ 1-5, 4-1, 5-1, 5-5, 5-6, 6-2/HB 386; Ga. L. 2012, p. 580, § 18/HB 865; Ga. L. 2012, p. 694, § 4/HB 729; Ga. L. 2012, p. 775, § 48/HB 942; Ga. L. 2012, p. 1348, § 2/HB 743; Ga. L. 2013, p. 7, § 4/HB 266; Ga. L. 2013, p. 37, § 2-2/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 190, § 1/HB 164; Ga. L. 2013, p. 243, § 6.1/HB 318; Ga. L. 2014, p. 51, § 2/HB 958; Ga. L. 2014, p. 633, § 1/HB 933; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2015, p. 236, § 5-3/HB 170; Ga. L. 2015, p. 284, § 1/HB 428; Ga. L. 2015, p. 385, § 4-17/HB 252; Ga. L. 2015, p. 1219, § 26/HB 202; Ga. L. 2015, p. 1262, § 7/HB 225; Ga. L. 2015, p. 1313, §§ 1, 1A/HB 426; Ga. L. 2016, p. 62, § 1/HB 951; Ga. L. 2016, p. 758, § 4/SB 379; Ga. L. 2016, p. 772, § 1/HB 937; Ga. L. 2016, p. 796, § 1/HB 763; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 46, § 2/HB 265; Ga. L. 2017, p. 530, § 1/SB 156; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 307, § 1/HB 697; Ga. L. 2018, p. 624, § 1/HB 696; Ga. L. 2018, p. 644, § 4/HB 217; Ga. L. 2018, p. 674, § 1/HB 871; Ga. L. 2018, p. 1075, §§ 1, 2/HB 793; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2018, Ex. Sess., p. ES7, § 3-2/HB 5EX; Ga. L. 2019, p. 90, § 1/HB 35; Ga. L. 2019, p. 892, § 1/HB 352; Ga. L. 2019, p. 1044, § 1/HB 168; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 792, § 1/SB 104; Ga. L. 2020, p. 903, § 2-1/HB 105; Ga. L. 2021, p. 289, §§ 5-1, 5-2, 7-2/SB 6; Ga. L. 2021, p. 511, § 1/HB 374; Ga. L. 2021, p. 602, § 1-1/HB 498; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2022, p. 285, § 1/HB 1034; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2022, p. 655, §§ 1, 3/HB 1291; Ga. L. 2022, p. 741, § 1/HB 586; Ga. L. 2022, p. 655, § 2/HB 1291; Ga. L. 2023, p. 335, § 3-2/SB 56, effective January 1, 2024; Ga. L. 2023, p. 344, §§ 1, 2/HB 86, effective July 1, 2023; Ga. L. 2023, p. 727, § 1/HB 408, effective July 1, 2023; Ga. L. 2024, p. HB 1072, § 2-6/HB 1072, effective April 23, 2024; Ga. L. 2024, p. 794, § 3-4/HB 1181, effective January 1, 2025; Ga. L. 2024, p. 1052, § 5(48)/SB 448, effective July 1, 2024.

**Delayed effective date.**

Code Section 48-8-3 is set out twice in this Code. This version is effective

January 1, 2025. For version effective until January 1, 2025, see the preceding version.

**Amendments.**

**The first 2024 amendment,** effective April 23, 2024, deleted "or" from the end of paragraph (103); substituted "; or" for a period at the end of paragraph (104); and added paragraph (105). See Editor's notes for applicability.

**The second 2024 amendment,** effective January 1, 2025, in paragraphs (6.2), (6.3), (7.2), (11), (14), (15.1), (30), (38), (48), (56), (60), (63), (67), (71), (72), and (104), designated the existing provisions of each paragraph as subparagraph (A), substituted a period for a semicolon at the end, and added subparagraph (B); redesignated former subparagraphs (11)(A) through (11)(D) as divisions (i) through (iv) in subparagraph (11)(A); inserted "or her" in subparagraph (30)(A); substituted a period for a semicolon at the end of subparagraph (34.2)(B); added subparagraph (34.2)(C); in subparagraph (36)(B), deleted "him with" following "furnishes" and substituted a period for a semicolon at the end; added subparagraph (36)(C); substituted "tax-exempt" for "tax exempt" in subparagraph (56)(A); substituted a period for a semicolon at the end of subparagraph (65)(B); and, added subparagraph (65)(C).

**The third 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraphs (68)(G) and (68.1)(H), and in division (75)(B)(vi).

**Editor's notes.**

Ga. L. 2024, p. 347, § 3-1/HB 1072, not codified by the General Assembly, makes the amendment to paragraphs (103) and (104), and the addition of paragraph (105), applicable to taxable years beginning on or after January 1, 2025.

## 48-8-3.1. Exemptions for motor fuels.

(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the state sales and use taxes levied or imposed by this article.

(b) Sales of motor fuel, other than gasoline, purchased for purposes other than propelling motor vehicles on public highways as defined in Article 1 of Chapter 9 of this title shall be fully subject to the state sales and use taxes levied or imposed by this article unless otherwise specifically exempted by this article.

(c) It is specifically declared to be the intent of the General Assembly that taxation imposed on sales of motor fuel wholly or partially subject to taxation under this Code section shall not constitute motor fuel taxes for purposes of any provision of the Constitution providing for the automatic or mandatory appropriation of any amount of funds equal to funds derived from motor fuel taxes.

**History.**

Code 1981, § 48-8-3.1, enacted by Ga. L. 1989, p. 62, § 4; Ga. L. 2015, p. 236, § 5-4/HB 170.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year

revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-3.2. Exemptions for manufacturing equipment, industrial materials, packing supplies, and energy.

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

(1) "Consumable supplies" means tangible personal property, other than machinery and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.

(2) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) "Equipment" means tangible personal property, other than machinery and industrial materials. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. The term also includes consumable supplies. Examples of equipment include, but are not limited to, machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term excludes real property.

(4) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(5) "Industrial materials" means materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term includes raw materials.

(6) "Local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; and by or pursuant to any article of this chapter.

(7) "Machinery" means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term includes a machine and all of its components, including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine, including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality. The term includes repair or replacement parts. The term excludes real property and consumable supplies.

(8) "Machinery clothing" means felts, screen plates, wires, or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(9) "Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a

continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(10) "Manufacturer" means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or

(B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(11) "Manufacturing plant" means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(12) "Packaging operation" means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(13) "Packaging supplies" means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.

(14) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(15) "Repair or replacement part" means a part for any machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic

fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(16) "Substantial purpose" means the purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria, including, but not limited to, the number of items produced.

(b) The sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.

(c)(1) Except as otherwise provided in paragraph (4) of this subsection, the sale, use, storage, or consumption of energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution and except for local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment. This exemption shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 25 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 25 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 50 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 50 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such sale, use,

storage, or consumption of energy shall be exempt from an amount equal to 75 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 75 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy; and

(D) On or after January 1, 2016, such sale, use, storage, or consumption of energy shall be fully exempt from such sales and use taxation.

(2)(A) Any person making a sale of items qualifying for exemption under paragraph (1) of this subsection shall be relieved of the burden of proving such qualification if the person making the sale receives a certificate from the purchaser certifying that the purchase is exempt under this subsection.

(B) Any person who qualifies for the exemption under paragraph (1) of this subsection shall notify and certify to the person making the qualified sale that such exemption is applicable to the sale.

(3) With respect to services which are regularly billed on a monthly basis, the exemption under paragraph (1) of this subsection shall become effective with respect to and the exemption shall apply to services billed on or after January 1, 2013.

(4) If a competitive project of regional significance under paragraph (93) of Code Section 48-8-3 is started in a county or municipality, it shall not be subject to the phase-in period contained in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, but such project shall receive the full exemption provided for in subparagraph (D) of paragraph (1) of this subsection notwithstanding the January 1, 2016, limitation in that subparagraph.

(d) The exemptions under this Code section shall be applied as follows:

(1) The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants;

(2) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial pur-

pose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The commissioner shall consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable;

(3) For leased machinery or equipment that did not qualify for an exemption at the date of lease inception and subsequently qualifies for the exemption under this Code section, the exemption shall apply to all lease payments made subsequent to such qualification;

(4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

(5) Energy necessary and integral to the manufacture of tangible personal property includes energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, or to perform an actual part of the manufacture of tangible personal properly; energy used in administrative or other ancillary activities that are located and performed at the manufacturing plant so long as such activities primarily benefit such manufacture of tangible personal property; energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the manufacturer's employees at the manufacturing plant; and energy used for any other purpose at a manufacturing plant.

(e) Examples that qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

(1) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(3) Machinery or equipment used to control, regulate, heat, cool,

or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(4) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;

(6) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(7) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses;

(8) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(10) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(11) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing;

(12) For the period commencing on July 1, 2021, and ending on June 30, 2026, maintenance and replacement parts for machinery or equipment, stationary or in transit, used to mix, agitate, and transport freshly mixed concrete in a plastic and unhardened state, including but not limited to mixers and components, engines and components, interior and exterior operational controls and components, hydraulics and components, all structural components, and all

safety components, provided that sales and use taxes on motor fuel used as energy in a concrete mixer truck shall not be exempt or refundable; and

(13) Energy used at a manufacturing plant.

**History.**

Code 1981, § 48-8-3.2, enacted by Ga. L. 2012, p. 257, § 5-2/HB 386; Ga. L. 2014, p. 229, § 1/HB 900; Ga. L. 2017, p. 568, § 1/HB 247; Ga. L. 2021, p. 289, § 5-3/SB 6.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2012, "or after January 1, 2013" was substituted for "or after the effective date of this Code section" at the end of paragraph (c)(3) and "paragraph (93)" was substituted for "paragraph (92)" in paragraph (c)(4).

**Editor's notes.**

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Part V of this Act shall be known and may be cited as the 'Georgia Economic Recovery Act of 2021.'"

**Law reviews.**

For article on the 2012 enactment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## 48-8-3.3. Exemptions for agricultural operations; establishment of Georgia Agricultural Trust Fund.

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

(1)(A) "Agricultural machinery and equipment" means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; in tilling the soil or in animal husbandry; machinery and equipment used exclusively for irrigation of agricultural

products, including, but not limited to, fruit, vegetable, and nut crops regardless of whether the irrigation machinery or equipment becomes incorporated into real property; and machinery and equipment used to cool agricultural products in storage facilities.

(B) "Agricultural machinery and equipment" shall mean farm tractors and attachments to the tractors; off-road vehicles used primarily in the production of nursery and horticultural crops; self-propelled fertilizer or chemical application equipment sold to persons engaged primarily in producing agricultural products for sale and which are used exclusively in tilling, planting, cultivating, and harvesting agricultural products, including growing, harvesting, or processing onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops; devices and containers used in the transport and shipment of agricultural products; aircraft exclusively used for spraying agricultural crops; pecan sprayers, pecan shakers, and other equipment used in harvesting pecans sold to persons engaged in the growing, harvesting, and production of pecans; and off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments; grain bins and attachments to grain bins regardless of whether such grain bins or attachments are incorporated into real property; any repair, replacement, or component parts installed on agricultural machinery and equipment; trailers used to transport agricultural products; all-terrain vehicles and multipassenger rough-terrain vehicles; and any other off-road vehicles used in the production of agricultural or horticultural products.

(2)(A) "Agricultural operations" is used synonymously with the term "agricultural purposes" and means the following activities:

(i) Raising, growing, harvesting, or storing of crops, including, but not limited to, soil preparation and crop production services such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services;

(ii) Feeding, breeding, or managing livestock, equine, or poultry;

(iii) Producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys;

(iv) Producing plants, trees, fowl, equine, or other animals;

(v) Producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products;

(vi) Processing poultry;

(vii) Post-harvest services on crops with the intent of preparing them for market or further processing, including but not limited to crop cleaning, drying, shelling, fumigating, curing, sorting, grading, packing, ginning, canning, pickling, and cooling;

(viii) Slaughtering poultry and other animals; and

(ix) Manufacturing dairy products.

(B) "Agricultural operations" excludes constructing, installing, altering, repairing, dismantling, or demolishing real property structures or fixtures, including, but not limited to, grain bins, irrigation equipment, and fencing.

(2.1) "Agricultural products" means items produced by agricultural operations. Agricultural products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.

(3) "Agricultural production inputs" means seed; seedlings; plants grown from seed, cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and instruments used for the administration of such drugs; fencing products and materials used to produce agricultural products regardless of whether the fencing products or materials become incorporated into real property; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes; ice or other

refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia, and propylene glycol used in the processing for market or the chilling of agricultural products in storage facilities, rooms, compartments, or delivery trucks; materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; and containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.

(3.1) "Animal" shall be synonymous with livestock and means living organisms that are commonly regarded as farm animals, organisms that produce tangible personal property for sale, or organisms that are processed, manufactured, or converted into articles of tangible personal property for sale. The term does not include living organisms that are commonly regarded as domestic pets or companion animals.

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

(5) "Qualified agricultural producer" includes producers of agricultural products who meet one of the following criteria:

(A) The person or entity is the owner or lessee of agricultural land or other real property from which $5,000.00 or more of agricultural products in aggregate were produced and sold during the year, including payments from government sources;

(B) The person or entity is in the business of performing agricultural operations and has provided $5,000.00 of such services during the year;

(C) The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, livestock, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term agricultural products will be produced which have the capacity to generate in aggregate at least $5,000.00 in annualized sales in the future; or

(D) The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate in aggregate at least $5,000.00 in annualized sales.

(b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agricultural producer of agricultural production inputs, energy used in agriculture, diesel exhaust fluid for agricultural uses only, and agricultural machinery and equipment.

(c) The Commissioner of Agriculture shall require applicants to acknowledge and produce, upon request, at least one of the following forms to determine eligibility under this Code section:

(1) Business activity on IRS schedule F (Profit or Loss from Farming);

(2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss);

(3) IRS Form 4797;

(4) IRS Form 1065; or

(5) IRS Form 1120 or 1120(s).

If an applicant does not file any of the forms provided for in this subsection but claims eligibility for the exemption certificate pursuant to the criteria specified in paragraph (5) of subsection (a) of this Code section, the applicant shall provide to the Commissioner of Agriculture any documentation, tax returns, forms, or sales receipts required by the Commissioner of Agriculture and the commissioner, in his or her discretion, shall determine if the applicant has met such eligibility requirements in determining whether to issue or deny the issuance of the certificate.

(d)(1) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture to request an agricultural sales and use tax exemption certificate that contains an exemption

number. Upon request, the qualified agricultural producer shall also produce the form or forms requested by the Commissioner of Agriculture under subsection (c) of this Code section to the commissioner. Such application shall be in a form prescribed by the Commissioner of Agriculture and shall contain, among other information, a warning to the agricultural producer of the consequences for providing false information on the application or for unauthorized use or misuse of the exemption applied for, an acknowledgment by the agricultural producer that the Commissioner of Agriculture is authorized, by the submission of the application, to share the information contained therein with the department, and an acknowledgment by the agricultural producer that records of purchases of qualified agricultural products exempt from sales and use tax shall be maintained and shall, upon request, be furnished to the Commissioner of Agriculture and the commissioner.

(2) The Commissioner of Agriculture shall not issue or renew an agricultural sales and use tax exemption until the agricultural producer requesting such certificate has provided the Commissioner of Agriculture with a valid state taxpayer identification number obtained through the Department of Revenue's Georgia Tax Center.

(3) Any agricultural sales and use tax exemption certificate issued or renewed on or after January 1, 2019, shall be valid for three years. In order to have staggered renewal dates for such three-year certificates, the Commissioner of Agriculture shall, by rules and regulations, establish a schedule for the orderly renewal of existing certificates and shall prorate the application or renewal fee specified in paragraph (4) of subsection (e) of this Code section for the initial period, if less than three years, so renewed.

(4) To facilitate the use of the exemption certificate, a wallet sized card containing the producer's name, address, exemption number, and expiration date shall be issued by the Commissioner of Agriculture. Notwithstanding that exemption certificates are renewed for three-year periods, the Commissioner of Agriculture shall, upon renewal, issue a card each year that such certificate is in effect.

(e)(1) The Commissioner of Agriculture and the commissioner are authorized to cooperate in the promulgation of rules and regulations governing the issuance of agricultural exemption certificates and the administration and enforcement of this Code section.

(2) A seller shall, upon the first use of a new or renewed tax exemption certificate during any calendar year, verify that such certificate is valid by reviewing the producer's certificate. A seller shall be authorized to continue to honor the tax exemption certificate unless the seller receives actual notice of a suspension or revocation.

A seller is prohibited from allowing the sales tax exemption if the producer cannot provide a valid tax exemption certificate.

(3) If an agricultural producer knowingly uses a tax exemption certificate unlawfully, the Commissioner of Agriculture, after verifying the unlawful use of the tax exemption certificate, and subject to notice and a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall suspend the certificate for up to one year. If a subsequent unlawful use is knowingly made within five years following the end of the suspension, the Commissioner of Agriculture, after notice and hearing, shall determine if the certificate should be revoked. Any agricultural producer who has had his or her certificate revoked pursuant to this paragraph shall not be eligible for the issuance of a new tax exemption certificate until three years from the date of such revocation.

(4) The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge a fee of $150.00 per three-year issuance or renewal.

(5)(A) There shall be established a Georgia Agricultural Trust Fund as a separate fund in the state treasury. The Commissioner of Agriculture shall be the trustee of the fund.

(B) The state treasurer shall invest the money held in the Georgia Agricultural Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund. The fund is authorized to accept donations from private individuals and entities.

(C) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to paragraph (4) of this subsection shall be annually appropriated to the Georgia Agricultural Trust Fund established by subparagraph (A) of this paragraph and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.

(D) All of the money appropriated to the Georgia Agricultural Trust Fund pursuant to subparagraph (C) of this paragraph shall be dedicated for use and expended by the Commissioner of

Agriculture for the purposes of marketing and promotion activities conducted by the Department of Agriculture in support of Georgia agricultural products and supporting the maintenance and operations of state farmers' markets.

(E) The Commissioner of Agriculture shall prepare an accounting of the funds expended pursuant to this paragraph during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

(f)(1) The department, in conjunction with the Department of Agriculture, is authorized to conduct audits, as necessary, to monitor compliance with the provisions of this Code section.

(2) The department and the Department of Agriculture shall, and are hereby authorized to, share information that is necessary to efficiently administer and enforce the provisions of this Code section. Any information shared for these purposes, if confidential, shall retain its character as confidential and privileged information. The furnishing of information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished. Any person who divulges any confidential information obtained under this Code section shall be subject to the same civil and criminal penalties as provided for divulgence of confidential information by employees of the department.

(3) Upon issuance of a new or renewed tax exemption certificate, the Department of Agriculture shall provide the applicant with informational material detailing the lawful use of the tax exemption certificate. Any seller of tax exempt products under this Code section shall also be provided with such informational material. Any person who knowingly uses such certificate unlawfully shall be subject to any civil or criminal penalties authorized by law in addition to the suspension or revocation of such certificate.

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

(h) Notwithstanding subsection (c) of Code Section 48-8-63, contractors shall not incur any use tax on:

(1) Tangible personal property that a qualified agricultural producer purchases tax-exempt under this Code section and furnishes to such contractor for use in the performance of an agricultural operation, so long as such property retains the character of tangible

personal property and is returned to the qualified agricultural producer upon the completion of the contract; or

(2) Grain bins, irrigation equipment, and fencing or the repair, replacement, or component parts to grain bins, irrigation equipment, or fencing that a qualified agricultural producer purchases tax-exempt under this Code section for use in an agricultural operation and furnishes to such contractor for installation into real property.

(i) The Department of Agriculture shall prepare an annual report for the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the activity in administering and enforcing the provisions of this Code section. The report shall include but not be limited to the:

(1) Number of new tax exemption certificates issued;

(2) Number of renewed tax exemption certificates issued; and

(3) Number of tax exemption certificates revoked or suspended due to knowingly unlawful activity.

**History.**

Code 1981, § 48-8-3.3, enacted by Ga. L. 2012, p. 257, § 5-3/HB 386; Ga. L. 2013, p. 7, § 5/HB 266; Ga. L. 2014, p. 288, § 1/HB 983; Ga. L. 2016, p. 429, § 1/HB 822; Ga. L. 2018, p. 338, § 1/HB 886; Ga. L. 2021, p. 761, § 16/HB 511; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2024, p. 454, § 1/SB 340, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, inserted "diesel exhaust fluid for agricultural uses only," near the end of subsection (b).

**Editor's notes.**

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act." This Act became effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act." This Act became effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2014, p. 288, § 3/HB 983, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2015, and shall be applicable to all taxable years beginning on or after January 1, 2015."

**Law reviews.**

For article on the 2012 enactment of this Code section, see 29 Georgia St. U.L. Rev. 112 (2012).

## 48-8-3.4. Maximum amount of sales and use tax imposed and collected on the maintenance, refitting, and repair of any single boat.

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

(1) "Boat" means a vehicle used or capable of being used as a means of transportation on the water.

(2) "Event" means an uninterrupted period of time beginning when a boat arrives at a maintenance, refit, or repair facility in this state and ending when such boat departs such facility.

(b) Notwithstanding any other provision of this article, the maximum amount of sales and use tax imposed and collected to maintain, refit, or repair a boat in this state during a single event shall not exceed $35,000.00.

(c) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section, including, but not limited to, calling for an annual report to be issued to the department and the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee that contains the following:

(1) The number of full-time and part-time positions created by the seller during the preceding tax year;

(2) The average salary of individuals employed in the reported positions; and

(3) The total revenue generated and sales and use taxes collected from qualifying events during the preceding year.

(d) This Code section shall be automatically repealed on June 30, 2031.

**History.**
Code 1981, § 48-8-3.4, enacted by Ga. L. 2017, p. 155, § 1/HB 125; Ga. L. 2021, p. 289, § 5-4/SB 6.

**Editor's notes.**
Ga. L. 2021, p. 289, § 1-1/SB 6, not codified by the General Assembly, provides, in part, that: "Part V of this Act shall be known and may be cited as the 'Georgia Economic Recovery Act of 2021.'"

**Law reviews.**
For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

## 48-8-3.5. Taxation on sale or use of jet fuel.

(a) The sale or use of jet fuel that is pumped into an aircraft in this state and the use of jet fuel that is pumped into an aircraft in another state shall be exempt from all sales and use tax except such tax levied:

(1) By the state pursuant to Code Section 48-8-30 at a rate that shall not exceed 4 percent;

(2) Pursuant to Article 2 of this chapter by a jurisdiction in which a sales and use tax was levied on jet fuel on December 30, 1987, at a rate that shall not exceed the rate in effect on December 30, 1987; and

(3) Pursuant to Section 25 of an Act approved March 10, 1965 (Ga.

L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," by a jurisdiction in which such tax was levied on jet fuel on December 30, 1987, at a rate that shall not exceed the rate in effect on December 30, 1987.

(b) For the period of time beginning December 1, 2018, and ending at the last moment of June 30, 2019, the sale or use of jet fuel that is pumped into an aircraft in this state and the use of jet fuel that is pumped into an aircraft in another state shall be exempt from the sales and use tax levied by the state pursuant to Code Section 48-8-30.

(c) To the extent required to comply with 49 U.S.C. Sections 47107(b) and 47133, revenue derived from the levy of sales and use taxes on jet fuel and other fuels sold or used at an airport for aviation purposes shall be used for a state aviation program or airport related purposes. Any portion of such revenue so derived which is not required or exceeds the amount required for purposes of such compliance with federal law may be appropriated for other purposes as provided by law.

(d) The commissioner shall adopt rules and regulations to carry out the provisions of this Code section.

**History.**
Code 1981, § 48-8-3.5, enacted by Ga. L. 2018, Ex. Sess., p. ES7, § 3-3/HB 5EX.

## 48-8-4. Nonapplicability of use tax to products produced and used by farmer.

The use tax shall not apply to livestock, livestock products, poultry, poultry products, farm products, and agricultural products produced by the farmer and used by him and the members of his family.

**History.**
Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4515, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 168 et seq., 187.

## 48-8-5. Exemptions for agricultural commodities not sold as finished product to ultimate consumer.

(a) For the purposes of this Code section, the term "agricultural commodity" means horticultural, poultry, and farm products and livestock and livestock products.

(b) Each agricultural commodity sold by any person other than a producer to any other person who purchases not for direct consumption

but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing the agricultural commodity for the ultimate retail consumer trade is exempted from all provisions of this article including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization or handling of the commodity, except when the commodity is actually sold as a marketable or finished product to the ultimate consumer.

**History.**
Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4516, enacted by Ga. L. 1978, p. 309, § 2.

**OPINIONS OF THE ATTORNEY GENERAL**

**Retail sales are not exempt.** — Retail sales by farmers or any other persons, including those who buy from the farmer and resell to the public, and those merchants who employ persons to operate stalls on the premises of state farmers' markets, are subject to sales tax. 1969 Op. Att'y Gen. No. 69-260.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 80, 86, 187.
**ALR.**
Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 A.L.R.2d 1031.

## 48-8-6. (For effective date, see note.) Prohibition of political subdivisions from imposing various taxes; ceiling on local sales and use taxes; taxation of mobile telecommunications.

(a) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such

constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply:

(A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200. The exception provided for under this subparagraph shall apply only during the period the tax under such subparagraph (a)(1)(D) is in effect. The exception provided for under this subparagraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter;

(B) In a county in which the tax levied for purposes of a metropolitan area system of public transportation is first levied after January 1, 2010, and before January 1, 2021. Such tax shall not apply to the following:

(i) The sale or use of jet fuel; and

(ii) The sale of motor vehicles; or

(C) In a county in which a tax is levied and collected pursuant to Part 2 of Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter;

(5) Either a sales and use tax levied under Article 5 of this chapter or a sales and use tax levied under Article 5B of this chapter;

(6) A sales and use tax levied under Article 5A of this chapter;

(7) A sales and use tax levied under Article 2 of Chapter 9 of Title 32; and

(8) A sales and use tax levied under Part 3 of Article 3 of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(b) Reserved.

(c) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to the sale of motor vehicles.

(c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee.

**History.**

Ga. L. 1951, p. 360, § 25; Ga. L. 1965, p. 451, § 3; Ga. L. 1971, p. 85, § 1A; Ga. L. 1971, p. 95, § 1; Ga. L. 1975, p. 984, § 1; Ga. L. 1975, p. 1002, § 6; Ga. L. 1977, p. 744, § 5; Code 1933, § 91A-4534, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1985, p. 232, § 3; Ga. L. 2002, p. 576, § 1; Ga. L. 2002, p. 970, § 1; Ga. L. 2003, p. 665, § 13; Ga. L. 2004, p. 69, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 662, § 3/HB 1221; Ga. L. 2010, p. 778, § 5/HB 277; Ga. L. 2010, p. 813, § 1/HB 1393; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2014, p. 475, § 1/HB 1009; Ga. L. 2014, p. 649, § 2/HB 265; Ga. L. 2015, p. 217, § 1/HB 215; Ga. L. 2015, p. 236, § 7-4/HB 170; Ga. L. 2018, p. 377, § 1-2/HB 930; Ga. L. 2018, Ex. Sess., p. ES7, § 3-4/HB 5EX; Ga. L. 2023, p. 47, § 1/HB 230, effective April 24, 2023; Ga. L. 2024, p. 20, § 3-1/HB 581, see notes for effective date.

**Delayed effective date.**

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025, provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025, and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. If the voters approve, subsection (a) will read: "(a)(1) Except as provided in this

subsection, on and after July 1, 2024, there shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this 2 percent limitation, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, and regardless of whether another provision of law purports to the contrary, except for the following:

"(A) A 1 percent sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

"(B) Up to 1 percent in aggregate of any of the transportation related sales and use taxes authorized under Articles 5, 5A, and 5B of this chapter and Article 2 of Chapter 9 of Title 32; and

"(C) Up to 1 percent in aggregate of any sales and use taxes authorized under Code Section 48-8-96, Code Section 48-8-97, Article 2B of this chapter, Part 3 of Article 3 of this chapter, and Article 4 of this chapter.

"(2) Notwithstanding any provision of law to the contrary, any tax that does not comply with the limitations provided in paragraph (1) of this subsection as of July 1, 2025, but was initiated in compliance with the law in effect prior to January 1, 2025, shall be allowed to continue as authorized under laws that existed prior to July 1, 2025; provided, however, that upon the expiration or termination of any such tax, such tax shall not be renewed and the jurisdiction that levied such tax shall be fully subject to the limitations imposed by this subsection.

"(3) This subsection shall not limit the imposition of any local excise tax, which is separately authorized under Chapter 13 of this title.

"(4) Except as provided in paragraph (2) of this subsection, if the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax shall not be imposed."

**Amendments.**

**The 2023 amendment,** effective April 24, 2023, in subsection (a), deleted "and" at the end of paragraph (a)(6), substituted "; and" for a period at the end of paragraph (a)(7), and added paragraph (a)(8).

**The 2024 amendment,** rewrote subsection (a). For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2002, subsection (c) as enacted by Ga. L. 2002, p. 970, § 1, was redesignated as subsection (d).

Pursuant to Code Section 28-9-5, in 2004, subsection (d) as added by Ga. L. 2004, p. 69, § 5 was redesignated as subsection (c.1).

Pursuant to Code Section 28-9-5, in 2010, subsection (b) was set out as reserved and "paragraph (2) of subsection (a)" was substituted for "paragraph (2) of subsection (b)" in the beginning of subsection (c) and in subsection (c.1).

**Editor's notes.**

Ga. L. 2002, p. 970, § 4, not codified by the General Assembly, provides that: "If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of Sections 116 through 126 of Title 4 U.S.C., then all provisions and applications of this Act are declared to be invalid and have no legal effect as of the date of entry of such judgment."

Ga. L. 2002, p. 970, § 5, not codified by the General Assembly, provides that this Act "shall apply to charges for mobile telecommunications services reflected on customer bills issued on or after August 2, 2002."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financ-

ing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

Ga. L. 2014, p. 649, § 3/HB 265, not codifed by the General Assembly, provides that the 2014 amendment "shall become effective on June 1, 2014, only if an Act providing for the suspension of restrictions on the use of annual proceeds from sales and use taxes by the Metropolitan Atlanta Rapid Transit Authority and reconstituting the board of directors of the Metropolitan Atlanta Rapid Transit Authority is enacted at the 2014 regular session of the General Assembly." This contingency was met by the passage of HB 264 (Ga. L. 2014, p. 634).

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes subsection (a) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

**Law reviews.**

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article on the 2004 amendment of this Code section, see 21 Georgia St. U.L. Rev. 226 (2004).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## JUDICIAL DECISIONS

**Tax forbidden whether incidence is on seller or purchaser.** — This section forbids the imposition of a sales or use tax by a municipality, regardless of whether the legal incidence of such tax is placed on the seller or the purchaser. City of Columbus v. Atlanta Cigar Co., 111 Ga. App. 774, 143 S.E.2d 416, 1965 Ga. App. LEXIS 1093 (1965).

**Exception for taxes otherwise authorized by General Assembly is not a grant of power to tax.** — This section grants no power. It merely states that the section was not intended as a prohibition upon any otherwise existing power of counties to levy an excise tax upon these items. Chanin v. Bibb County, 234 Ga. 282, 216 S.E.2d 250, 1975 Ga. LEXIS 1108 (1975).

**Ordinance imposing cigarette tax violates Constitution, and statutory law.** — City ordinance which placed a tax on cigarettes sold, stored, or delivered within the municipality was contrary to Ga. L. 1951, p. 360, § 25 (see now O.C.G.A. § 48-8-6), former Code 1933, Ch. 92-22 (see now O.C.G.A. T. 48, C. 11), and Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) which forbid the enactment of

special laws for which provision had been made by an existing general law. City of Columbus v. Atlanta Cigar Co., 111 Ga. App. 774, 143 S.E.2d 416, 1965 Ga. App. LEXIS 1093 (1965).

**RESEARCH REFERENCES**

**ALR.**

Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes — modern cases, 58 A.L.R.5th 187.

## 48-8-7. Violation of article.

(a) It shall be unlawful for any dealer to knowingly and willfully fail, neglect, or refuse to collect the tax provided in this article, either by himself or through his agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

**History.**

Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-9934, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 1/HB 1506.

**Editor's notes.**

Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

**JUDICIAL DECISIONS**

**Seller or dealer ultimately responsible for collection even though ultimate liability for payment is on purchaser.** — Although the ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event of a failure to pay, the commissioner may proceed against either the purchaser or seller, it is nevertheless the intent of the law that the seller or dealer is the entity responsible for collecting and forwarding the tax, and the dealer's failure to do so subjects the dealer to both civil and criminal penalties in addition to the tax liability. Dittler Bros. v. AMR Int'l, Inc., 142 Ga. App. 570, 236 S.E.2d 544, 1977 Ga. App. LEXIS 1701 (1977).

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting required for violators.** — Those charged with offenses under O.C.G.A. § 48-8-7 are to be

fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.
**ALR.**
Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

## 48-8-8. Filing false or fraudulent return by dealer under article.

(a) It shall be unlawful for any dealer required by this article to knowingly and willfully make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

**History.**
Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9941, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 2/HB 1506.
**Editor's notes.**
Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting required for violators.** — Those charged with offenses under O.C.G.A. § 48-8-8 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.
**C.J.S.**
37 C.J.S., Fraud, §§ 12 et seq., 115, 123 et seq. 85 C.J.S., Taxation, § 2127 et seq.
**ALR.**
Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

## 48-8-9. Failure by dealer to furnish return under article.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the commissioner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

**History.**

Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9940, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 3/HB 1506.

**Editor's notes.**

Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required for violators.** — Those charged with offenses under O.C.G.A. § 48-8-9 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

**Percentage of local option sales and use tax to absent municipality.** — Absent municipality cannot be forced under O.C.G.A. § 48-8-89 to accept a smaller percentage of the local option sales and use tax proceeds distributed to all qualified municipalities in the county than the percentage the absent municipality's population is of the total population of all such qualified municipalities, regardless of whether that distribution is pursuant to a negotiated certificate or is based instead on an order by a superior court judge when the necessary parties are unable to agree. 2012 Op. Att'y Gen. No. U12-1.

### RESEARCH REFERENCES

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 120.

**ALR.**

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

## 48-8-10. Failure by dealer to keep or to allow inspection of records under article.

(a) It shall be unlawful for any dealer subject to this article to

knowingly and willfully fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

**History.**
Ga. L. 1951, p. 360, § 17; Code 1933, § 91A-9939, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 4/HB 1506.

**Editor's notes.**
Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting required for violators.** — Those charged with offenses under O.C.G.A. § 48-8-10 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 120.

**ALR.**
Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

## 48-8-11. Violation of any other provision of article; penalty.

(a) It shall be unlawful for any dealer to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

**History.**
Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9943, enacted by Ga. L. 1978, p. 309, § 2.

**JUDICIAL DECISIONS**

**Only dealers can be penalized under this section.** Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

**Liability of dealers who are corporate officers or employees.** — Since a corporate officer or employee may also be a dealer, it is clear that a dealer can violate Ga. L. 1960, p. 210, §§ 1, 2, though by definition only if the dealer is also an officer or employee in charge. Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

**Defendant cannot assert that acts in the form of corporate acts are not defendant's acts** merely because the acts are carried out by the defendant through the instrumentality of the corporation. Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.

## 48-8-12. Refusal by transportation company, agency, firm, or person to allow examination of its books, records, and other documents under article.

(a) With respect to this article, it shall be unlawful for any transportation company, agency, firm, or person to refuse to permit the examination of its books, records, and other documents by the commissioner as provided by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

**History.**
Ga. L. 1951, p. 360, § 17; Code 1933, § 91A-9938, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.

## 48-8-13. Taxing jurisdiction for mobile telecommunications services.

(a) For purposes of this Code section, the terms and corresponding definitions set forth in 4 U.S.C. Section 124 shall apply. In addition, as used in this Code section, the term:

(1) "Enhanced ZIP Code" means a United States postal ZIP Code of 9 or more digits.

(2) "Fee" shall include, without limitation, any emergency 9-1-1 charge imposed pursuant to Part 4 of Article 2 of Chapter 5 of Title 46.

(3) "FIPS" means the Federal Information Processing Standard (FIPS) 55-3 or any future enhancement.

(4) "Home service provider" means the facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(5) "Mobile telecommunications service" means commercial mobile radio service, as such term is defined in 47 C.F.R. Section 20.3 as in effect on June 1, 1999, or as subsequently amended.

(6) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. At such time as the state certifies a master street address data base covering all or a portion of the state, addresses within the area so covered shall be identified by FIPS code. If the state has not designated such a data base, a home service provider desiring to be held harmless from any tax, charge, or fee liability under the provisions of 4 U.S.C. Section 120 shall employ an enhanced ZIP Code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercise due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced ZIP Code overlaps boundaries of taxing jurisdictions of the same level, the home service provider shall designate one specific jurisdiction within such enhanced ZIP Code for use in taxing the activity for such enhanced ZIP Code for each level of taxing jurisdiction.

(7) "Taxing jurisdiction" means the state or any municipality or county.

(b) Subject to the provisions of 4 U.S.C. Section 116(c), the tax levied by this chapter shall apply only to those charges for mobile telecommunications services subject to tax that are deemed to be provided to a customer by a home service provider pursuant to 4 U.S.C. Section 117(a) if the customer's place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(c) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under the provisions of this Code section is erroneous, the customer shall notify the home service provider in writing to the address provided as required by subsection (g) of this Code section. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error

asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice under this subsection, the home service provider shall review its records to determine the customer's taxing jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this subsection shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this subsection.

(d)(1) If a mobile telecommunications service is not subject to the tax levied by this chapter, and if the amount charged for such mobile telecommunications service is aggregated with and not separately stated from the amount paid or charged for any service that is subject to such tax, then the nontaxable mobile telecommunications service shall be treated as being subject to such tax unless the home service provider can reasonably identify the amount paid or charged for the mobile telecommunications service not subject to such tax from its books and records kept in the regular course of business.

(2) If a mobile telecommunications service is not subject to the tax levied by this chapter, a customer may not rely upon the nontaxability of such mobile telecommunications service unless the customer's home service provider separately states the amount charged for such nontaxable mobile telecommunications service or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identify the amount charged for such nontaxable mobile telecommunications service.

(e)(1) A mobile telecommunications services provider who is obligated to remit or pay the tax levied by this chapter shall be held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a place of primary use to an incorrect jurisdiction, if the mobile telecommunications services provider satisfies the requirements of 4 U.S.C. Section 120(a).

(2)(A) The department may elect to provide an electronic data base that satisfies the requirements of 4 U.S.C. Section 119. If the department provides such data base, a home service provider using the data contained in such data base shall be held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a place of primary use to an incorrect local jurisdiction.

(B) Paragraph (1) of this subsection shall apply to a home service provider who is in compliance with the terms of such paragraph until the later of:

(i) Eighteen months after the approval described in 4 U.S.C. Section 119(a); or

(ii) Six months after the department provides an electronic data base that satisfies the requirements of 4 U.S.C. Section 119.

(3) A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. Subject to paragraph (5) of this subsection, if the home service provider's reliance on information provided by its customer is in good faith:

(A) The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer; and

(B) The home service provider shall be held harmless from liability for any additional tax, including any related interest or penalties, which is based on a different determination of such customer's place of primary use.

(4) Except as provided in paragraph (5) of this subsection, a home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement.

(5)(A) If the department determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of "place of primary use," the department shall notify such customer of such determination and provide such customer an opportunity to demonstrate that such address satisfies such definition.

(B) If the customer fails to demonstrate that the address meets the definition of such customer's place of primary use, the

department shall provide the home service provider with the proper address to be used as such customer's place of primary use, and the home service provider shall begin using the address provided by the department as such customer's place of primary use in the next full billing period.

(6)(A) If the department determines that the assignment of a taxing jurisdiction by a home service provider does not reflect the correct taxing jurisdiction, the department shall notify the home service provider of such determination and provide such home service provider an opportunity to demonstrate that the assignment represents the correct taxing jurisdiction.

(B) If the home service provider fails to demonstrate that the assignment reflects the correct taxing jurisdiction, the department shall provide the home service provider with the correct taxing jurisdiction to be used, and the home service provider shall begin using the taxing jurisdiction provided by the department in the next full billing period.

(f) A home service provider shall identify each customer's place of primary use and shall provide at least quarterly a complete listing of the total number of customers to the Georgia Emergency Management and Homeland Security Agency. The home service provider shall indicate in such report whether it is employing an enhanced ZIP Code to assign each street address to a specific taxing jurisdiction so as to qualify for the safe harbor provisions of 4 U.S.C. Section 120. Further, each home service provider shall, upon request, provide information showing the total number of billings and the amount of fees collected to any taxing jurisdiction as to the customers whose place of primary use is within the jurisdiction of such taxing jurisdiction; provided, however, that in no event shall customer identification be required to be released. Such information shall initially be made available not later than July 1, 2006.

(g) A home service provider shall clearly state on each customer bill or invoice the following information:

(1) The taxing jurisdiction to which each tax and fee charged to the customer is paid and the amount paid to each taxing jurisdiction; provided, however, that such information shall initially be made available not later than July 1, 2006; and

(2) An address, telephone number, or electronic method for the customer to send the notification required by subsection (c) of this Code section or otherwise.

**History.**

Code 1981, § 48-8-13, enacted by Ga. L. 2002, p. 970, § 2; Ga. L. 2005, p. 660, § 10/HB 470; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2016, p. 91, § 22/SB 416.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2002, in paragraph (d)(2), "identify" was substituted for "indentifes" and, in subsection (e), "data base" was substituted for "database" in subparagraph (e)(2)(A) and division (e)(2)(B)(ii) and "is" was substituted for "are" in subparagraph (e)(3)(B).

**Editor's notes.**

Ga. L. 2002, p. 970, § 4, not codified by the General Assembly, provides that: "If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of Sections 116 through 126 of Title 4 U.S.C., then all provisions and applications of this Act are declared to be invalid and have no legal effect as of the date of entry of such judgment."

Ga. L. 2002, p. 970, § 5, not codified by the General Assembly, provides that this Code section "shall apply to charges for mobile telecommunications services reflected on customer bills issued on or after August 2, 2002."

## 48-8-14. Restrictions on state contracts with nongovernmental vendors failing or refusing to collect sales or use taxes.

(a) As used in this Code section, the term "state agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. The term "state agency" shall not include any county, municipality, or local or regional governmental authority.

(b) On or after April 12, 2005, the Department of Administrative Services and any other state agency shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding $100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under this chapter on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental

vendor awarded the contract, the name of the vendor's affiliate, and the certificate of registration number as provided for under Code Section 48-8-59 for the vendor and affiliate of the vendor.

(f) The commissioner is specifically authorized to promulgate regulations to implement this Code section.

**History.**
Code 1981, § 48-8-14, enacted by Ga. L. 2005, p. 159, § 22/HB 488; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2010, p. 662, § 4/HB 1221.

**Editor's notes.**
Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

## 48-8-15. Ratification of Executive Order on temporary and partial exemption for liquid propane gas commodity sold and delivered for residential heating.

(a) The General Assembly finds that:

(1) Liquid propane gas and natural gas are essential commodities used by all Georgians to heat their homes;

(2) There has been a substantial rise in the prices of liquid propane gas and natural gas since adjournment of the 2005 regular session of the General Assembly such that the prices for liquid propane gas and natural gas for 2006 are projected to far exceed the 2005 prices for these commodities;

(3) The significant increase in liquid propane gas and natural gas prices has burdened and will continue to burden financially all Georgians who must use these commodities to heat their homes during the winter months; and

(4) The significant increase in liquid propane gas and natural gas prices for the winter months of 2006 will result in a windfall to the state in the form of surplus sales and use taxes on these commodities.

(b)(1) For the time period commencing as specified in the Executive Order of the Governor dated December 19, 2005, and filed in the official records of the office of the Governor as Executive Order 12.19.05.01 and the time period concluding at the end of the third completed billing cycle ending on or before April 30, 2006, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to charges for the natural gas commodity billed for residential use shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30, or any other law, to the contrary.

(2) For the time period commencing as specified in the Executive

Order of the Governor dated December 19, 2005, and filed in the official records of the office of the Governor as Executive Order 12.19.05.01 and concluding on the last moment of March 31, 2006, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to sales of the liquid propane gas commodity when sold and delivered primarily for residential heating purposes shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30, or any other law, to the contrary.

(c) Sales or use of fuels described in subsection (b) of this Code section shall be exempt from the first 2 percent of the 4 percent state sales and use tax imposed under this chapter and shall be subject to the remaining 2 percent of the 4 percent state sales and use tax imposed under this chapter. The temporary and partial sales and use tax exemption provided for in this subsection shall not apply to local sales and use taxes levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of Chapter 8 of this title. Such local taxes shall remain applicable to sales of such fuels.

(d) The tax relief required under this Code section with respect to charges for the natural gas commodity billed for residential use shall be credited or otherwise reflected on a consumer's natural gas bill as soon as practicable and shall apply only with respect to charges billed for the natural gas commodity and not for other enumerated charges.

(e) The failure of the dealer to pass through to the purchaser of any of the fuels described in subsection (b) of this Code section the amount of the tax exemptions, decreases, or reduction under this Code section shall constitute an unfair or deceptive act or practice under Part 2 of Article 15 of Chapter 10 of Title 10, the "Fair Business Practices Act," as amended, and shall be subject to enforcement by the administrator of said Part 2 in the same manner as any other act or practice constituting a violation of said Part 2 and subject to the same remedies and penalties as any other act or practice constituting a violation of said Part 2.

(f) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.**

Code 1981, § 48-8-15, enacted by Ga. L. 2006, p. 1, § 2/HB 970; Ga. L. 2017, p. 774, § 48/HB 323.

**Editor's notes.**

Ga. L. 2006, p. 1, § 1/HB 970, not codified by the General Assembly, provides that: "The Executive Order of the

Governor dated December 19, 2005, and filed in the official records of the Office of the Governor as Executive Order 12.19.05.01 which suspended the collection of state sales and use taxation in part as that tax applies to the liquid propane gas commodity sold and delivered primarily for residential heating purposes and to charges for the natural gas commodity for residential use is ratified by the General Assembly of Georgia."

### 48-8-16. Ratification of Executive Order on temporary exemption for dyed fuel oils used for certain purposes.

(a) The General Assembly finds that:

(1) The price of dyed fuel oils, as used primarily for off-road, agricultural uses, including timber growing or harvesting and mining or construction, has risen substantially; and

(2) This spike in the price of dyed fuel oils has produced an acute strain on Georgia's agricultural, timber growing or harvesting, and mining or construction sectors.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated May 15, 2008, and filed in the official records of the office of the Governor as Executive Order 05.15.08.01 which suspended the collection of state sales and use taxation as that tax applies to the sales of dyed fuel oils as defined in paragraph (5.1) of Code Section 48-9-2 which are used exclusively for agricultural purposes, timber growing or harvesting purposes, or mining or construction purposes and used directly by such industry sectors for such purposes and not for highway use as defined in paragraph (8) of Code Section 48-9-2.

(c) For the time period commencing on May 12, 2008, as specified in the Executive Order of the Governor dated May 15, 2008, and filed in the official records of the office of the Governor as Executive Order 05.15.08.01 and concluding on the last moment of April 30, 2009, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to the sale or use of dyed fuel oils, as defined in paragraph (5.1) of Code Section 48-9-2, which are used exclusively for agricultural purposes, timber growing or harvesting purposes, or mining or construction purposes and used directly by such industry sectors for such purposes and not for highway use as defined in paragraph (8) of Code Section 48-9-2 shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.

(d) The temporary sales and use tax exemption provided for in this Code section shall not apply to local sales and use taxes levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,

known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such local taxes shall remain applicable to sales or uses of such dyed fuel oils.

(e) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.**
Code 1981, § 48-8-16, enacted by Ga. L. 2009, p. 76, § 1/HB 46; Ga. L. 2017, p. 774, § 48/HB 323.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2009, "concluding on the last moment of April 30, 2009," was substituted for "concluding on the last moment of the earlier of the last day of the month of the effective date of this act or May 31, 2009," in subsection (c).

## 48-8-17. Ratification of Executive Order on temporary suspension on the collection of tax on sales of motor fuel and aviation gasoline.

(a) The General Assembly finds that:

(1) Motor fuels and aviation gasoline are essential commodities used by Georgians for transportation;

(2) The price of gasoline has fluctuated dramatically since the adjournment of the 2014 General Assembly;

(3) It is the intention of this state to stabilize the rate of taxation on motor fuels and aviation gasoline during periods of volatile price swings; and

(4) Code Section 45-12-22 authorizes the Governor to suspend the collection of taxes, or any part thereof, due the state until the meeting of the next General Assembly.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated December 5, 2014, and filed in the official records of the office of the Governor as Executive Order 12.05.14.02 which suspended commencing on December 5, 2014, the collection of any rate of prepaid state taxes as defined in paragraph (24) of Code Section 48-8-2 to the extent it differs from the rate levied as of June 1, 2014, pursuant to Code Section 48-9-14 as it existed on April 15, 2015, as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2. The period of suspension under this subsection shall conclude at the last moment of December 31, 2015.

(c) The ratification of the temporary suspension of collection of prepaid state tax shall not apply to prepaid local taxes as defined in paragraph (23) of Code Section 48-8-2.

(d) The commissioner is authorized to prescribe forms and promul-

gate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.**

Code 1981, § 48-8-17, enacted by Ga. L. 2015, p. 48, § 1/HB 319; Ga. L. 2017, p. 774, § 48/HB 323.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2017, "April 15, 2015," was substituted for "on the effective date of this subsection" in the middle of the first sentence of subsection (b).

**Editor's notes.**

This Code section formerly pertained to the ratification of Executive Order 06.02.08.01 which provided for a temporary prepaid state tax exemption. The former Code section was based on Code 1981, § 48-8-17, enacted by Ga. L. 2009, p. 84, § 1/HB 121; Ga. L. 2010, p. 662, § 5/HB 1221 and was repealed by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX, effective September 21, 2011.

Subsequently, this Code section formerly pertained to the collection of taxes on gasoline and aviation fuel. That former Code section was based on Code 1981, § 48-8-17, enacted by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX, and was repealed by Ga. L. 2013, p. 784, § 1/HB 210, effective May 6, 2013.

This Code section formerly pertained to the temporary suspension of the collection of taxes on gasoline and aviation fuel. The former Code section was based on Code 1981, § 48-8-17, and Ga. L. 2013, p. 784, § 1/HB 210; Ga. L. 2014, p. 866, § 48/SB 340 and was repealed by Ga. L. 2015, p. 48, § 1, effective April 15, 2015.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-8-17.1. [Repealed] Ratification of Executive Order on prepaid taxes; suspension of provisions.

**History.**

Code 1981, § 48-8-17.1, enacted by Ga. L. 2009, p. 84, § 2/HB 121; Ga. L. 2010, p. 662, § 6/HB 1221; repealed by Ga. L. 2011, Ex. Sess., p. 258, § 2/HB 2EX, effective September 21, 2011.

## 48-8-18. Ratification of Executive Order on temporary suspension on the collection of tax on pharmaceutical medications distributed without cost.

(a) The General Assembly finds that:

(1) Pharmaceutical samples provide a zero-cost option for some Georgians to obtain medication necessary to maintain their health and sustain their lives;

(2) Pharmaceutical medications used in clinical trials are often provided without cost; and

(3) It is in the best interests of Georgians to exempt from sales and use taxes pharmaceutical medications that are distributed without cost for several reasons, including:

(A) The ability to distribute needed medicines to persons who might not otherwise be able to afford them;

(B) The attraction of clinical trials to Georgia for the betterment of the health of Georgians and to continue the state's place as a leader in cutting-edge health research; and

(C) The elimination of an inconsistency in the law whereby pharmaceutical medicines that are sold at retail are not taxed, but those that are distributed for free are subject to taxation.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated August 29, 2008, and filed in the official records of the office of the Governor as Executive Order 08.29.08.01 which suspended the collection of any rate of sales and use taxation as that tax applies to those controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensable by prescription for the treatment of natural persons which are dispensed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor and the collection of any such taxes on controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensed without charge for the purposes of a clinical trial approved by an institutional review board which has been accredited by the Association for the Accreditation of Human Research Protection Programs.

(c) For the time period commencing on September 1, 2008, as specified in the Executive Order of the Governor dated August 29, 2008, and filed in the official records of the office of the Governor as Executive Order 08.29.08.01 and concluding on the last moment of June 30, 2009, sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to those controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensable by prescription for the treatment of natural persons which are dispensed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor and as such tax applies to controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensed without charge for the purposes of a clinical trial approved by an institutional review board which has been accredited by the Association for the Accreditation of Human Research Protection Programs, shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.** Code 1981, § 48-8-18, enacted by Ga. L. 2009, p. 79, § 1/HB 59; Ga. L. 2017, p. 774, § 48/HB 323.

## 48-8-19. Ratification of Executive Order on temporary suspension of collection of tax on jet fuel.

(a) The General Assembly finds that:

(1) The annual economic impact of Georgia airports amounts to more than $62 billion per year;

(2) Direct flights out of Hartsfield-Jackson Atlanta International Airport alone have supported nearly $11 billion in foreign investment and 42,000 jobs across the state;

(3) Georgia's sales and use tax levy on jet fuel amounts to the fourth highest tax burden on jet fuel among states with major airport hubs, placing Georgia at a competitive disadvantage compared with major airport hubs in Florida, New York, North Carolina, and Texas, among others; and

(4) The distribution of the proceeds of sales and use tax on jet fuel could jeopardize Georgia's legal standing and compliance with federal aviation programs.

(b) The General Assembly of Georgia hereby ratifies the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01 which suspended the collection of any rate of sales and use tax as such tax applies to jet fuel. The General Assembly of Georgia hereby continues such suspension of collection indefinitely.

(c) For the time period commencing on August 1, 2018, as specified in the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01, and concluding at the last moment of November 30, 2018, sales and use taxation pursuant to Code Section 48-8-30 as such tax applies to jet fuel shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.** Code 1981, § 48-8-19, enacted by Ga. L. 2018, Ex. Sess., p. ES7, § 2-1/HB 5EX; Ga. L. 2021, p. 922, § 48/HB 497.

PART 2

IMPOSITION, RATE, COLLECTION, AND ASSESSMENT

**RESEARCH REFERENCES**

**Am. Jur. Proof of Facts.** Residential Property, 115 Am. Jur. POF 3d Challenge to Tax Assessment of 203.

## 48-8-30. Imposition, rate, and collection of tax.

(a)(1) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.

(2)(A) There is levied and imposed a tax on the retail purchase or retail sale of specified digital products, other digital goods, or digital codes sold to an end user in this state, provided that such end user receives or will receive the right of permanent use of such products, goods, or codes and the transaction is not conditioned upon continued payment by the end user.

(B) The tax levied under this paragraph shall apply regardless of whether possession of the specified digital goods, other digital goods, or digital codes is maintained by the seller or a third party.

(C) Except as provided otherwise in this article, the tax imposed by this article on specified digital products, other digital goods, and digital codes shall be levied, collected, remitted, and administered in the same manner and at the same rate as is provided in this article for the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property.

(b)(1) Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person making a sale or sales of tangible personal property at retail in this state shall be a retailer and a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail.

(c)(1) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at

retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price, except as provided in paragraph (2) of this subsection.

(2) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state and used outside this state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price or fair market value of the property, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1)(A) Every purchaser of tangible personal property at retail outside this state from a dealer when such property is to be used, consumed, distributed, or stored for use or consumption in this state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article, and when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer.

(B) Every dealer who makes a retail sale of tangible personal property outside this state which is to be delivered electronically or physically to a location within this state shall be liable for a tax on the sale at the rate of 4 percent of such sales price or the amount of tax as collected by such dealer from purchasers having their purchases delivered in this state, whichever is greater.

(C) It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored for use or consumption in this state if that property is delivered electronically or physically to a location within this state to the purchaser or agent thereof.

(D) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This paragraph shall not be construed to require a duplication in the payment of the tax.

(2) The department may bring an action for a declaratory judgment in any superior court against any person the department believes meets the definition of dealer provided in subparagraph (M.1) or (M.2) of

paragraph (8) of Code Section 48-8-2 in order to establish that the collection obligation created by this subsection is applicable and valid under state and federal law with respect to such a dealer. If such action presents a question for judicial determination related to the constitutionality of the imposition of taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the collection obligation against such a dealer. The superior court shall act on such declaratory judgment action and issue a final decision in an expeditious manner.

(c.2)(1) A marketplace facilitator that meets the definition of a dealer provided in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall constitute the dealer and retailer for each retail sale taxable under this chapter at retail that it facilitates within or outside this state on behalf of a marketplace seller if such retail sale is sourced, as provided in Code Section 48-8-77, to a location within this state.

(2)(A) All taxes levied or imposed by this chapter on retail sales described in paragraph (1) of this subsection shall be paid by the purchaser to the marketplace facilitator that facilitates the retail sale on behalf of a marketplace seller.

(B) The marketplace facilitator shall remit such taxes to the commissioner as provided in this article and, when received by the commissioner, the taxes shall be credited against the taxes imposed on the retail sale.

(C) Each marketplace facilitator shall be liable for the full amount of taxes levied or imposed by this chapter on all retail sales described in paragraph (1) of this subsection or the amount of tax collected by such marketplace facilitator from all purchasers on all such retail sales, whichever is greater.

(3) For the purposes of this subsection, it shall be prima-facie evidence that a retail sale is sourced to a location within this state if it is to be held for pickup, used, consumed, distributed, stored for use or consumption, or rendered as a service within this state.

(4) No retail sale that is not taxable to the purchaser at retail shall be taxable to the marketplace facilitator. Taxes collected and remitted by a marketplace facilitator pursuant to this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of any tax.

(5) A marketplace seller shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this chapter on any retail sale for which its marketplace facilitator is obligated and liable.

(6) The department may bring an action for a declaratory judgment in any superior court against any person that meets the definition of a dealer as provided in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2, in order to establish that the collection obligation and liability established by this subsection is applicable and valid under state and federal law with respect to such a dealer. If such action presents a question for judicial determination related to the constitutionality of the imposition of taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the collection obligation against such a dealer. The superior court shall act on such declaratory judgment action and issue a final decision in an expeditious manner.

(7) No class action may be brought against a marketplace facilitator in any court of this state on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund of taxes erroneously paid.

(8) The department shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The department will not audit marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief under paragraph (9) of this subsection.

(9) A marketplace facilitator is relieved of liability for failure to collect and remit the correct amount of tax imposed by this chapter to the extent that the marketplace facilitator demonstrates to the satisfaction of the department that the error was due to insufficient or incorrect information given to the marketplace facilitator by the marketplace seller and the marketplace facilitator made a reasonable effort to obtain correct and sufficient information from the marketplace seller; provided, however, that this paragraph shall not apply if the marketplace facilitator and the marketplace seller are related members as defined in Code Section 48-7-28.3. Where a marketplace facilitator is relieved of liability under this paragraph, the marketplace seller is solely liable for the amount of uncollected tax.

(10) A person that is a franchisor as such term is defined by 16 C.F.R. 436.1 shall not be a marketplace facilitator with respect to any dealer that is its franchisee, as such term is defined by 16 C.F.R. 436.1, and that would otherwise be a marketplace seller of such franchisor, provided that:

(A) In the prior calendar year, such franchisor and all of its franchisees combined made annual gross sales in the United States of at least $500 million in aggregate;

(B) Such franchisee maintains a valid certificate of registration as required by Code Section 48-8-59; and

(C) Such franchisee and franchisor maintain a valid contract providing that the franchisee will collect and remit all applicable taxes and fees that the franchisor would otherwise be required to collect and remit as a marketplace facilitator for such franchisee.

(11) A person shall not be a marketplace facilitator with respect to any dealer that would otherwise be its marketplace seller if:

(A) In the prior calendar year, such dealer made annual gross sales in Georgia of at least $500 million;

(B) Such dealer maintains a valid certificate of registration as required by Code Section 48-8-59; and

(C) Such dealer and person that would otherwise be the marketplace facilitator maintain a valid contract providing that the dealer will collect and remit all applicable taxes and fees that such person would otherwise be required to collect and remit as a marketplace facilitator for such dealer.

(12) A dealer shall return and report retail sales for which the dealer acted as a marketplace facilitator to the department as otherwise required by this chapter; provided, however, that such dealer may elect to return and report such retail sales either:

(A) Separately from retail sales made directly by such dealer using a separate marketplace facilitator return that shall be published by the department for such purposes; or

(B) Together with all other retail sales made directly by such dealer.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price. The tax shall be paid to the person who leases or rents the property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum 4 percent of the fair market value of the tangible personal property at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the rate of 4 percent of the sales price paid to the person who leased or rented the property, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for a tax at the rate of 4 percent of the sales price paid for that lease or rental if that person is a dealer, as defined in Code Section 48-8-2, and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in Code Section 48-8-2, and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease or rental at the rate of 4 percent of the sales price from such leases or rentals or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent of the sales price made for the purchase. The tax shall be paid by the person purchasing or receiving

the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the sales price of retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid

local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under Code Section 48-9-3.

**History.**

Ga. L. 1951, p. 360, § 2; Ga. L. 1960, p. 153, § 1; Ga. L. 1967, p. 284, § 1; Code 1933, § 91A-4502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 24; Ga. L. 1989, p. 62, § 5; Ga. L. 1990, p. 1243, §§ 2-4; Ga. L. 1992, p. 6, § 48; Ga. L. 1996, p. 1635, § 1; Ga. L. 1998, p. 602, § 4; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 17; Ga. L. 2007, p. 309, § 2/HB 219; Ga. L. 2010, p. 662, § 7/HB 1221; Ga. L. 2011, p. 674, § 1-4/HB 117; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 236, § 5-5/HB 170; Ga. L. 2018, p. 259, § 2/HB 61; Ga. L. 2019, p. 282, § 2/HB 182; Ga. L. 2020, p. 1, § 2/HB 276; Ga. L. 2023, p. 335, § 3-3/SB 56, effective January 1, 2024.

**Amendments.**

**The 2023 amendment,** effective January 1, 2024, designated the existing provisions of subsection (a) as paragraph (a)(1), and added paragraph (a)(2).

**Editor's notes.**

Ga. L. 1989, p. 62, § 1, not codified by the General Assembly, provides: "It is the intention of the General Assembly that the revenue generated by the increase in the state sales and use tax provided for in this Act shall be used in part for general governmental purposes and in part for grants of funds to political subdivisions of the state to provide ad valorem tax relief. The General Assembly recognizes and intends that all such revenue is to be paid into the general fund of the state treasury and subject to the normal budgetary and appropriations process, but it is the intention of the General Assembly that a portion of such revenue shall be appropriated to fund such grants for ad valorem tax relief purposes."

Ga. L. 1989, p. 62, § 14, not codified by the General Assembly, provides: "In the event that any other Act of the 1989 General Assembly amends Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, it is the intention of the General Assembly that the provisions of such other Act control over the provisions of this Act, except that it is the intention of the General Assembly that the increase in the rate of state sales and use taxation provided for in this Act shall not operate to decrease the maximum rate of taxes which may be imposed by local governments under said article as now existing or as it may be amended; and for this limited purpose, the provisions of this Act and particularly of this statement of intent shall control over the provisions of such other Act, notwithstanding any limitation on maximum aggregate amounts of taxation which may be contained in such other Act."

Ga. L. 1989, p. 62, § 15, not codified by the General Assembly, provides: "(a) As used in this section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased

or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

"(b) The increased rate of state sales and use taxation provided for in this Act shall not apply with respect to the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to April 1, 1989, and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to April 1, 1989; provided, however, that any such sale or use shall remain fully taxable at the prior rate of taxation.

"(c) With respect to services which are regularly billed on a monthly basis, the increased rate of state sales and use taxation provided for in this Act shall apply to services billed on or after April 1, 1989; provided, however, that any such services billed prior to such date shall remain fully taxable at the prior rate of taxation."

Former paragraph (f)(3), concerning accrual of assessments for state sales and use tax, was repealed by operation of law on June 30, 2014, pursuant to Ga. L. 2011, p. 674, § 1-4/HB 117.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2018, p. 259, § 3/HB 61, not codified by the General Assembly, provides that the amendment to subsection (c.1) and addition of subsection (c.2) shall apply to all sales made on or after January 1, 2019.

Ga. L. 2020, p. 1, § 3/HB 276, not codified by the General Assembly, provides, in part, that the addition of subsection (c.2) shall apply to all sales occurring on or after April 1, 2020.

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall become effective on January 1, 2024, and shall be applicable to transactions occurring on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

**Law reviews.**

For comment on National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967), as to constitutionality of imposing state use taxes on out-of-state mail order form, see 19 Mercer L. Rev. 257 (1968).

For article surveying Georgia cases in the area of state and local taxation from June 1979 through May 1980, see 32 Mercer L. Rev. 203 (1980).

For article, "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989).

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of

this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

For article on the 2018 amendment of this Code section, see 35 Georgia St. U.L. Rev. 187 (2018).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

## JUDICIAL DECISIONS

### Analysis

General Consideration
Interstate Transactions
Liability for Collection and Payment

### General Consideration

**"Moment of sale" or "moment of purchase" test should be applied to sales and use tax computations, respectively.** Rich's, Inc. v. Blackmon, 133 Ga. App. 665, 211 S.E.2d 916, 1975 Ga. App. LEXIS 2234 (1975).

**Substance of a transaction, rather than the appellation chosen by the parties, controls its tax treatment.** Footpress Corp. v. Strickland, 242 Ga. 686, 251 S.E.2d 278, 1978 Ga. LEXIS 1324 (1978).

**Purpose of Ga. L. 1951, p. 360, § 2 (see now O.C.G.A. § 48-8-30) differs from that of Ga. L. 1951, p. 360, § 8 (see now O.C.G.A. § 48-8-39).** Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Ga. L. 1951, p. 360, § 2 (see now O.C.G.A. § 48-8-30) and Ga. L. 1951, p. 360, § 8 (see now O.C.G.A. § 48-8-39) operate to tax sales made under different circumstances.** Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Tax on personal use followed by tax on sale to customer permissible.** — Tax of retail purchaser who makes any use of property other than retention, demonstration, or display while holding the property for sale in the regular course of business, under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), and subsequent tax if that purchaser thereafter sells the property to a consuming purchaser, involve two distinct sales transactions which are independent taxable events, and are not violative of the prohibition against duplication of taxes under Ga. L. 1951, p. 360. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Article does not provide for taxation of real property.** — No provision is made in Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) for a tax upon sales of real property as elsewhere defined and distinguished from personal property by the law of this state. State v. Dyson, 89 Ga. App. 791, 81 S.E.2d 217, 1954 Ga. App. LEXIS 581 (1954).

**Bracket system illegal when overpayment results.** — Bracket system which requires the payment or collection of more tax than that contemplated by the General Assembly, that is, to collect a whole cent of tax when a fractional part of a cent of tax (by mathematical calculation) is involved, would exceed the authority granted. Hawes v. Phillips, 122 Ga. App. 714, 178 S.E.2d 759, 1970 Ga. App. LEXIS 1011 (1970).

**Lease of coin operated amusement machines (COAMs).** — Because the plain language of O.C.G.A. § 48-8-3(43) applies to revenues generated by coin operated amusement machines (COAMs), which includes revenues generated from the lease of COAMs and revenues generated from the participation plays of COAMs, the Georgia Court of Appeals erred in concluding that the exemption did not apply to the lease revenues

generated. Funvestment Group, LLC v. Crittenden, 317 Ga. 288, 893 S.E.2d 60, 2023 Ga. LEXIS 202 (2023).

**Attachment and priority of lien for sales and use tax.** — Lien and the lien's rank is provided for the state for sales and use taxes. Such lien attaches on the day on which the dealer is required to make a return and remittance to the commissioner, and is declared to be superior to all other liens. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

**Effect of failure to record fi. Fa. For sales taxes.** — Recording of the fi. fa. issued by the commissioner on the general execution docket is not a condition precedent to attachment of the lien for sales taxes, and the only effect of a failure to record the lien is that as against innocent purchasers the lien will be lost. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

**When maintenance charges not within meaning of "gross lease or rental proceeds".** — When maintenance charges are separately stated, are based upon maintenance costs, and may be changed after the initial year independently of the rental or lease charge, such charges are not within the meaning of "gross lease or rental proceeds" as set forth in O.C.G.A. § 48-8-30. Strickland v. Sperry Rand Corp., 248 Ga. 535, 285 S.E.2d 1, 1981 Ga. LEXIS 1094 (1981).

**Taxation of separately stated maintenance charges.** — Separately stated maintenance charges which are included in a lease transaction on tangible personal property are not taxable as part of the gross lease or rental proceeds. Strickland v. Sperry Rand Corp., 248 Ga. 535, 285 S.E.2d 1, 1981 Ga. LEXIS 1094 (1981).

**Standing to claim tax refund.** — Electrical membership corporation lacked direct standing to pursue a claim for a refund of sales tax on behalf of its members/patrons, pursuant to O.C.G.A. § 48-2-35(b)(1) (now (c)(1)), as it was not a "taxpayer" within O.C.G.A. § 48-2-35(b)(4) (now (c)(4)), for purposes of bringing an action for a tax refund when it did not bear the burden of the tax because the tax was passed on to its members/patrons; one purpose of the EMC was to furnish electrical energy and service to its members, pursuant to O.C.G.A. § 46-3-200(1), and the sale of electricity required a retail sales tax paid to the EMC, which was passed onto the Georgia Commissioner of Revenue, pursuant to O.C.G.A. § 48-8-30(a). Sawnee Elec. Mbrshp. Corp. v. Ga. Dep't of Revenue, 279 Ga. 22, 608 S.E.2d 611, 2005 Ga. LEXIS 117 (2005).

Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the General Refund Statute, O.C.G.A. § 48-2-35, because the bank was not a taxpayer entitled to a refund under § 48-2-35 since the bank was simply a third-party lender that contracted to advance the money for the consumer, and ultimately the merchant, to meet the merchant's obligations to pay the sales tax; the bank's recourse was against the consumer who defaulted on the debt or possibly through any provisions in the credit card program contracts assigning responsibility for bad debts among the various parties. Citibank (South Dakota), N.A. v. Graham, 315 Ga. App. 120, 726 S.E.2d 617, 2012 Ga. App. LEXIS 330 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. Oct. 1, 2012).

### Interstate Transactions

**Nondiscriminatory use tax on goods transported in interstate commerce not a violation of commerce clause.** — Nondiscriminatory tax on goods transported in interstate commerce, which is imposed under this section not upon the operations of interstate commerce but upon the privilege of use after commerce has ended, is not a regulation contrary to the commerce clause of the United States Constitution. Independent Publishing Co. v. Hawes, 119 Ga. App. 858, 168 S.E.2d 904, 1969 Ga. App. LEXIS 1280 (1969).

**Purpose of use tax on property purchased outside the state.** — To preclude avoidance of the sales tax when enforcement directly against the retail sale is not practicable, this section

**Interstate Transactions** (Cont'd)

imposes a complementary use tax on property purchased outside the state. Independent Publishing Co. v. Hawes, 119 Ga. App. 858, 168 S.E.2d 904, 1969 Ga. App. LEXIS 1280 (1969).

**Intent as to credit for like taxable incidents occurring in other states.** — Intent in Georgia is to allow credit for a like taxable incident which first occurs in another state and to collect a tax based on a taxable incident in Georgia occurring thereafter, but only to the extent of the difference between a lesser like tax previously paid and the Georgia tax, and only if the other state has a reciprocal law. Hawes v. National Serv. Indus., Inc., 121 Ga. App. 775, 175 S.E.2d 34, 1970 Ga. App. LEXIS 1353 (1970), aff'd, 227 Ga. 221, 179 S.E.2d 765, 1971 Ga. LEXIS 646 (1971).

**Use tax on out-of-state purchase by resident purchaser upon which sales tax not collected.** — Law imposes a tax on a Georgia purchaser who purchases personal property outside the state from an out-of-state seller, when the seller is not required to collect and remit a sales tax on the purchase to this state. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Taxation of goods purchased outside state by nonresident for delivery in state.** — When a nonresident taxpayer purchased telephone directories from nonresident printers for delivery by the printers within this state pursuant to the taxpayer's contracts with certain telephone companies in this state, the taxpayer is considered a consumer within the meaning of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) and is not relieved of liability from the tax by the fact that the directories were purchased outside the state nor by the fact that the directories were shipped by the printers directly to the telephone companies. L.M. Berry & Co. v. Blackmon, 129 Ga. App. 347, 199 S.E.2d 610, 1973 Ga. App. LEXIS 1000 (1973), aff'd, 231 Ga. 659, 203 S.E.2d 520, 1974 Ga. LEXIS 1176 (1974).

**Direct mail advertising materials** purchased by a corporation outside the state for distribution to residents within the state were subject to use tax. Collins v. J.C. Penney Co., 218 Ga. App. 405, 461 S.E.2d 582, 1995 Ga. App. LEXIS 750 (1995).

**Preprinted newspaper advertising inserts** purchased by a corporation did not become a component or integral part of the newspaper through which the inserts were distributed and were subject to use tax. Collins v. J.C. Penney Co., 218 Ga. App. 405, 461 S.E.2d 582, 1995 Ga. App. LEXIS 750 (1995).

**Liability for Collection and Payment**

**Order of liability for sales tax.** — Liability for sales tax is imposed primarily on the purchaser with secondary liability on the seller to collect and remit the tax. Blackmon v. Nichols, 494 F.2d 1179, 1974 U.S. App. LEXIS 8443 (5th Cir. 1974).

**Ultimate liability for use tax is upon purchaser, not seller,** who is merely the state's collecting agent. For this service the seller is compensated, provided the taxes due are not delinquent at the time of payment. Independent Publishing Co. v. Hawes, 119 Ga. App. 858, 168 S.E.2d 904, 1969 Ga. App. LEXIS 1280 (1969).

**Intent is that seller be responsible for collection.** — Although ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event of failure to pay such tax the commissioner may proceed against either purchaser or seller, it is nevertheless the intent of the law that the seller or dealer is the entity responsible for collecting and forwarding the tax, and the seller's failure to do so subjects the seller to both civil and criminal penalties in addition to the tax liability. Dittler Bros. v. AMR Int'l, Inc., 142 Ga. App. 570, 236 S.E.2d 544, 1977 Ga. App. LEXIS 1701 (1977).

**Authority to proceed against purchaser is permissive, not mandatory.** — Dealer liability for the tax is not altered because the state may also proceed against the purchaser for the tax. The law, in permissive and not mandatory language, provides that when the purchaser has not paid the sales tax, the commissioner may proceed directly against the purchaser to recover the tax.

Nimmer v. Strickland, 242 Ga. 430, 249 S.E.2d 233, 1978 Ga. LEXIS 1240 (1978).

**Party designated as "owner" in lease contract liable for collection and remittance.** — If one who is designated in a written contract as the "owner" of described personal property grants to another designated as "user" the right to possess and use described personal property in consideration for a specified sum of money, which sum is designated in such contract as rental and, when by the terms of such contract the personalty remains the property of the owner and is to be returned to the owner at the termination of the period of the lease contract, the one designated therein as the "owner" is liable for collection and remittance of the sales tax imposed thereby on the gross proceeds received under such lease contract. Undercofler v. Whiteway Neon Ad, Inc., 114 Ga. App. 644, 152 S.E.2d 616, 1966 Ga. App. LEXIS 883 (1966).

**Purchaser has right to hearing regarding assessment for sales tax.** — Purchaser who has paid the sales tax to the seller has the right to prove such payment at a hearing in which the purchaser is contesting the assessment against the purchaser. Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341, 1975 Ga. LEXIS 1360 (1975).

**Proof of remittance at hearing.** — At a hearing contesting a tax assessment, the purchaser has a right to show that the seller remitted the tax on the transaction to the state, and this is a question of fact. Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341, 1975 Ga. LEXIS 1360 (1975).

## OPINIONS OF THE ATTORNEY GENERAL

**Analysis**

General Consideration
Entities and Transactions Subject to Tax
Amount Subject to Tax
Interstate Transactions
First Use in State of Property Purchased Outside State

### General Consideration

**Purpose of use tax.** — Intent of the General Assembly was not to levy a primary use tax from which would be exempt transactions involving sales at retail in this state, upon which sales tax has been collected. Rather, the use tax supplements the sales tax and is intended as a collection device. Williams v. Suwannee Longleaf Mfg. Co., 97 Ga. App. 431, 103 S.E.2d 123, 1958 Ga. App. LEXIS 793 (1958), aff'd, 214 Ga. 613, 106 S.E.2d 797, 1959 Ga. LEXIS 284 (1959).

**Purpose of taxes on use and rentals.** — Rentals tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) is, like the use tax imposed by Ga. L. 1951, p. 360, a supplementary or compensating tax designed to deter sales tax avoidance through renting instead of selling tangible personal property and to equalize the tax treatment of persons engaged in the business of renting with those engaged in selling tangible personal property. It treats the rental of tangible personal property as a pro tanto sale, that is, a retail sale to the extent of the rent and for the term of the rental. 1958-59 Ga. Op. Att'y Gen. 382.

**Legislative intent as to distinction between services and leases or rentals.** — Analytically, if inquiry be pursued to the limit of its logic, it might be said that every lease or rental involves some element of service, while every service involves some utilization of personal property; but here, as in all cases, the law does not deal in absolutes for the General Assembly has, by employing two concepts differing in their consequences, manifested the legislature's intention that a line is to be drawn somewhere separating the areas of taxability and nontaxability. 1963-65 Ga. Op. Att'y Gen. 172.

**Taxation of representative from foreign country.** — Representative from foreign country is not exempt from either Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) or former Code 1933, Ch. 92-14 (see now O.C.G.A. § 48-9-1 et seq.). 1962 Ga. Op. Att'y Gen. 514.

**Building and construction materials.** — Under Ga. L. 1989, p. 62, § 15(a) and (b), the increased state sales and use tax rate does not apply to the sale or use of certain building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid and the bid was submitted prior to April 1, 1989, even though the contract is awarded or entered into after April 1, 1989. 1989 Op. Att'y Gen. No. U89-5.

### Entities and Transactions Subject to Tax

**Housing authorities are not exempt from payment of state sales taxes** upon purchases made by those authorities. 1952-53 Ga. Op. Att'y Gen. 476.

**Agricultural commodity commissions** are subject to taxes imposed under Ga. L. 1951, p. 360. 1975 Op. Att'y Gen. No. 75-136.

**Taxation of Georgia Prison Store.** — Georgia Prison Store is a dealer under Ga. L. 1951, p. 360 and is required to register, collect, and remit sales tax on all the store's retail sales. 1974 Op. Att'y Gen. No. 74-29.

**Inmates in Georgia prisons** are neither exempt nor constitutionally protected from tax on purchases of items from inmate stores. 1974 Op. Att'y Gen. No. 74-29.

**Automobile dealers furnishing vehicles for high school driver education classes** are exempt from sales tax thereon. 1952-53 Ga. Op. Att'y Gen. 473.

**Taxation of sales by area vocational-technical schools to students.** — Area vocational-technical schools, operated by local units of school administration, engaged in selling books and other miscellaneous materials to their students on a nonprofit basis, must collect and remit sales taxes on sales made by them. Upon failure to make such collections and remittances, the local units are liable themselves for the tax. 1973 Op. Att'y Gen. No. 73-83 (Overruled to some extent by Tex. Op. Att'y Gen. 86-18).

**Sales by executors and administrators are subject to payment of the state sales tax.** 1952-53 Ga. Op. Att'y Gen. 474.

**Drying and cleaning of peanuts** is a service which is not taxable under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.). 1962 Ga. Op. Att'y Gen. 561.

### Amount Subject to Tax

**Royalty payments.** — Sales tax is only based upon gross proceeds from rentals and is not imposed upon the payment of royalties. 1954-56 Ga. Op. Att'y Gen. 845.

**Taxes imposed prior to retail sale included in base for computing sales tax.** — If a tax is imposed on an event prior to a retail sale, that tax must be included in the base on which the sales tax is computed. 1971 Op. Att'y Gen. No. U71-121.

**Sales tax paid on federal excise tax if not listed separately.** — Sales tax is not paid on federal excise tax when purchasing a new car unless federal excise tax is not listed separately, but simply included in the gross price of the car. 1954-56 Ga. Op. Att'y Gen. 852.

**Other excise taxes on beer included in sales price.** — Sales of beer are subject to payment of the state sales tax, but such tax is to be computed on the actual sales price excluding other excise taxes imposed thereon. 1952-53 Ga. Op. Att'y Gen. 472.

**Use tax on property furnished to contractor by government.** — When a government contractor under a fixed-price type maintenance, overhaul, and modification contract uses up and consumes government furnished property in performing a contract, although having previously purchased such property as agent for the government, the contractor becomes liable for use tax based upon the fair market value of the property so used up and consumed. 1962 Ga. Op. Att'y Gen. 547.

**Interstate Transactions**

**Sales tax applies when title passes in this state.** — Sales tax applies to the purchase of property by an out-of-state purchaser if the title passes in this state, even if the property is immediately removed from the state. 1971 Op. Att'y Gen. No. U71-92.

**Tax when title passes in another state to purchasers in this state.** — When title passes in another state to a purchaser in this state, and the items are distributed gratuitously to persons within this state, the sales tax would not apply, but use tax should be collected. 1960-61 Ga. Op. Att'y Gen. 554.

**Sale and delivery of property** in this state is subject to this state's sales tax, even though the purchaser is a nonresident. 1970 Op. Att'y Gen. No. U70-63.

**Rental contracts** which are completed fully within this state are subject to Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-9-1 et seq.), notwithstanding the fact that physical possession of the rented property is delivered outside this state. 1969 Op. Att'y Gen. No. 69-146.

**Tax situs for lease transaction is where lessee first takes exclusive control.** — Situs of the taxable event under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-9-1 et seq.) is the place where the tangible personal property is first put under the exclusive control of the renter for use under the rental agreement, this being considered as the equivalent of delivery were the transaction a sale. When this taxable event takes place within this state the dealer who rents is subject to the tax imposed by Ga. L. 1951, p. 360, irrespective of the fact that the rented property may be used in interstate commerce, and when this taxable event takes place outside this state, then, upon the property being brought into this state, whether in interstate commerce or not, the tax imposed by Ga. L. 1951, p. 360 applies against the renter as if the tangible personal property had been originally rented within this state, subject to the credit for like taxes paid elsewhere. 1958-59 Ga. Op. Att'y Gen. 382.

**Store in this state may not require out-of-state customer to pay state sales tax on goods ordered shipped to such customer.** 1952-53 Ga. Op. Att'y Gen. 479.

**Tax on lease of trucks for use outside state.** — Any person or company engaged in the business of leasing trucks in this state has an obligation to pay tax on the gross proceeds and to pass the tax on to the lessee as an additional charge. The fact that a leased truck may be used outside this state is immaterial so long as there is any use within this state. 1954-56 Ga. Op. Att'y Gen. 845.

**Tax on use of machinery belonging to nonresident corporation.** — Use of machinery by a Georgia corporation, which machinery belongs to a nonresident corporation and for which the Georgia corporation pays a royalty, is subject to use tax. 1954-56 Ga. Op. Att'y Gen. 846.

**Property delivered to out-of-state location by buyer.** — When property is delivered pursuant to sales to out-of-state locations by a means of transportation which is leased or rented by the buyer, the sales occur in this state and are taxable under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-9-1 et seq.). 1969 Op. Att'y Gen. No. 69-146.

**Use tax on advertising materials purchased outside state.** — Manufacturer who buys advertising materials outside state, ships the materials directly to dealers, at no cost to dealers, with dealers using the materials to promote local sales, is liable for use tax on such materials. 1962 Ga. Op. Att'y Gen. 556.

**Dual operator liable for tax on property consumed in performance of contract.** — Since a dual operator, or person who, as a retail dealer, sells tangible personal property in performing contracts, is a consumer of the property used in performing contracts, irrespective of where the contracts may be performed, the person would owe this state a sales tax with respect to the purchase of such property in this state and would owe this state a use tax with respect to such property purchased outside this state and

then brought to rest in this state. 1968 Op. Att'y Gen. No. 68-96.

**First Use in State of Property Purchased Outside State**

**Meaning of "fair market value" of imported advertising materials.** — For purposes of O.C.G.A. § 48-8-30(c), fair market value of advertising materials imported by department stores into Georgia is that price that a willing buyer with similar advertising needs would pay to purchase like advertising from a willing seller. In absence of evidence to the contrary, fair market value of these advertising materials at time of their first use within Georgia should be taken to be the materials' purchase price. 1981 Op. Att'y Gen. No. 81-93.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, §§ 34 et seq., 41 et seq., 50 et seq., 137, 166, 205 et seq.

**C.J.S.**

85 C.J.S., Taxation, § 2127 et seq.

**ALR.**

Computation of sales tax, 107 A.L.R. 267; 135 A.L.R. 1485; 150 A.L.R. 1311.

Who is liable for tax in case of conditional sale, or option for purchase, of personal property, 116 A.L.R. 325.

Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 A.L.R. 542.

Sale of article intended for consumption or use by customers or patrons of the buyer on the latter's premises as retail sale within sales tax law, 157 A.L.R. 557.

Applicability of sales tax to judicial or bankruptcy sales, 27 A.L.R.2d 1219.

Use tax on property purchased by nonresident in another state, 41 A.L.R.2d 535.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 A.L.R.2d 862.

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 A.L.R.2d 811.

Sales by automatic vending machine as subject to retail sales tax, 91 A.L.R.2d 1138.

Sales and use taxes: exemption of casual, isolated, or occasional sales, 42 A.L.R.3d 292.

Sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use tax, 2 A.L.R.4th 1124.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

Sales and use taxes on sale or lease of mailing or customer list, 80 A.L.R.4th 1126.

Computer software or printout transactions as subject to state sales or use tax, 36 A.L.R.5th 133.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax — post-complete auto transit cases, 71 A.L.R.5th 671.

Sales and Use Tax in Aircraft Transactions, 91 A.L.R.7th 1.

## 48-8-31. Tax computation to be carried to third decimal place; rounding.

Tax computation must be carried to the third decimal place, and the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

**History.**
Ga. L. 1951, p. 360, § 22; Code 1933, § 91A-4531, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 40; Ga. L. 2010, p. 662, § 8/HB 1221.

**JUDICIAL DECISIONS**

**Bracket system valid when no more than 3 percent tax on fractional part of dollar.** — Bracket system which does not require the payment and collection of more than the necessary amount of coinage required to pay and collect the 3 percent levied on sales of a fractional part of a dollar is not contrary to the legislative grant of authority to the commissioner. Hawes v. Phillips, 122 Ga. App. 714, 178 S.E.2d 759, 1970 Ga. App. LEXIS 1011 (1970).

**Bracket system illegal if overpayment results.** — Bracket system which requires the payment or collection of more tax than that contemplated by the General Assembly, that is, to collect a whole cent of tax where a fractional part of a cent of tax (by mathematical calculation) is involved, would exceed the authority granted. Hawes v. Phillips, 122 Ga. App. 714, 178 S.E.2d 759, 1970 Ga. App. LEXIS 1011 (1970).

## 48-8-32. Tax collectable from dealers; rate for retail sales price and purchase price.

The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the purchase price at the time of purchase, as the case may be, shall be collectable from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property.

**History.**
Ga. L. 1951, p. 360, § 4; Code 1933, § 91A-4504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 62, § 6; Ga. L. 2010, p. 662, § 9/HB 1221.

**JUDICIAL DECISIONS**

**Dealer liable for tax whether collected by the dealer or not.** — Every person making a sale of tangible personal property at retail in the state is required by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-9-1 et seq.) to collect and remit the tax to the commissioner, and is a dealer under Ga. L. 1951, p. 360, and is liable for the tax as of the moment of sale, whether the dealer collects the tax or not. Davis v. Chilivis, 142 Ga. App. 679, 237 S.E.2d 2, 1977 Ga. App. LEXIS 1447 (1977).

**"Moment of sale" or "moment of purchase" test should be applied** to sales and use tax computations, respectively. Rich's, Inc. v. Blackmon, 133 Ga. App. 665, 211 S.E.2d 916, 1975 Ga. App. LEXIS 2234 (1975).

**OPINIONS OF THE ATTORNEY GENERAL**

**Use tax on property purchased out of state.** — Automobile purchased by taxpayer out of state and brought into this state for use herein is subject to use tax. 1954-56 Ga. Op. Att'y Gen. 862.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 107, 109, 181, 182.

**ALR.**
Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 A.L.R. 542.

## 48-8-33. Collection of tax by dealer as agent of state notwithstanding constitutional or other exemptions.

Notwithstanding any exemption from taxes which a dealer enjoys under the Constitution or laws of this state, any other state, or the United States, the dealer shall collect the tax imposed by this article from the purchaser or consumer and shall pay the tax over to the commissioner as provided by law.

**History.**
Ga. L. 1951, p. 360, § 12; Ga. L. 1960, p. 153, § 4; Code 1933, § 91A-4511, enacted by Ga. L. 1978, p. 309, § 2.

**JUDICIAL DECISIONS**

**Dealer's relationship with purchaser and state.** — This section is merely descriptive of the relationship between the dealer and purchaser. The dealer is an agent for the state in the collection of the tax imposed upon the dealer and passed on to the purchaser. For reporting, accounting, and payment of the tax the dealer is a taxpayer with the right of the state in the case of the dealer's default to proceed against the dealer, not as an ordinary agent, but as a taxpayer. This section is in harmony, and not in conflict, with other provisions of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-9-1 et seq.). Williams v. Bear's Den, Inc., 214 Ga. 240, 104 S.E.2d 230, 1958 Ga. LEXIS 382 (1958).

**OPINIONS OF THE ATTORNEY GENERAL**

**Municipal corporations are not exempt from collecting sales taxes** when municipal corporations engage in the business of operating a public swimming pool and charging admission. 1954-56 Ga. Op. Att'y Gen. 859.

**Operators of concessions located within a park** should charge, collect, and remit the 3 percent sales tax on the sales price of tangible personal property and services sold by those operators. 1954-56 Ga. Op. Att'y Gen. 858.

**Area vocational-technical schools,** operated by local units of school administration, engaged in selling books and other miscellaneous materials to their students on a nonprofit basis, must collect and remit sales taxes on sales made by them. Upon failure to make such collections and remittances, the local units are liable themselves for the tax. 1973 Op. Att'y Gen. No. 73-83. (Overruled to some extent by Tex. Op. Att'y Gen. 86-18).

**Sales by executors and administrators** are subject to payment of the state sales tax. 1952-53 Ga. Op. Att'y Gen. 474.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 208 et seq.

## 48-8-34. Collection of tax from purchaser by dealer at time of sale; payment of tax on imports; use, consumption, distribution, or storage equivalent to sale at retail; no duplication of tax.

(a) Every dealer making sales within or outside the state of tangible personal property for distribution, storage, use, or other consumption in this state shall collect the tax imposed by this article from the purchaser at the time of sale.

(b) On all tangible personal property imported or caused to be imported by any dealer from another state or foreign country and used by him, the dealer shall pay the tax imposed by this article as if the property had been sold at retail for use or consumption in this state. For the purposes of this article, the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property shall each be equivalent to a sale at retail and the tax shall be immediately levied and collected on each such sale in the manner provided in this article. There shall be no duplication of the tax in any event as a result of this subsection.

**History.**
Ga. L. 1951, p. 360, § 4; Code 1933, § 91A-4505, enacted by Ga. L. 1978, p. 309, § 2.

**JUDICIAL DECISIONS**

**Purpose is to equalize taxes, sales and use of property wherever purchased.** — Effect of this section is to require, as far as practicable, that the application of the tax upon use of tangible personal property purchased outside the state shall be consistent with the application of the tax upon sales of tangible personal property at retail inside the state. Colonial Pipeline Co. v. Undercofler, 115 Ga. App. 58, 153 S.E.2d 592, 1967 Ga. App. LEXIS 998 (1967).

**Intent is that seller be responsible for collection although purchaser also liable.** — Although ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event of failure to pay, the commissioner may proceed against either the purchaser or seller, it is nevertheless the intent of the law that the seller or dealer is the entity responsible for collecting and forwarding the tax, and the dealer's failure to do so subjects the dealer to both civil and criminal penalties in addition to the tax liability. Dittler Bros. v. AMR Int'l, Inc., 142 Ga. App. 570, 236 S.E.2d 544, 1977 Ga. App. LEXIS 1701 (1977).

**Taxation of property purchased in this state for future shipment to other states.** — Tangible personal property purchased from sellers in this state and stored by the taxpayer in this state for future shipment to other states for ultimate use are taxable and are not excluded from tax, whether or not the property is at all times designated for future shipment outside the state.

National Serv. Indus., Inc. v. Hawes, 227 Ga. 221, 179 S.E.2d 765, 1971 Ga. LEXIS 646 (1971).

### OPINIONS OF THE ATTORNEY GENERAL

**Purchases in state of property to be used or consumed exclusively outside state.** — Construing Ga. L. 1951, p. 360, § 4 (see now O.C.G.A. § 48-8-34), purchases made in this state of tangible personal property to be used or consumed or stored exclusively outside the state are not subject to the tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.), and dealers are not required to collect the tax from such purchasers. 1954-56 Ga. Op. Att'y Gen. 865.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 208.
**C.J.S.**
85 C.J.S., Taxation, §§ 2099, 2127 et seq.
**ALR.**
Right of seller to collect from buyer amount of sales tax in addition to price fixed by the contract, 127 A.L.R. 1183.
Sales and use taxes on sale or lease of mailing or customer list, 80 A.L.R.4th 1126.

## 48-8-35. Addition of tax by dealer to sale price or charge; amount of tax as debt owed by purchaser to dealer; liability of dealer for failure to collect.

Each dealer shall add the amount of the tax imposed under this article, as far as practicable, to the sale price or charge. The tax shall be a debt from the purchaser or consumer to the dealer until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any dealer who neglects, fails, or refuses to collect the tax provided for in this article upon a retail sale of tangible personal property made by him, his agent, or his employee when the sale is subject to the tax shall be liable for and shall pay the tax himself.

**History.**
Ga. L. 1951, p. 360, § 12; Ga. L. 1953, Jan.-Feb. Sess., p. 197, § 1; Code 1933, § 91A-4512, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 95.

### JUDICIAL DECISIONS

**Dealer responsible for collection and remittance.** — Responsibility for collecting the taxes levied under Ga. L. 1951, p. 360 from the purchaser and remitting such taxes to the commissioner is on the dealer. Thyer Mfg. Corp. v. Drake, 217 Ga. 114, 121 S.E.2d 136, 1961 Ga. LEXIS 388 (1961).

**Failure to report taxes collected.** — Provisions of Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) exclude the idea that the tax is always payable at the time

of the sale. However, a failure to report a collection violates the statute. Drake v. Thyer Mfg. Corp., 105 Ga. App. 20, 123 S.E.2d 457, 1961 Ga. App. LEXIS 558 (1961).

**Failure to report sale no bar to recovery of tax when tax has been paid.** — Payment of the tax, whenever made, is regarded as full compliance with the law, whether certain technical details in the reporting of the tax, or any other preliminary requirements, are omitted. Mere failure to report the sale will not preclude the right to recover the tax when the end, namely payment, sought by the law, has been in fact made. Drake v. Thyer Mfg. Corp., 105 Ga. App. 20, 123 S.E.2d 457, 1961 Ga. App. LEXIS 558 (1961).

**Attachment and ranking of lien for sales and use taxes.** — Lien and the lien's rank is provided for the state for sales and use taxes. Such lien attaches on the day on which the dealer is required to make the return and remittance to the commissioner and is declared to be superior to all other liens. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

**Effect of failure to record fi. Fa.** — Recording of the fi. fa. issued by the commissioner on the general execution docket is not a condition precedent to attachment of the lien for sales taxes. The only effect of a failure to record the lien is that as against innocent purchasers the lien will be lost. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 208 et seq.

**ALR.**

Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 A.L.R. 542.

## 48-8-36. Prohibition of advertising by dealer of assumption of payment of tax; exception; liability of dealer.

No person engaged in making retail sales shall advertise or represent to the public in any manner directly or indirectly that he or she will absorb all or any part of the tax or that he or she will relieve the purchaser of the payment of all or any part of the tax imposed by this article unless:

(1) The retailer includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on behalf of the purchaser by the retailer; and

(2) The retailer furnishes the purchaser with written evidence that the retailer will be liable for and pay any tax the purchaser was relieved from paying under this Code section.

If a retailer advertises that any portion of the tax not paid by the purchaser will be remitted on the purchaser's behalf by the retailer, the retailer shall be solely liable for and shall pay that portion of the tax. If a dealer or retailer complies with the provisions of this Code section and pays the absorbed tax over to the commissioner as provided by law, the dealer or retailer shall be deemed to have complied with the provisions

of this article requiring collection of the tax from the purchaser or consumer.

**History.**
Ga. L. 1951, p. 360, § 12; Ga. L. 1960, p. 153, § 5; Code 1933, § 91A-4514, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 954, § 1/SB 332.

**OPINIONS OF THE ATTORNEY GENERAL**

**Assumption by seller of the risk of a variable and unascertainable amount of tax violates this section.** 1969 Op. Att'y Gen. No. 69-439.

## 48-8-37. Penalty for violation of Code Section 48-8-36.

(a) It shall be unlawful for any person to violate Code Section 48-8-36.

(b) Any person who violates Code Section 48-8-36 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.00 nor more than $250.00 or imprisonment in the county jail for not more than three months, or both. Any person who is convicted of a second or subsequent violation of Code Section 48-8-36 shall be punished by a fine of $500.00 and imprisonment for six months.

**History.**
Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-9935, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.

**JUDICIAL DECISIONS**

**Contracts in violation of section not thereby nullified.** — Although this section provides a penalty for absorbing the sales tax, it was designed merely for revenue purposes, not for the protection of the public, and does not impliedly nullify a contract made in contravention of this section. Chilivis v. Rogers Oil Co., 135 Ga. App. 176, 217 S.E.2d 179, 1975 Ga. App. LEXIS 2361 (1975).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.

## 48-8-38. Burden of proof on seller as to taxability; certificate that property purchased for resale; proof of claimed exemption.

(a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail shall be upon the person who makes the sale unless such person, in good faith, takes from

the purchaser a certificate stating that the property is purchased for resale or is otherwise tax exempt.

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

(1) That is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;

(2) In a form appropriate for the type of exemption claimed;

(3) Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(4) Claiming an exemption that could be applicable to the item being purchased; and

(5) Claiming an exemption that is reasonable for the purchaser's type of business.

(c) The certificate relieves the seller from the burden of proof on sales for resale as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate, taken in good faith, from a purchaser who:

(1) Is engaged in the business of selling tangible personal property;

(2) Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and

(3) At the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business.

(d) The certificate shall include such information as is determined by the commissioner and is signed by the purchaser if it is a paper exemption certificate.

(e) A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(f) A sale of any specified digital product, other digital good, or digital code shall be considered a sale for resale if the specified digital product, other digital good, or digital code is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an

integral, inseparable component part of a service or another such product, good, or code by the purchaser of the specified digital product, other digital good, or digital code to an ultimate consumer. The purchaser of the specified digital product, other digital good, or digital code for resale shall maintain records that substantiate such resale in a manner consistent with this subsection, as determined by the commissioner.

**History.**

Ga. L. 1951, p. 360, §§ 5-7; Code 1933, § 91A-4507, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 94; Ga. L. 2010, p. 662, § 10/HB 1221; Ga. L. 2011, p. 38, § 5/HB 168; Ga. L. 2013, p. 7, § 6/HB 266; Ga. L. 2023, p. 335, § 3-4/SB 56, effective January 1, 2024.

**Amendments.**

**The 2023 amendment,** effective January 1, 2024, added subsection (f).

**Editor's notes.**

Ga. L. 2023, p. 335, § 4-1(a)/SB 56, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act become effective on January 1, 2024, and shall be applicable to transactions occurring on or after January 1, 2024.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

**OPINIONS OF THE ATTORNEY GENERAL**

**Section applies to sales to nonprofit organizations.** — Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes. When the organization is not registered with the commissioner as a dealer, one who sells to the nonprofit organization must collect the tax. 1971 Op. Att'y Gen. No. U71-143.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 209.

**ALR.**

Burden of proof as to amount for which dealer is liable under sales tax or tax based on amount sold or offered for sale, 39 A.L.R. 273.

Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

## 48-8-39. Effect of use other than retention, demonstration, or display by giver of certificate or by processor, manufacturer, or converter.

(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the purchase price of the property to him shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental

of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in his gross receipts either the amount of the rental charged or the total amount of the charges made by him for the transportation rather than the cost of the property to him.

(b)(1)(A) If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time shall be deemed the sales price of the article, except as otherwise provided in subparagraph (B) of this paragraph.

(B)(i) As used in this subparagraph, the term "total raw material cost" means the manufactured cost of floor covering samples; supplies used in the manufacturing of floor covering samples such as binding, grommets, and similar items; floor covering sample display devices such as racks, binders, and similar items; and inbound freight charges. Such term does not mean or include labor or overhead for assembling or producing samples from finished floor covering and does not mean or include outbound freight charges which may be charged to the expense account for floor covering samples.

(ii) As used in this subparagraph, the term "floor covering sample" or "floor covering samples" includes, but is not limited to, samples of carpet floor covering, hardwood floor covering, engineered hardwood floor covering, laminate floor covering, stone floor covering, tile floor covering, vinyl floor covering, resilient floor covering, linoleum floor covering, and other floor coverings.

(iii) For purposes of subparagraph (A) of this paragraph, the fair market value of any floor covering sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of any floor covering that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample.

(2) If the sole use of the article other than retaining, demonstrating, or displaying it for sale is the rental of the article while holding it for sale, the processor, manufacturer, or converter may elect to treat the amount of the rental charged rather than the fair market value of the article as its sales price.

**History.**

Ga. L. 1951, p. 360, § 8; Ga. L. 1968, p. 496, § 1; Ga. L. 1970, p. 595, § 1; Code 1933, § 91A-4508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 385, § 1; Ga. L. 2006, p. 470, § 1/HB 1040; Ga. L. 2010, p. 662, § 11/HB 1221; Ga. L. 2015, p. 910, § 1/HB 277.

**Law reviews.**

For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## JUDICIAL DECISIONS

**For constitutionality, see** Ingalls Iron Works Co. v. Chilivis, 237 Ga. 479, 228 S.E.2d 866, 1976 Ga. LEXIS 1276 (1976).

**Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-1 et seq.) was not impliedly repealed by Ga. L. 1960, p. 989, § 1 (see now O.C.G.A. § 48-8-61).** Bailes Oldsmobile, Inc. v. Hawes, 122 Ga. App. 395, 177 S.E.2d 170, 1970 Ga. App. LEXIS 875 (1970).

**Purpose of Ga. L. 1951, p. 360, § 2 (see now O.C.G.A. § 48-8-30) differs from that of Ga, L. 1951, p. 360, § 8 (see now O.C.G.A. § 48-8-39).** Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Ga. L. 1951, p. 360, §§ 2 and 8 (see now O.C.G.A. §§ 48-8-30 and 48-8-39) operate to tax sales made under different circumstances.** Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**This section creates nothing more than a rebuttable presumption.** Bailes Oldsmobile, Inc. v. Hawes, 122 Ga. App. 395, 177 S.E.2d 170, 1970 Ga. App. LEXIS 875 (1970).

**O.C.G.A. § 48-8-39 applies to property held for sale to general public.** — Words "holding it for sale in the regular course of business" in the first sentence of this section refer to holding for sale to the general public. Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**No exemption is permitted for personal uses of property.** Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Use other than demonstration or display deemed taxable purchase.** — As soon as a retail seller makes any use of the property other than demonstration or display in the regular course of business, the seller is deemed to have purchased the property personally and will be taxed on the property. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Seller must pay tax when personal use made of property.** — If a retailer takes merchandise to the retailer's home for personal use the retailer would at that time be liable for the tax, regardless of the fact that at some subsequent time the retailer sells the machine in the regular course of business. Similarly, if the seller makes personal use of materials used for producing goods for sale, the seller is liable for the tax even if such materials are used to fill an order and are sold to a customer along with the order. Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**Sale of small portion otherwise used for personal use not taxable.** — One who sells at retail a small portion of industrial materials one has otherwise produced or manufactured for own use will not be subject to a sales or use tax on the fair market value of those materials one uses personally. Strickland v. W.E. Ross & Sons, 251 Ga. 324, 304 S.E.2d 719, 1983 Ga. LEXIS 776 (1983).

**Tax on personal use followed by tax on sale to customer permissible.** — Tax of retail purchaser who makes any

use of property other than retention, demonstration, or display while holding the property for sale in the regular course of business, under Ga. L. 1951, p. 360, § 8 (see now O.C.G.A. § 48-8-39), and subsequent tax if the purchaser thereafter sells the property to a consuming purchaser, involve two distinct sales transactions which are independent taxable events, and are not violative of the prohibition against duplication of taxes under Ga. L. 1951, p. 360, § 2 (see now O.C.G.A. § 48-8-30). Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Personal use of a demonstrator automobile** for over six months is not a use which this section will excuse. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Rebuttable presumption that automobiles held more than six months not used solely for demonstration.** — Under the Official Compilation of Rules and Regulations of the State of Georgia, Rules of the Department of Revenue, § 560-12-2-09(5), a rebuttable presumption arises that automobiles held in excess of six months are not being used solely for retention, demonstration, or display. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Personal and business use of demonstrator cars by employees of dealer.** — When demonstrator cars are driven by employees of dealer for both personal and business purposes for more than six months, the dealer could not escape tax liability by simply denominating personal uses of the automobiles as displays to the community. Law Lincoln Mercury, Inc. v. Strickland, 246 Ga. 237, 271 S.E.2d 152, 1980 Ga. LEXIS 1049 (1980).

**Contractor liable for tax on raw materials even if purchaser exempt.** — Fabrication of raw materials by a contractor into products to be installed and incorporated into realty constitutes a use or consumption by the contractor, who is liable for the tax, regardless of the fact that the entity with whom it is contracting is a political subdivision exempt from the payment of sales tax. Macon Mach. Shop, Inc. v. Hawes, 118 Ga. App. 280, 163 S.E.2d 440, 1968 Ga. App. LEXIS 1367 (1968).

**Use of materials sold to customer together with order produced from such materials.** — When materials are purchased by seller from another who has prepared such materials to order for the benefit of a customer who has placed an order, and are then resold to such customer, the use is for the benefit of the customer, and this section did not apply. Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**Use of items furnished by customer not taxable.** — Use made of an item produced from materials furnished by the customer for the purpose of producing goods for such customer is not a use contemplated by this section for the reason that it is solely for the benefit of the buyer who ultimately receives both title and right of possession of such item, and pays the sales tax thereon. Its purchase in the first instance by the seller is for the purpose of resale after use for the benefit of the person to whom it is resold by producing goods which the customer has ordered. Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14, 1958 Ga. App. LEXIS 512 (1958).

**Carpet manufacturer's use of carpet samples** in connection with its sales of carpeting constituted a "fictional sale" under O.C.G.A. § 48-8-39(b) and the samples were subject to tax; however, the fair market value of the samples was zero so that no taxes were owed for such sales. Collins v. Prince St. Techs., 220 Ga. App. 492, 469 S.E.2d 700, 1996 Ga. App. LEXIS 137 (1996).

**Contact lenses.** — Lenses given to eye-care professionals for their use in any way they saw fit was simply a marketing scheme designed to promote the sale of lenses manufactured by the plaintiff; therefore, those lenses were properly classified as deemed retail sales. However, lenses in packages which sales representatives opened for demonstration purposes were exempt from taxation.

CIBA Vision Corp. v. Jackson, 248 Ga. App. 688, 548 S.E.2d 431, 2001 Ga. App. LEXIS 378 (2001), cert. denied, No. S01C1022, 2001 Ga. LEXIS 699 (Ga. Sept. 7, 2001).

**Ophthalmic drugs.** — Drugs packaged or designated as samples were taxable because those drugs were not purchased for resale. CIBA Vision Corp. v. Jackson, 248 Ga. App. 688, 548 S.E.2d 431, 2001 Ga. App. LEXIS 378 (2001), cert. denied, No. S01C1022, 2001 Ga. LEXIS 699 (Ga. Sept. 7, 2001).

**OPINIONS OF THE ATTORNEY GENERAL**

**Manufacturer taxable for own use of goods.** — Manufacturer of personal property for sale is subject to sales tax on use of such manufactured goods based on fair market value of goods at time of use. 1969 Op. Att'y Gen. No. 69-139.

**Cost of items purchased under a certificate for resale but withdrawn from stock for other use is subject to tax.** 1969 Op. Att'y Gen. No. 69-126.

**Dispensing of drugs by pharmacist.** — Pharmacist, with respect to dispensing drugs under Medicaid, is in a position analogous to that of a dealer who withdraws goods from inventory to provide a service. The use is taxable to the pharmacist at cost. 1971 Op. Att'y Gen. No. 71-145.

## 48-8-40. Effect of sales from commingled goods when certificate given for portion of goods.

If a purchaser gives a certificate with respect to the purchase of fungible goods and after giving the certificate commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

**History.** Ga. L. 1951, p. 360, § 9; Code 1933, § 91A-4509, enacted by Ga. L. 1978, p. 309, § 2.

## 48-8-41. Bringing action raising issue of taxability; copy of initial pleading to Attorney General; filing of acknowledgment of pleading in court; judgment void absent filed acknowledgment.

If the issue of taxability under this article is raised in any case, the person raising the issue shall furnish the Attorney General with a copy of the initial pleading in which the issue is raised. The Attorney General shall acknowledge receipt of the pleading and his acknowledgment shall be filed in the court in which the case is pending. Any judgment rendered in a case in which the acknowledgment has not been filed shall be void and of no effect.

**History.**
Ga. L. 1951, p. 360, § 12; Ga. L. 1953, Jan.-Feb. Sess., p. 197, § 1; Code 1933, § 91A-4512.1, enacted by Ga. L. 1979, p. 5, § 96.

**JUDICIAL DECISIONS**

**Notice under § 48-2-9 need not be given when action brought to recover taxes.** — Action to recover a sum alleged to be due as a tax imposed by Ga. L. 1951, p. 360 (see now O.C.G.A. T. 48, C. 8, A. 1) may be maintained under those provisions without giving notice thereof under Ga. L. 1937-38, Ex. Sess., p. 77, § 8 (see now O.C.G.A. § 48-2-9). Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952).

**RESEARCH REFERENCES**

**C.J.S.**
7A C.J.S., Attorney General, §§ 11, 13.
**ALR.**
Sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270.

## 48-8-42. Credit for tax when like tax paid in another state; procedure; proof of payment; payment of difference when like tax less than tax imposed by article; exceptions.

(a) This article shall not apply with respect to the use, consumption, distribution, or storage of tangible personal property in this state upon which a like tax equal to or greater than the amount imposed by this article has been paid in another state. The proof of payment of the tax shall be determined according to rules and regulations made by the commissioner. If the amount of tax paid in another state is less than the amount of tax imposed by this article, the dealer shall pay to the commissioner an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this article.

(b) Except as provided in this subsection, no credit shall be given under this Code section for taxes paid in another state if the other state does not grant like credit for taxes paid in this state. Credit in the amount of tax actually paid in a state which does not grant like credit for taxes paid in this state shall be given up to the amount of the like tax due in this state only with respect to any use in the other state of tangible personal property by a manufacturer or fabricator in fulfillment of a bona fide written contract to furnish the property and perform services relative to the property in the other state when the property was manufactured or fabricated in this state exclusively for use by the manufacturer or fabricator as a contractor in fulfillment of the contract.

**History.**
Ga. L. 1951, p. 360, § 10; Ga. L. 1953, Nov.-Dec. Sess., p. 369, § 1; Ga. L. 1976, p. 469, § 1; Code 1933, § 91A-4510, enacted by Ga. L. 1978, p. 309, § 2.
**Law reviews.**
For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

**JUDICIAL DECISIONS**

**Intent as to credit for taxes paid in other states.** — Intent in this state is to allow credit for a like taxable incident which first occurs in another state and to collect a tax based on a taxable incident in this state occurring thereafter, but only to the extent of the difference between a lesser like tax previously paid and the Georgia tax, and only if the other state has a reciprocal law. Hawes v. National Serv. Indus., Inc., 121 Ga. App. 775, 175 S.E.2d 34, 1970 Ga. App. LEXIS 1353 (1970), aff'd, 227 Ga. 221, 179 S.E.2d 765, 1971 Ga. LEXIS 646 (1971).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 79, 176.
**ALR.**
Validity and construction of provisions allowing use tax credit for tax paid in other state, 31 A.L.R.4th 1206.

## 48-8-43. Disposition of taxes collected in excess of 4 percent.

When the tax collected for any period is in excess of 4 percent, the total tax collected shall be paid over to the commissioner less the compensation to be allowed the dealer.

**History.**
Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4513, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 62, § 7.

## 48-8-44. Payment of tax when used articles taken as credit on sale of new and used articles.

When used articles are taken in trade or a series of trades as a credit or partial payment on the sale of new and used articles, the tax imposed by this article shall be paid on the value of the new or used articles less the credits for the used articles.

**History.**
Ga. L. 1951, p. 360, § 13; Code 1933, § 91A-4517, enacted by Ga. L. 1978, p. 309, § 2.

**OPINIONS OF THE ATTORNEY GENERAL**

**Trade-in credit provision does not apply to automobile dealers who "trade" with themselves.** 1975 Op. Att'y Gen. No. U75-76.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 129.

**ALR.**
Computation of sales tax where property is turned in by purchaser, 4 A.L.R.2d 1059.

## 48-8-45. Reporting cash and credit sales; election of basis of accounting; payments under cash basis of accounting; deduction of bad debts under accrual basis of accounting; bad debt deductions, refunds, and allocation.

(a) Any dealer taxable under this article having both cash and credit sales may report the sales on either the cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

(b) Any dealer reporting on a cash basis of accounting shall include in each return all cash sales made during the period covered by the return and all collections made in any period on credit sales of prior periods and shall pay the tax on the sales at the time of filing the return.

(c) Any dealer reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner. Any deduction taken or refund claimed that is attributed to bad debts shall not accrue or include interest.

(d) The bad debt may be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. Any such deduction for such bad debt shall be reported as a separate line item on the claimant's sales and use tax return. If such deduction is not reported as a line item, it shall be disallowed. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and the claimant would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(e) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the

collection is made. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and, secondly, to interest, service charges, and any other charges.

(f)(1) As used in this subsection, "assignee" includes but is not limited to:

(A) Assignees of promissory notes, accounts, or accounts receivable; or

(B) Financial institutions that do not make taxable retail sales but that finance retail sales by making loans or issuing credit cards to purchasers.

(2) The deduction and refund provided for in this Code section are not assignable. The deduction and refund provided for in this Code section are only available to a dealer that makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt with respect to that sale. Assignees may not take a deduction or claim a refund pursuant to this Code section.

(g) For purposes of calculating the deduction taken or refund claimed, a "bad debt" shall have the same meaning as defined in 26 U.S.C. Section 166. However, the amount calculated pursuant to 26 U.S.C. Section 166 shall be adjusted to exclude:

(1) Financing charges or interest;

(2) Sales or use taxes charged on the purchase price;

(3) Uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid;

(4) Expenses incurred in attempting to collect any debt; and

(5) Repossessed property.

(h) For bad debts incurred and written off after January 1, 2011, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed. The statute of limitations for filing such claim shall be three years from the due date of the return on which the bad debt could first be claimed. Such refund shall be claimed on such form as shall be established by the commissioner.

(i) Where filing responsibilities have been assumed by a certified service provider, the department allows the service provider to claim, on behalf of the seller, any bad debt allowance provided by this Code section. Such refund shall be claimed on such form as shall be established by the commissioner. The certified service provider must

credit or refund the full amount of any bad debt allowance or refund received to the seller.

(j) Where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the Streamlined Sales Tax member states, such allocation is permitted.

**History.**
Ga. L. 1951, p. 360, § 14; Code 1933, § 91A-4518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1998, p. 604, § 1; Ga. L. 2008, p. 340, § 3/HB 948; Ga. L. 2010, p. 662, § 12/HB 1221; Ga. L. 2011, p. 38, § 6/HB 168.

**Law reviews.**
For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001).

**JUDICIAL DECISIONS**

**O.C.G.A. § 48-8-45(c).** — Company which financed both automobile dealers' wholesale floor plans and retail purchases by consumers of automobiles from the dealers did not qualify as "any person" under O.C.G.A. § 48-8-45(c) so as to entitle the company to seek a deduction for bad debts under the Sales and Use Tax Act, O.C.G.A. § 48-8-1 et seq. GMAC v. Jackson, 247 Ga. App. 141, 542 S.E.2d 538, 2000 Ga. App. LEXIS 1366 (2000), cert. denied, No. S01C0583, 2001 Ga. LEXIS 468 (Ga. June 4, 2001).

**Only potential tax relief afforded by statute is deduction.** — Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the Bad Debt Statute, O.C.G.A. § 48-8-45, because the only potential tax relief afforded by § 48-8-45(c) was a deduction; in drafting the Bad Debt Statute, the General Assembly chose to grant only a deduction for bad credit card debt. Citibank (South Dakota), N.A. v. Graham, 315 Ga. App. 120, 726 S.E.2d 617, 2012 Ga. App. LEXIS 330 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. Oct. 1, 2012).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 205 et seq.

**C.J.S.**
85 C.J.S., Taxation, § 2062 et seq.

## 48-8-46. Final return and payment upon sale of or quitting business; withholding of sufficient amount of purchase money by successor; effect of failure to withhold.

If any dealer liable for any tax, interest, or penalty imposed by this article sells out his business or stock of goods or equipment or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. The dealer's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid until the former owner produces either a receipt from the commissioner showing that the taxes, interest, and penalties have been paid or a certificate from the commissioner stating that no sales and use taxes, interest, or penalties are due. If the purchaser of a business or stock of goods or equipment fails to withhold the purchase money as

required by this Code section, he shall be personally liable for the payment of any sales and use taxes, interest, and penalties accruing and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner.

**History.**

Ga. L. 1951, p. 360, § 15; Ga. L. 1960, p. 153, § 6; Code 1933, § 91A-4519, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 11.

**Law reviews.**

For article, "Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B. J. 82 (1985).

**JUDICIAL DECISIONS**

**Section comports with due process and equal protection requirements.** — Ga. L. 1951, p. 360, § 15 (see now O.C.G.A. § 48-8-46) is not unconstitutional under U.S. Const., amend. 14 or Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I) because it must be considered in pari materia with Ga. L. 1937-38, Ex. Sess., p. 77, § 44 and Ga. L. 1937-38, Ex. Sess., p. 77, § 45 (see now O.C.G.A. §§ 48-2-50 and 48-2-59) which provide for due process. Richards v. Blackmon, 233 Ga. 739, 213 S.E.2d 638, 1975 Ga. LEXIS 1430 (1975).

**Stock of goods or equipment.** — Buyer's purchase of the inventory, furniture, fixtures, equipment, vehicles, goodwill, and other assets from its predecessor in interest constituted the purchase of the "stock of goods or equipment" of a dealer liable for sales taxes due and brought the sale within the purview of O.C.G.A. § 48-8-46. JD Design Group, Inc. v. Graham, 282 Ga. 130, 646 S.E.2d 227, 2007 Ga. LEXIS 409 (2007).

**Section does not deprive a purchaser of due process and equal protection of the law** when a purchaser can prevent liability by compliance with this section's provisions. Richards v. Blackmon, 233 Ga. 739, 213 S.E.2d 638, 1975 Ga. LEXIS 1430 (1975).

**Buyer's duty to search lien recordings.** — Buyer's claim that the buyer was an innocent purchaser for value did not afford the buyer relief from liability for the taxes owed under O.C.G.A. § 48-8-46 as the statute effectively put the buyer on notice of the possibility of tax liability not apparent from a search of the lien recordings because the statute imposed a duty to inquire on the buyer; additionally, the buyer could have prevented the buyer's liability by withholding part of the purchase money to cover such taxes, or could have required the buyer's predecessor to produce a certificate from the commissioner that no taxes were due. JD Design Group, Inc. v. Graham, 282 Ga. 130, 646 S.E.2d 227, 2007 Ga. LEXIS 409 (2007).

**Relationship of debtor and creditor does not exist between the state and the dealer.** — Dealer's relationship to the state is that of a taxpayer. Richards v. Blackmon, 233 Ga. 739, 213 S.E.2d 638, 1975 Ga. LEXIS 1430 (1975).

**Uniform Commercial Code provisions on bulk transfers did not deal with taxpayers; therefore, it does not impliedly repeal Ga. L. 1951, p. 360, § 15.** Richards v. Blackmon, 233 Ga. 739, 213 S.E.2d 638, 1975 Ga. LEXIS 1430 (1975).

**Effect of affidavit listing no creditors.** — Affidavit of a seller of a business listing no creditors pursuant to the provisions on bulk transfers does not relieve the purchaser from a tax assessment made under this section. Richards v. Blackmon, 233 Ga. 739, 213 S.E.2d 638, 1975 Ga. LEXIS 1430 (1975).

Summary judgment as to the issue of a successor in interest's liability for unpaid taxes in favor of that successor was reversed as the successor failed to protect itself from successor liability for the unpaid sales and use taxes owed by its predecessor under O.C.G.A. § 48-8-46, and the successor failed to protect itself against unrecorded tax liens to the extent allowed by the statute. Graham v. JD Design Group, Inc., 281 Ga. App. 347, 636 S.E.2d 66, 2006 Ga. App. LEXIS 1101 (2006), aff'd, 282 Ga. 130, 646 S.E.2d 227, 2007 Ga. LEXIS 409 (2007).

**No successor liability.** — Appellee that purchased assets used in a business was not liable for sales and use taxes as a successor to a corporation under O.C.G.A. § 48-8-46 as the appellee had not purchased the assets from the corporation itself. Graham v. Palmtop Props., 284 Ga. App. 730, 645 S.E.2d 343, 2007 Ga. App. LEXIS 396 (2007).

**Statutory estoppel did not apply to lien.** — No statutory estoppel applied to a lien to which the Georgia Department of Revenue was entitled with regard to delinquent sales taxes. JD Design Group, Inc. v. Graham, 282 Ga. 130, 646 S.E.2d 227, 2007 Ga. LEXIS 409 (2007).

### OPINIONS OF THE ATTORNEY GENERAL

**Section applicable even when purchaser does not continue business as going concern.** — One who purchases either stock of goods or equipment from a going business does so at one's own peril unless and until one receives a certificate from the commissioner, even if the purchaser does not continue to operate the business as a going concern. 1963-65 Ga. Op. Att'y Gen. 337.

**Liability when one purchases franchise agreements and another the business property.** — Company which purchases franchise agreements of a retail dealer and a company which purchases the business property are both liable for any sales tax, interest, and penalty thereon which became due by reason of taxable sales made by the retail dealer, the former owner, and are unpaid. 1969 Op. Att'y Gen. No. 69-186.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.

## 48-8-47. Notice by commissioner to persons holding credits of or owing debts to delinquent dealers; duty of such persons.

In the event any dealer is delinquent in the payment of the tax imposed by this article, the commissioner may give notice of the amount of the delinquency by registered or certified mail or statutory overnight delivery to all persons having in their possession or under their control any credits or other personal property belonging to the dealer and to all persons owing any debts to the dealer at the time of receipt by them of the notice. In lieu of registered or certified mail or statutory overnight delivery, the notice may be served and the recipient may acknowledge service thereof by telephonic facsimile transmission or by other means of instantaneous electronic transmission. Thereafter, no person so notified shall transfer or make any other disposition of the credits, other personal property, or debts until the commissioner has consented

to a transfer or disposition or until 30 days have elapsed after the receipt of the notice. Each person so notified must advise the commissioner within five days after receipt of the notice of any and all credits, other personal property, or debts in such person's possession, under such person's control, or owing by such person as provided in this Code section.

**History.**
Ga. L. 1951, p. 360, § 15; Code 1933, § 91A-4520, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 780, § 4; Ga. L. 2000, p. 1589, § 3.

**Editor's notes.**
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that this Act shall apply with respect to notices delivered on or after July 1, 2000.

## 48-8-48. Penalty for violation of Code Section 48-8-46 or 48-8-47.

(a) It shall be unlawful for any person to violate Code Section 48-8-46 or 48-8-47.

(b) Any person who violates Code Section 48-8-46 or 48-8-47 shall be guilty of a misdemeanor.

**History.**
Ga. L. 1951, p. 360, § 15; Code 1933, § 91A-9936, enacted by Ga. L. 1978, p. 309, § 2.

## 48-8-49. Dealers' returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns to the commissioner showing the gross sales and purchases arising from all sales and purchases taxable under this article during the preceding calendar month. The commissioner may provide by regulation for quarterly or annual returns or, upon application, may permit a dealer to file a return on a quarterly or annual basis if deemed advisable by the commissioner. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the commissioner.

(b)(1) As used in this subsection, the term "estimated tax liability" means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer's average monthly payments for the last calendar year.

(2) If the tax liability of a dealer in the preceding calendar year was greater than $60,000.00 excluding local sales taxes, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section.

(c) Rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect to the sales price in accordance with the rules and regulations prescribed by the commissioner.

(d)(1) The commissioner, in his discretion, may grant extensions, upon written application, to the end of the calendar month in which any tax return is due under this Code section.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing and only for a period of not more than 12 consecutive months.

(3) Upon the grant of any extension authorized by this subsection, the taxpayer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which, when added to the amount previously remitted for the period pursuant to subsection (b) of this Code section, equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged, assessed, or collected by reason of the granting of an extension pursuant to this subsection.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980.

**History.**

Ga. L. 1951, p. 360, § 16; Ga. L. 1952, p. 334, § 1; Ga. L. 1960, p. 153, § 7; Ga. L. 1972, p. 8, § 1; Code 1933, § 91A-4521, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 27; Ga. L. 1989, p. 62, § 8; Ga. L. 1990, p. 1243, § 5; Ga. L. 1996, p. 780, § 3; Ga. L. 2003, p. 355, § 4; Ga. L. 2003, p. 665, § 14; Ga. L. 2006, p. 530, § 1/HB 1120; Ga. L. 2010, p. 662, § 13/HB 1221; Ga. L. 2011, p. 38, § 7/HB 168; Ga. L. 2015, p. 236, § 5-6/HB 170.

**Editor's notes.**

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For survey article on recent developments in Georgia state and local taxation, see 34 Mercer L. Rev. 400 (1982).

For article, "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 205 et seq.

**ALR.**

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

## 48-8-49.1. Direct pay permit program.

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

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

(2) "Qualified taxpayer" means a taxpayer that:

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

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

(i) National Industry Code 517110 — Wired Telecommunications Carriers;

(ii) National Industry Code 517210 — Wireless Telecommunications Carriers (except Satellite);

(iii) National Industry Code 517410 — Satellite Telecommunications;

(iv) NAICS Industry Code 48111 — Scheduled Air Transportation;

(v) NAICS Industry Code 48211 — Rail Transportation;

(vi) Industry Group Code 4841 — General Freight Trucking;

(vii) Economic Sector Code 21 — Mining, Quarrying, and Oil and Gas Extraction;

(viii) Economic Sector Code 22 — Utilities; or

(ix) Economic Sector Codes 31-33 — Manufacturing.

(b) The department shall establish and maintain a direct pay permit program for the purpose of enabling qualified taxpayers to pay directly to the department taxes that are imposed by this chapter on the qualified taxpayers; provided, however, that such program shall exclude taxation on the following:

(1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section 48-8-2;

(2) Purchases of meals, beverages, or tobacco;

(3) Purchases of local telephone services, transportation of persons, or lodging accommodations and ancillary charges associated with lodging accommodations;

(4) Purchases to places of amusement, entertainment, or athletic events; admissions to displays or exhibitions; participation in games or sports; or charges for the use of amusement devices; or

(5) Rental charges for periods of 31 days or less for motor vehicles required to be titled in this state.

(c) The commissioner shall not require a qualified taxpayer to waive interest on refunds made in accordance with Code Section 48-2-35 as a condition for obtaining a direct pay permit.

(d) The department shall, at a minimum, provide for the following by rule or regulation:

(1) Certain attestations to be made by a qualified taxpayer in its application for a direct pay permit;

(2) Responsibilities and duties for holders of direct pay permits;

(3) Transferability or nontransferability of direct pay permits;

(4) Expiration and renewal of direct pay permits; and

(5) Revocation of direct pay permits.

**History.**

Code 1981, § 48-8-49.1, enacted by Ga. L. 2020, p. 184, § 1-4/HB 846.

**Law reviews.**

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

## 48-8-50. Compensation of dealers for reporting and paying tax; reimbursement deduction.

(a) As used in this Code section, the term "affiliated entity" means with respect to any corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity, any other corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity related thereto:

(1) As a parent, subsidiary, sister, or daughter corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity;

(2) By control of one corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity by the other; or

(3) By any other common ownership or control.

(b) Each dealer required to file a return under this article shall include such dealer's certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article, each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

(1) With respect to each certificate of registration number on such return, a deduction of 3 percent of the first $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(2) With respect to each certificate of registration number on such return, a deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection; and

(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any provision of this title, including, but not limited to, sales and use taxes on motor fuel imposed under any of the provisions described in subsection (f) of this Code section.

(c) The department shall compile and maintain a master registry of the certificate of registration numbers filed on such returns with respect to all the affiliated business entities and multiple locations of each dealer and shall assign a master number to each dealer. Each dealer required to file a return under this article shall also include such dealer's master number on such return if such number has been assigned by the department under this subsection.

(d) With respect to a dealer which consists of only a single sales location or which consists of a group of fewer than four sales locations or affiliated entities, or any combination thereof, claiming such deduction, a separate return shall be filed for each sales location and affiliated entity for each reporting period. With respect to a dealer which consists of a group of four or more sales locations or affiliated entities, or any combination thereof, claiming such deduction, a single, consolidated return shall be filed for such entire group. A consolidated return under this subsection shall be used for the purpose of identifying the sales locations or affiliated entities of a dealer and such consolidated return shall identify separately the reporting and paying of the tax due under this article for each sales location or affiliated entity of such dealer. The deduction requirements of subsection (b) of this Code section shall apply separately to each certificate of registration number on such return.

(e) No deduction shall be allowed under this Code section unless all of the requirements of subsections (b), (c), and (d) of this Code section have been satisfied.

(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," and any other sales tax, use tax, or sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return.

(g) The reimbursement deduction authorized under Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," shall be at the rate and subject to the requirements specified under subsections (b) through (f) of this Code section.

(h) Each certified service provider as defined in Code Section 48-8-161 shall receive the amount provided in the contract between the certified service provider and the Streamlined Sales Tax Governing Board.

**History.**

Ga. L. 1951, p. 360, § 16; Ga. L. 1964, p. 57, § 1; Ga. L. 1965, p. 321, § 1; Ga. L. 1966, p. 505, § 1; Ga. L. 1975, p. 101, § 1; Code 1933, § 91A-4522, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 815, § 1; Ga. L. 1993, p. 995, § 1; Ga. L. 2003, p. 355, § 5; Ga. L. 2003, p. 665, § 15; Ga. L. 2004, p. 425, § 1; Ga. L. 2005, p. 159, § 23/HB 488; Ga. L. 2007, p. 309, § 3/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 14/HB 1221; Ga. L. 2015, p. 236, § 5-7/HB 170.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2003, "subsection (f) of this Code section" was substituted for "subsection (f) of Code section" near the end of paragraph (b)(3).

**Editor's notes.**

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

**JUDICIAL DECISIONS**

**Seller acts as collecting agent for state.** — Ultimate liability for a use tax is laid upon the purchaser, not the seller, whose role is merely that of collecting agent for the state. For this service the seller is compensated, provided the taxes due are not delinquent at the time of payment. Independent Publishing Co. v. Hawes, 119 Ga. App. 858, 168 S.E.2d 904, 1969 Ga. App. LEXIS 1280 (1969).

## 48-8-51. Extension of time for making returns; limits; conditions; remittance; interest; estimate when no return or false return filed; presumption of correctness.

(a)(1) The commissioner may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application and only for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the grant of any extension authorized by this subsection,

the dealer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the dealer's liability at the rate specified in Code Section 48-2-40.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980.

(b) In the event any dealer fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the commissioner shall make an estimate for the taxable period of retail sales of the dealer and the gross proceeds from rentals or leases of tangible personal property by the dealer and shall estimate the cost price of all articles of tangible personal property imported by the dealer for use, consumption, distribution, or storage for use or consumption in this state. Based upon his estimate, the commissioner shall assess and collect the tax, interest, and penalty, as accrued, on the basis of the assessments. The commissioner's assessments shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

**History.**
Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-4524, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 28.

**JUDICIAL DECISIONS**

**Assessment is prima facie evidence of assessment's correctness.** — Language of this section making the assessment prima facie correct in effect makes the assessment prima facie evidence of the assessment's correctness. Hawes v. Foster, 118 Ga. App. 296, 163 S.E.2d 351, 1968 Ga. App. LEXIS 927 (1968).

**Burden of going forward with evidence.** — When a taxpayer attacks the legality of a tax levy by affidavit of illegality, the commissioner makes out a prima facie case by introducing the tax fi. fa., and the burden of going forward with evidence shifts to the defendant in fi. fa. Fowler v. Strickland, 243 Ga. 30, 252 S.E.2d 459, 1979 Ga. LEXIS 787, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35, 1979 U.S. LEXIS 2592 (1979).

Effect of the language of Ga. L. 1951, p. 360, § 16 and Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, 48-8-11, and 48-8-49 et seq.) is to shift to the taxpayer the burden of going forward with evidence to dispute the correctness of an assessment made thereunder. Fowler v. Strickland, 243 Ga. 30, 252 S.E.2d 459, 1979 Ga. LEXIS 787, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35, 1979 U.S. LEXIS 2592 (1979).

**Assessments may not be issued for purpose of extending time for appeal.** — Assessment made by the commissioner pursuant to this section may not be cancelled or abated and a new assessment

issued after the time for appeal has expired solely for the purpose of extending the time of appeal. Undercofler v. VFW Post 4625, 110 Ga. App. 711, 139 S.E.2d 776, 1964 Ga. App. LEXIS 748 (1964).

**Section imposes no duty to conduct hearing.** — This section places a duty on the commissioner to estimate, assess, and collect tax when a dealer either fails to make a return or makes a grossly incorrect, false, or fraudulent return. No mention is made of a duty to conduct a hearing. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970).

## 48-8-52. Dealers' duty to keep and produce records of sales, purchases, and invoices; examination and fixing by commissioner; assessment and collection of taxes.

(a)(1) Each dealer required to make a return and pay any tax under this article shall keep and preserve:

(A) Suitable records of the sales and purchases taxable under this article;

(B) Other books of account which are necessary to determine the amount of tax due;

(C) Other information as required by the commissioner; and

(D) For a period of three years, all invoices and other records of goods, wares, merchandise, and other subjects of taxation under this article.

(2) All books, invoices, and other records required to be kept by this subsection shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In the event the dealer has imported tangible personal property and fails to produce an invoice showing the purchase price of each article subject to tax or if the invoice does not reflect the true or actual purchase price, the commissioner shall ascertain in any manner feasible the true purchase price and shall assess and collect the tax with interest and penalties as accrued on the true purchase price as assessed by the commissioner. The assessment so made shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

(c) In the case of the lease or rental of tangible personal property when the consideration reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, the commissioner may fix the true or actual consideration and collect the tax on the consideration in the same manner as provided in Code Section 48-8-51, with interest and penalties as accrued.

**History.**
Ga. L. 1951, p. 360, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 200, § 1; Code 1933, § 91A-4525, enacted by Ga. L. 1978, p.

309, § 2; Ga. L. 2010, p. 662, § 15/HB 1221.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the statutory provisions, decisions under Ga. L. 1951, p. 360, § 17, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

**Declaratory judgment as to taxability affords no relief from audit.** — Declaratory judgment as to taxability under Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-80 et seq.) will not relieve the taxpayer from audit of the taxpayer's books under Ga. L. 1951, p. 360, § 16 (see now O.C.G.A. § 48-8-49) or Ga. L. 1951, p. 360, § 17 or Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-811). Undercofler v. Eastern Air Lines, 221 Ga. 824, 147 S.E.2d 436, 1966 Ga. LEXIS 713 (1966) (decided under Ga. L. 1951, p. 360, § 17).

**Power of commissioner to rely on outside sources when taxpayer's records unavailable.** — Whole thrust of Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-811) is to authorize the commissioner to make an assessment based upon whatever outside information the commissioner can locate when the commissioner does not have the benefit of the best source, the taxpayer's own records, because the taxpayer has refused to permit examination of the books or answer questions, first at the place of business, then after a formal notice. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970) (decided under Ga. L. 1951, p. 360, § 17).

**When commissioner must invoke formal procedures to gain access to tax information.** — Only when a dealer refuses to allow on-site examination of records, the most expeditious and least disruptive way to conduct an audit, need the commissioner invoke the formal notice to produce records or to subpoena employees in order to gain information from which the dealer can make a reasonably accurate assessment. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970) (decided under Ga. L. 1951, p. 360, § 17).

**Hearing under § 48-8-55 not required when tax records are known to be insufficient.** — Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-811) sets out the procedures which must be exhausted before the commissioner can make an assessment without regard to the taxpayer's records, but does not require a useless notice and hearing when the dealer voluntarily opened records to the field auditors, the records were found insufficient, and the commissioner, with the taxpayer's knowledge, resorted to additional sources of information to compute the tax liability. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970) (decided under Ga. L. 1951, p. 360, § 17).

## OPINIONS OF THE ATTORNEY GENERAL

**Limits on duty to maintain tax records.** — State law requires that tax records be kept for a period of three years only and that requirement is with respect to sales tax information only. 1969 Op. Att'y Gen. No. 69-288.

## RESEARCH REFERENCES

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 205.

## 48-8-53. Duty of wholesalers and jobbers to keep records; contents; inspection by commissioner.

Each wholesale dealer or jobber in this state shall keep a record of all sales of tangible personal property made in this state whether the sales are for cash or on terms of credit. The record shall contain the name and address of the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of three years and shall be open to inspection by the commissioner or his duly authorized deputies, agents, and assistants at all reasonable hours during the day.

**History.**
Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-4526, enacted by Ga. L. 1978, p. 309, § 2.

### OPINIONS OF THE ATTORNEY GENERAL

**Limits on duty to maintain tax records.** — State law requires that tax records be kept for a period of three years only and that requirement is with respect to sales tax information only. 1969 Op. Att'y Gen. No. 69-288.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 205.

## 48-8-54. Failure of wholesalers or jobbers to keep and allow inspection of records under Code Section 48-8-53; penalty.

(a) It shall be unlawful for any wholesale dealer or jobber in this state to fail to keep the records required to be kept by Code Section 48-8-53 or to fail to permit an inspection of the records by the commissioner as provided in Code Section 48-8-53.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

**History.**
Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-9937, enacted by Ga. L. 1978, p. 309, § 2.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 222.

## 48-8-55. Appearance before commissioner of dealer who fails to file return or files false or fraudulent return; notice; presumption of correctness of commissioner's assessment.

(a) If any dealer required to make and file a return under this article fails to submit the return within the time required or submits a return which is false or fraudulent in that it contains statements which differ from the true gross sales, purchases, leases, or rentals taxable under this article or otherwise fails to comply with this article for the taxable period for which the return is made, the commissioner shall give the dealer ten days' notice in writing prior to requiring the dealer to appear before him or his assistant with the books, records, and papers required by the commissioner which relate to the business of the dealer for the taxable period.

(b) Any assessment of a dealer by the commissioner pursuant to this article shall be deemed prima facie correct.

**History.**
Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-4528, enacted by Ga. L. 1978, p. 309, § 2.

### JUDICIAL DECISIONS

**Power of commissioner to rely on outside sources when taxpayer's records unavailable.** — Whole thrust of this section is to authorize the commissioner to make an assessment based upon whatever outside information the commissioner can locate when the commissioner does not have the benefit of the best source, the taxpayer's own records, because the taxpayer has refused to permit examination of the books or answer questions, first at the place of business, then after a formal notice. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970).

**When commissioner must invoke formal procedures to gain access to tax information.** — Only when a dealer refuses to allow on-site examination of records, the most expeditious and least disruptive way to conduct an audit, need the commissioner invoke the formal notice to produce records, or to subpoena employees, in order to gain information from which the dealer can make a reasonably accurate assessment. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970).

**Hearing not required when tax records known to be insufficient.** — This section sets out the procedures which must be exhausted before the commissioner can make an assessment without regard to the taxpayer's records, but does not require a useless notice and hearing when the dealer voluntarily opened records to the field auditors, the records were found insufficient, and the commissioner, with the taxpayer's knowledge, resorted to additional sources of information to compute the tax liability. Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970).

**Burden of going forward with evidence.** — When a taxpayer attacks the legality of a tax levy by affidavit of illegality, the commissioner makes out a prima facie case by introducing the tax fi. fa., and the burden of going forward with evidence shifts to the defendant in fi. fa. Fowler v. Strickland, 243 Ga. 30, 252

S.E.2d 459, 1979 Ga. LEXIS 787, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35, 1979 U.S. LEXIS 2592 (1979).

Effect of the language of Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-8-11) and Ga. L. 1951, p. 360, § 16 (see now O.C.G.A. § 48-8-49 et seq.) is to shift to the taxpayer the burden of going forward with evidence to dispute the correctness of an assessment made thereunder. Fowler v. Strickland, 243 Ga. 30, 252 S.E.2d 459, 1979 Ga. LEXIS 787, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35, 1979 U.S. LEXIS 2592 (1979).

**Declaratory judgment as to taxability affords no relief from audit.** — Declaratory judgment as to taxability under Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-8-11) will not relieve the taxpayer from an audit of the taxpayer's books under Ga. L. 1951, p. 360, § 16, Ga. L. 1951, p. 360, § 17, or Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. § 48-8-49 et seq.). Undercofler v. Eastern Air Lines, 221 Ga. 824, 147 S.E.2d 436, 1966 Ga. LEXIS 713 (1966).

## OPINIONS OF THE ATTORNEY GENERAL

**Purpose of notice and hearing.** — Purpose of the notice and hearing is dual. First, it is primarily to afford the taxpayer or dealer an opportunity to be heard and give evidence relating to the amount of tax due and the dealer's compliance with the law. Secondly, its purpose is to give the commissioner an opportunity to acquire such additional information relating to the violation as may be made available to the commissioner in such hearing before finally assessing additional taxes. 1954-56 Ga. Op. Att'y Gen. 833.

**Legislative intent as to power to assess delinquent taxpayers.** — General Assembly intended that in any case where the dealer fails to file a return or to appear in response to the ten days' notice or, having appeared, fails to produce records showing the true amount of the tax due, the commissioner is authorized after the expiration of the ten days' notice in the case where the dealer fails to appear or immediately after the hearing, if the dealer does appear, to make an assessment of any tax found to be due based on the best information available to the commissioner. 1954-56 Ga. Op. Att'y Gen. 833.

**When notice and hearing available.** — Wording of Ga. L. 1951, p. 360, § 18 (see now O.C.G.A. §§ 48-8-8, 48-8-9, and 48-8-11) is broad enough to require that in all cases when for any reason whatever the commissioner or the department shall determine that a dealer has failed to make or file a return, or has rendered a false or fraudulent return, or has otherwise failed to comply with Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-80 et seq.), the dealer should be given ten days' written notice to appear before the commissioner or the commissioner's assistant and to produce such books, records, and papers relating to the amount of tax due as the commissioner may deem pertinent, and be required to give testimony relating to such failure to comply with the provisions of Ga. L. 1951, p. 360, and only after such ten days' notice may an assessment be made. 1954-56 Ga. Op. Att'y Gen. 833. But see Anderson v. Blackmon, 123 Ga. App. 128, 179 S.E.2d 657, 1970 Ga. App. LEXIS 749 (1970) (dispensing with notice and hearing when those procedures would be useless).

**Protest procedures inapplicable.** — It is manifest that Ga. L. 1937-38, Ex. Sess., p. 77, § 29 is applicable only to those cases when the law requires the commissioner to give the taxpayer an opportunity to protest the assessment. Ga. L. 1951, p. 360 (see now O.C.G.A. § 48-8-80 et seq.) does not contain any requirement that the taxpayer be given an opportunity to protest. Therefore, the General Assembly did not intend that such protest procedure should be

applicable to sales taxes. 1954-56 Ga. Op. Att'y Gen. 833.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 212 et seq.

## 48-8-56. Period of delinquency of unpaid taxes; issuance of fi. fa. for collection.

The tax imposed by this article shall become delinquent for each month after the twentieth day of each succeeding month during which it remains unpaid. The commissioner may, and, when any tax becomes delinquent under this article, shall, issue a fi. fa. for the collection of the tax, interest, and penalty from each delinquent taxpayer, provided that the commissioner may transmit such a fi. fa. electronically.

**History.**
Ga. L. 1951, p. 360, § 19; Ga. L. 1952, p. 334, § 2; Code 1933, § 91A-4529, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 734, § 8.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 216.

**C.J.S.**
85 C.J.S., Taxation, § 2127 et seq.

## 48-8-57. Furnishing of bond by chronically delinquent or defaulting dealers; amount; sale at public auction of securities for collection of taxes due; notice requirements.

(a) The commissioner may require any dealer whom the commissioner finds, after notice and the opportunity for a hearing, to have been chronically delinquent or chronically in default under this article to execute and file with the commissioner a good and valid bond with a surety company authorized to do business in this state, or may require legal securities, in an amount of not less than $1,000.00 nor more than $10,000.00 as determined by the commissioner and in the manner deemed proper by the commissioner.

(b) The commissioner may sell any security deposited with him pursuant to this article at public auction if it is deemed necessary to do so in order to recover any tax or any amount required to be collected plus penalty and interest due. Notice of the sale may be served upon the delinquent dealer either in person or by mail or upon the person who deposited the security either in person or by mail. If the service is made by mail, it shall be in the manner prescribed for service of notice of

assessment and shall be addressed to the person at his address as it appears in the records of the commissioner. If service is made other than by mail, notice of sale may be served personally by any duly authorized agent of the commissioner.

**History.** Ga. L. 1974, p. 407, § 1; Code 1933, § 91A-4527, enacted by Ga. L. 1978, p. 309, § 2.

## 48-8-58. Property sold returned to dealer by purchaser; return allowances; credits and deductions; refunds of tax credit by retired dealer; failure to secure forms.

(a)(1) As used in this subsection, the term "return allowance" means the amount of the sales price or purchase price refunded by the dealer to the purchaser in cash or credit. No credit shall be allowed to the dealer under this subsection for taxes collected by such dealer from the purchaser unless the taxes collected have been returned by the dealer to the purchaser.

(2) When property sold is subsequently returned by agreement to the dealer by the purchaser, the dealer shall be entitled to credit for the tax imposed by this article with respect to the return allowance, in the manner prescribed by the commissioner, as follows:

(A) The dealer in the original return for the taxable period in which the return of the property is allowed may deduct from the dealer's gross sales the amount of the return allowance; or

(B) When a dealer has retired from business and has filed a final return, a claim for refund of the tax for which the dealer would be entitled to credit under this subsection may be filed within the time and in the manner prescribed under Code Section 48-2-35.

(b) The commissioner shall make available to dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. Failure of any dealer to secure the commissioner's forms shall not relieve the dealer from the payment of the tax at the time and in the manner provided in this article.

(c) The commissioner shall promulgate any rules and regulations necessary to implement this Code section.

**History.** Ga. L. 1951, p. 360, § 21; Ga. L. 1976, p. 341, § 1; Code 1933, § 91A-4530, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 200, § 5/HB 1310; Ga. L. 2010, p. 662, § 16/HB 1221.

## 48-8-59. Dealer's certificate of registration; application process and conditions; renewal fee following revocation or suspension.

(a)(1) Every person desiring to engage in or conduct business as a seller or dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business.

(2) Each person whose business extends into more than one county shall be required to secure only one certificate of registration under this article. The certificate of registration shall cover all operations of the company throughout this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall contain the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. Except for sellers or dealers who register with the Streamlined Sales Tax Governing Board, the application shall be signed:

(1) If the owner is an individual, by the individual;

(2) In the case of an association or partnership, by a member or partner; or

(3) In the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application. Written evidence of this authority to sign shall be attached to the application.

(c) When the required application has been made, the commissioner shall issue to the applicant a separate certificate of registration for each place of business within the state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the certificate. The certificate shall be conspicuously displayed at all times at the place for which the certificate is issued.

(d) A seller whose certificate of registration has been previously suspended or revoked shall pay the commissioner a fee of $1.00 for the renewal or issuance of a certificate of registration.

**History.**

Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-4532, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 662, § 17/HB 1221.

**Cross references.**

State agencies responsibility to provide registration number for contracting vendors, § 50-5-82.

**JUDICIAL DECISIONS**

**Application form is not a "rule".** — An "ST-1 form," which corporations are required by the department of revenue to use when applying for a certificate of registration, is not a "rule" within the purview of O.C.G.A. § 50-13-10, governing actions for declaratory judgment on the validity of rules. Roy E. Davis & Co. v. Department of Revenue, 256 Ga. 709, 353 S.E.2d 195, 1987 Ga. LEXIS 630 (1986).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
51 Am. Jur. 2d, Licenses and Permits, § 42 et seq.
**C.J.S.**
53 C.J.S., Licenses, §§ 51, 58 et seq.

**ALR.**
Recovery of sales taxes paid on bad debts, 38 A.L.R.6th 255.

## 48-8-60. Engaging in business as seller without certificate of registration required by Code Section 48-8-59; penalty.

(a) It shall be unlawful for any person to engage in business as a seller in this state without a certificate of registration as required by Code Section 48-8-59 after a certificate of registration has been suspended or revoked.

(b) Each officer of a corporation which engages in business in violation of subsection (a) of this Code section shall be guilty of a misdemeanor.

**History.**
Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-9942, enacted by Ga. L. 1978, p. 309, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
51 Am. Jur. 2d, Licenses and Permits, § 75.

## 48-8-61. Application for certificate of registration by importing dealers; filing of returns and payment of use tax on imported tangible personal property.

Dealers who import or cause to be imported tangible personal property from other states or foreign countries for use or consumption or for storage for use or consumption in this state, if not already registered as dealers under Code Section 48-8-59, shall at the time and in the manner required by rules and regulations of the commissioner obtain from the commissioner a certificate of registration and shall file returns and pay the applicable use tax on the tangible personal property.

**History.**
Ga. L. 1960, p. 989, § 1; Code 1933, § 91A-4532.1, enacted by Ga. L. 1979, p. 5, § 96A.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
51 Am. Jur. 2d, Licenses and Permits, § 42 et seq.

**C.J.S.**
53 C.J.S., Licenses, § 64.

## 48-8-62. Revocation or suspension of certificate of registration for violation of article or regulation; notice; hearing.

Whenever any person fails to comply with any provision of this article or with any rule or regulation of the commissioner relating to this article, the commissioner, upon hearing, after giving the person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked, may revoke or suspend any one or more of the certificates of registration held by the person. The notice may be served in person or by registered or certified mail or statutory overnight delivery directed to the last known address of the person.

**History.**
Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-4533, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1589, § 3.
**Editor's notes.**
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

## 48-8-63. Nonresident subcontractors; payment of tax; liability of seller; withholding; rates; bonds; exemption for unconsumed property; property of the state or the United States.

(a) As used in this Code section, the term "nonresident subcontractor" means a person who does not have a bona fide place of business in Georgia through the maintaining of a permanent domicile or business facility engaged in contracting real property work and who contracts with a prime or general contractor to perform all or any part of the contract of the prime or general contractor or who contracts with a subcontractor who has contracted to perform any part of the contract entered into by the prime or general contractor.

(b) Each person who orally, in writing, or by purchase order contracts

to furnish tangible personal property and to perform services under the contract within this state shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax imposed by this article at the time of the purchase. Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax. This Code section shall not relieve the dealer who made the sale from such dealer's liability to collect and pay the tax on purchases by a contractor.

(c) Each person who contracts to perform services in this state and who is furnished tangible personal property for use under the contract by the person, or such person's agent or representative, for whom the contract is to be performed, when a sales or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used and shall pay a use tax based on the fair market value of the tangible personal property so used irrespective of whether any right, title, or interest in the tangible personal property becomes vested in the contractors.

(d) Each person who orally, in writing, or by purchase order contracts to perform any service the principal part of which is the furnishing of machinery which will not be under the exclusive control of the contractor shall be liable to collect a sales tax on the rental value of the machinery so used. If labor and other charges are not separated from the rental charge, the person so contracting shall be liable to collect a sales tax on the entire contract price.

(e)(1) Any subcontractor who enters into a construction contract with a general or prime contractor shall be liable under this article as a general or prime contractor. Any general or prime contractor who enters into any construction contract or contracts with any nonresident subcontractor, where the total amount of such contract or contracts between such general or prime contractor and any nonresident subcontractors on any given project equals or exceeds $250,000.00, shall withhold 2 percent of the payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed this state.

(2) The prime or general contractor shall withhold payments on all contracts that meet the criteria specified in paragraph (1) of this subsection until the nonresident subcontractor furnishes such prime or general contractor with a certificate issued by the commissioner showing that all sales taxes accruing by reason of the contract between the nonresident subcontractor and the general or prime contractor have been paid and satisfied. If the prime or general contractor for any reason fails to withhold 2 percent of the payments

due the nonresident subcontractor under their contract, such prime or general contractor shall become liable for any sales or use taxes due or owed this state by the nonresident subcontractor.

(f) Whenever a nonresident subcontractor holding a contract with a general or prime contractor has posted with the commissioner either a good and valid bond with a surety company authorized to do business in this state or legal securities in an amount of not less than $5,000.00 nor more than $50,000.00, as determined by the commissioner, conditioned that all sales and use taxes which may accrue to this state on account of the execution of contracts that meet the criteria established in paragraph (1) of subsection (e) of this Code section by nonresident subcontractors will be paid when due, no general or prime contractor shall withhold any sums due the nonresident subcontractor under their contract with respect to sales and use taxes.

(g) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the United States in the performance of contracts with the United States when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection.

(h)(1) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the State of Georgia, the University System of Georgia, or any county, municipality, local board of education, or other political subdivision of this state in the performance of contracts with such entities when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection. Any governmental entity which furnishes tangible personal property to a contractor for incorporation into a construction, renovation, or repair project conducted pursuant to a contract with such governmental entity shall issue advance written notice to such contractor of the amount of tax owed for such tangible personal property. The failure of the governmental entity to issue such advance written notice to the contractor of such tax liability shall render such governmental entity liable for such tax.

(2) This subsection shall not apply with respect to the use of tangible personal property owned by the United States.

(i) The commissioner is authorized to prescribe forms and promul-

gate rules and regulations deemed necessary in order to administer and effectuate this Code section.

**History.**

Ga. L. 1955, p. 389, §§ 1, 2; Code 1933, § 91A-4536, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 97; Ga. L. 1989, p. 62, § 9; Ga. L. 2000, p. 411, § 2; Ga. L. 2005, p. 498, § 1/HB 306; Ga. L. 2006, p. 59, § 2/HB 111; Ga. L. 2012, p. 774, § 1/HB 932.

**Law reviews.**

For survey article on recent developments in Georgia state and local taxation, see 34 Mercer L. Rev. 400 (1982).

For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

## JUDICIAL DECISIONS

**Taxation of materials used by building contractor.** — When building materials are purchased by a contractor to be used in the construction, improvement, or repair of the house of the party who engages the contractor, such materials are not bought for the purpose of resale within the meaning of Ga. L. 1951, p. 360 (see O.C.G.A. § 48-8-1 et seq.), so as to be exempt from sales tax. Troup Roofing Co. v. Dealers Supply Co., 91 Ga. App. 880, 87 S.E.2d 358, 1955 Ga. App. LEXIS 896 (1955).

Contractor was responsible to pay the sales tax related to material purchased for a contract with the United States Department of the Army and shipped to Afghanistan as the material was purchased and stored in Georgia before being shipped to Afghanistan and, thus, the contractor fell under the contractor-as-consumer rule. Inglett & Stubbs Int'l, Ltd. v. Riley, 339 Ga. App. 375, 791 S.E.2d 642, 2016 Ga. App. LEXIS 577 (2016), cert. denied, No. S17C0669, 2017 Ga. LEXIS 467 (Ga. May 30, 2017).

**Exclusive control of dock cranes.** — Dock cranes furnished by a port authority to a stevedore were under the "exclusive control" of the port authority within the meaning of O.C.G.A. § 48-8-63(c), when the port authority retained total operational control over the cranes. Southeastern Maritime Co. v. Collins, 258 Ga. 725, 374 S.E.2d 197, 1988 Ga. LEXIS 520 (1988).

**No exemption for agent of tax exempt entity.** — Taxpayer, a for-profit corporation based in Illinois, that made purchases as an agent for a hospital authority, a tax exempt entity, was liable for sales and use taxes under O.C.G.A. § 48-8-63(b) or (c). There was no derivative exemption based upon the taxpayer's relationship with the authority. Resourcing Servs. Atlanta, LLC v. Ga. Dep't of Revenue, 288 Ga. App. 532, 654 S.E.2d 649, 2007 Ga. App. LEXIS 1235 (2007), cert. denied, No. S08C0567, 2008 Ga. LEXIS 287 (Ga. Mar. 10, 2008).

## OPINIONS OF THE ATTORNEY GENERAL

**Taxation of raw materials from roadway used by contractor in constructing highway.** — When contractor on highway project uses raw materials from roadway in construction of highway, those materials are not subject to sales and use tax, but when the subcontractor processes materials for the contractor's use, such processed materials are subject to tax. 1962 Ga. Op. Att'y Gen. 559.

**Sales tax on materials must be paid by contractor even though state work is being done,** when contract is for services including materials. 1962 Ga. Op. Att'y Gen. 560.

**Use tax on property furnished to contractor by government.** — When a

government contractor under a fixed-price type maintenance, overhaul, and modification contract uses up and consumes government furnished property in performing the contract, although having previously purchased such property as agent for the government, the contractor becomes liable for the use tax based upon the fair market value of the property so used up and consumed. 1962 Ga. Op. Att'y Gen. 547.

**Materials purchased for construction of a church are subject to sales tax.** 1957 Ga. Op. Att'y Gen. 325.

**Construction with other bond provisions.** — Minimum requirements of the bond called for in former Code 1933, Ch. 92-4 do not meet the minimum requirements of this section, and a qualifying subcontractor should, therefore, post both bonds. 1960-61 Ga. Op. Att'y Gen. 545.

**RESEARCH REFERENCES**

**C.J.S.**
85 C.J.S., Taxation, § 2068.

**ALR.**
Computer software or printout transactions as subject to state sales or use tax, 36 A.L.R.5th 133.

## 48-8-64. Time for assessment.

The amount of taxes imposed by this article shall be assessed within the time periods specified in Code Section 48-2-49.

**History.**
Ga. L. 1951, p. 360, § 26; Ga. L. 1953, Jan.-Feb. Sess., p. 184, § 1; Ga. L. 1960, p. 941, §§ 1, 2; Ga. L. 1960, p. 1007, § 1; Code 1933, § 91A-4535, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 29; Ga. L. 1985, p. 1350, § 3.

**JUDICIAL DECISIONS**

**Period of limitations as to sums not required to be assessed.** — As to sums not required to be assessed, the period of limitations is seven years from the time when a fi. fa. could first have been issued. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

**Assessment of proper, accepted returns does not change limitation of actions as to them.** — Amounts due on returns properly made and accepted by the commissioner need not be assessed. The fact that the amounts are assessed does not change the limitation of action as to them. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

**Section inapplicable to returns properly made and accepted.** — Section has no application to the amounts due by a taxpayer ascertained by returns properly made and accepted by the commissioner, whether the amounts so shown to be due are sought to be collected by assessment or execution. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

**Statute of limitations does not extinguish debt itself.** — Statute of limitation contained in Ga. L. 1951, p. 360 (see O.C.G.A. § 48-8-1 et seq.) operates only to bar the remedy, not to extinguish the tax debt itself. Hawes v. Shuman, 125 Ga. App. 117, 186 S.E.2d 582, 1971 Ga. App. LEXIS 752 (1971).

**Payment of debt after period of limitations is expired.** — Person who pays a debt after the running of the statute of limitations has expired cannot sue to recover the debt back because of this fact. Hawes v. Shuman, 125 Ga. App. 117, 186 S.E.2d 582, 1971 Ga. App. LEXIS 752 (1971).

**Voluntary payment of illegal taxes cannot be recovered.** Hawes v.

Shuman, 125 Ga. App. 117, 186 S.E.2d 582, 1971 Ga. App. LEXIS 752 (1971).

**Comparable income tax provisions.** — Laws cited by former Code 1933, § 91A-4535 (see now O.C.G.A. § 48-8-64) were intended to serve the same function as to sales tax as acts cited in former Code 1933, § 92-3303 (see now O.C.G.A. § 48-7-82) were intended to serve as to the income tax. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, §§ 231, 234 et seq.

**C.J.S.**

85 C.J.S., Taxation, § 2107 et seq.

**ALR.**

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

## 48-8-65. Nonresident dealers; circumstances and events constituting engaging in business; appointment of Secretary of State as attorney in fact for service of process; venue; perfection of service of process.

(a) For the purpose of this Code section, the term "processes of law" means any notice, demand, proposed assessment, final assessment, direction, ruling, or order issued by the commissioner or other official of the department as provided by law in the administration of the tax laws of this state. When service in the hands of the Secretary of State or other action is required of the Secretary of State, it shall be sufficient compliance with this Code section if the service or other action is done by a deputy of the Secretary of State. When action is required of the commissioner, it shall be sufficient compliance with this Code section if the action is done by his deputy or attorney.

(b)(1) The fact of engaging in some act or activity within this state giving rise to a tax liability or obligation under this article shall constitute an appointment by the person engaging in the act or activity of the Secretary of State or his successor in office to be the true and lawful attorney in fact of the person upon whom may be served, while the act or activity is being engaged in or for as long as the statute of limitations prescribed for the tax liability or obligation remains open, any processes of law for the determination and enforcement of the tax liability or obligation and shall signify the agreement of the person engaging in the act or activity that any process of law served upon the Secretary of State shall be of the same legal force and validity as if served upon the person personally.

(2) For the purposes of this subsection, a person engages in some act or activity within this state giving rise to a tax liability or obligation when the person:

(A)(i) Performs or carries on any employment, trade, business, profession, or any other act or activity for financial gain or

profit within this state including, but not limited to, the rental of real or personal property located within this state or for use within this state and the sale, exchange, or other disposition of tangible or intangible property having a situs in this state;

(ii) By reason of any act or activity performed or carried on within this state comes within the definition of "dealer" as defined in Code Section 48-8-2; or

(iii) Otherwise operates personally or through partners, employees, agents, or otherwise in this state so as to incur any liability or obligation with respect to the payment or collection of taxes imposed by this article; and

(B)(i) Does not maintain a residence, known place of business, or known agent to receive service of process; or

(ii) If he has maintained in this state a known place of residence, place of business, or agent, the known place of residence, business, or agent has been discontinued.

(c) Venue in any action or proceeding in which the Secretary of State by reason of subsection (b) of this Code section is made an attorney in fact for service of process shall be in Fulton County. The service in such a case shall be perfected by leaving a copy of the process in the hands of the Secretary of State and by sending by registered or certified mail or statutory overnight delivery a copy of the process to the person if his address is known and by attaching to the original process an affidavit of compliance with this Code section. When it appears from the affidavit that a copy of process has been mailed by the commissioner to a known address, a second mailing shall not be required of the Secretary of State to the same address, but the Secretary of State shall keep the copy received by him on file as a source of information for any inquiry from the person for whom the Secretary of State is attorney in fact, concerning the person's tax liabilities and obligations incident to the person's taxable acts or activities within this state.

**History.**
Ga. L. 1957, p. 654, §§ 1-3; Code 1933, § 91A-4537, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1589, § 3.

**Editor's notes.**
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that this Act shall apply with respect to notices delivered on or after July 1, 2000.

**RESEARCH REFERENCES**

**C.J.S.**
72 C.J.S., Process, § 76.

## 48-8-66. Penalties for failure to file return or pay in full; exception for providential cause; penalty for filing false or fraudulent return.

When any dealer fails to make any return or to pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or $5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or $5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or $25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the commissioner in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the state of any tax due under this article, a penalty of 50 percent of the tax due shall be assessed.

**History.**
Ga. L. 1951, p. 360, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 196, § 1; Ga. L. 1964, p. 57, § 1; Ga. L. 1974, p. 409, § 1; Ga. L. 1975, p. 162, § 1; Code 1933, § 91A-4523, enacted by Ga. L. 1978, p. 309, § 2.

### JUDICIAL DECISIONS

**Taxpayer not liable when an innocent and ignorant participant in fraudulent scheme.** — Court is authorized to find that a taxpayer is not liable for penalties based on a taxpayer's participation in the filing of a false or fraudulent return, when the taxpayer unlawfully but innocently and ignorantly sought to settle a tax debt with a representative of the state for less than the amount due, and did not contemplate or participate in the filing of false and fraudulent returns on the taxpayer's behalf by the state agents, and did not conspire with the state agents in a scheme whereby the agents were to rob the state of the amount paid in an effort to settle the debt, and the taxpayer honestly believed the state agents had authority to make the settlement and the state would receive the amount paid in settlement. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

### OPINIONS OF THE ATTORNEY GENERAL

**It is mandatory that penalties be imposed** against a person failing to pay state sales taxes, notwithstanding the fact that a return was made. 1952-53 Ga. Op. Att'y Gen. 236.

### RESEARCH REFERENCES

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 220 et seq., 230, 238.

**C.J.S.**
85 C.J.S., Taxation, § 2133 et seq.

## 48-8-67. Distribution of certain unidentifiable sales and use tax proceeds; limitations; powers and duties of state revenue commissioner.

(a) As used in this Code section, the term "authorized recipient" means the state, special districts, counties, or municipalities, or any combination thereof, as determined by general law, applicable local constitutional amendment, or Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," which specifies the entities to whom the commissioner is directed to distribute the proceeds of sales and use taxes.

(b) When a dealer makes a return with insufficient information to identify proceeds as being attributable to retail sales, retail purchases, rentals, storage, use, or consumption of tangible personal property or services occurring within a particular special district or particular county, the commissioner shall make reasonable efforts to obtain the information needed to make a distribution of those proceeds. When the information cannot be obtained, the commissioner shall allocate unidentifiable proceeds among the authorized recipients in the same proportion as the proceeds of the sales and use taxes are otherwise allocated and distributed to the authorized recipients. Each allocation of unidentifiable proceeds shall be calculated by determining each authorized recipient's pro rata share of identifiable proceeds collected during the same period of time in which the unidentifiable proceeds to be allocated were collected. Each authorized recipient's pro rata share of the unidentifiable proceeds for each such collection period shall be the same as that authorized recipient's pro rata share of the identifiable proceeds for the same collection period.

(c) The initial allocation of such unidentifiable proceeds shall be distributed in the manner consistent with subsection (b) of this Code section before July 1, 1998, and such allocation shall include all amounts of such unidentifiable proceeds that have been collected subsequent to June 30, 1997, and prior to April 1, 1998, and which have not been distributed by the commissioner at the time of the initial distribution. Such initial distribution of unidentifiable proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient. In lieu of interest earned on such unidentifiable proceeds, an amount equivalent to 5 percent of the initial distribution amount shall be allocated and distributed by the commissioner in a similar manner, if funds are specifically appropriated for such purpose.

(d) Following the initial allocation under subsection (c) of this Code section, allocations of unidentifiable proceeds shall be made by the

commissioner according to a schedule provided for by rules and regulations of the commissioner but in no event less often than twice per year. Any such subsequent distribution of unidentified proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient.

(e) Information regarding proceeds distributed to authorized recipients pursuant to this Code section shall be identified by the commissioner, and such information shall be made available upon request.

(f) The department shall at the time of the first distribution of such unidentifiable proceeds provide each authorized recipient with written notice advising each authorized recipient that negotiation of the first distribution shall constitute a release and full accord and satisfaction for any and all refund requests or claims with respect to any sales and use tax collected prior to April 1, 1998, which the authorized recipient has or may have for recovery of any such tax funds. Negotiation of the first distribution shall also constitute full and complete acceptance of all the terms and conditions set forth in this Code section and shall bar any challenges to this Code section.

(g) The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient distribution of state and local sales and use tax proceeds in accordance with this Code section.

**History.**

Code 1981, § 48-8-67, enacted by Ga. L. 1998, p. 769, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2001, p. 984, § 18; Ga. L. 2005, p. 159, § 24/HB 488; Ga. L. 2009, p. 723, § 1/HB 181; Ga. L. 2011, p. 47, § 2/HB 322.

**Editor's notes.**

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

**Law reviews.**

For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

**JUDICIAL DECISIONS**

**Constitutionality.** — Court would reject the contention that O.C.G.A. § 48-8-67 is unconstitutional, either as a retrospective application of law which alters vested rights, or as a breach of an implied contract between DeKalb County and the State of Georgia. DeKalb County v. State, 270 Ga. 776, 512 S.E.2d 284, 1999 Ga. LEXIS 161 (1999).

## 48-8-68. Relief from liability in certain circumstances for failure to collect tax at new rate.

If the sales tax rate changes with less than 30 days between the enactment of the rate change and the effective date of such rate change,

sellers shall be relieved of liability for failing to collect tax at the new rate if:

(1) The seller collected tax at the immediately preceding effective rate; and

(2) The seller's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate.

The provisions of this Code section do not apply if the commissioner establishes that the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate.

**History.**
Code 1981, § 48-8-68, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.

## 48-8-69. Purchases from printed catalogs; local jurisdiction boundary changes.

(a) Any local sales tax rate changes made pursuant to this chapter shall apply to purchases from printed catalogues wherein the purchaser computed the tax based upon local tax rates published in the catalogue only on the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

(b) For sales and use tax purposes only, local jurisdiction boundary changes are effective only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers.

**History.**
Code 1981, § 48-8-69, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.

**Law reviews.**
For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

## 48-8-70. Determination of ZIP Code designation applicable to particular purchases; rebuttable presumption of seller's due diligence.

If a nine-digit ZIP Code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit ZIP Code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit ZIP Code area. For the purposes of this Code section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit ZIP Code designation by utilizing software approved by the Streamlined

Sales Tax Governing Board that makes this designation from the street address and the five-digit ZIP Code applicable to a purchase.

**History.**
Code 1981, § 48-8-70, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.

### 48-8-71. Immunity from liability for reliance upon erroneous data provided by the state on tax rates, local boundaries, and taxing jurisdiction assignments.

Sellers and certified service providers shall not be liable for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state on state and local tax rates, local boundaries, and taxing jurisdiction assignments.

**History.**
Code 1981, § 48-8-71, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.

### 48-8-72. Over-collected sales or use tax.

(a) A cause of action against a seller for over-collected sales or use taxes does not accrue until a purchaser has provided written notice to the seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

(b) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of such sales or use taxes, the seller:

(1) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(2) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

**History.**
Code 1981, § 48-8-72, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.

### 48-8-73. Immunity from liability for reliance upon erroneous taxability matrix data provided by the state.

A seller and certified service provider are relieved of liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state in the taxability matrix.

**History.**
Code 1981, § 48-8-73, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.

### 48-8-74. Effective date for sales tax rate change.

The effective date for a sales tax rate change for services covering a period starting before and ending after the statutory effective date shall be as follows:

(1) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

**History.**
Code 1981, § 48-8-74, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.

### 48-8-75. Purchaser's immunity from liability for failure to pay correct sales tax under certain circumstances.

(a) A purchaser shall be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax if:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state; or

(4) A purchaser using data bases provided by this state relied on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments.

(b) A purchaser shall be relieved from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (a) of this Code section provided that, with respect to reliance on the taxability matrix completed by this state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price," or "excluded from sales price" or "included in the definition" or "excluded from the definition."

**History.**
Code 1981, § 48-8-75, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2014, p. 866, § 48/SB 340.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2012, "in" was inserted following "described" in subsection (b).

## 48-8-76. Compliance with terms of Streamlined Sales and Use Tax Agreement; relief from certain obligations.

(a) A seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Streamlined Sales and Use Tax Agreement is relieved from the obligation to remit uncollected sales tax provided the seller was not so registered in this state in the twelve-month period preceding the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(b) The relief provided in subsection (a) of this Code section precludes an assessment for uncollected or unpaid sales together with penalty or interest for sales made during the period the seller was not registered in this state, provided that the registration occurs within 12 months of the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(c) The relief provided in subsection (a) of this Code section shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

(d) The relief provided in subsection (a) of this Code section shall not be available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(e) The relief provided in subsection (a) of this Code section is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations applicable to asserting a tax liability is tolled during this 36 month period.

(f) The relief provided in subsection (a) of this Code section is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

**History.**
Code 1981, § 48-8-76, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.

**48-8-77. Sourcing; definitions; sales of advertising and promotional direct mail and other direct mail; sales of telecommunications service.**

(a) This Code section shall not be construed to impose sales and use tax on any tangible personal property or service which was not subject to such tax prior to January 1, 2011.

(b)(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) When subparagraph (A) or (B) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraph (A), (B), or (C) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When subparagraph (A), (B), (C), or (D) of this paragraph does not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in paragraph (3) or (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in paragraph (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection, notwithstanding the exclusion of lease or rental in paragraph (1) of this subsection.

As used in this paragraph, the term "transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(B) Trucks and truck-tractors with a Gross Vehicle Weight Rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(C) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(D) Containers designed for use on and component parts attached or secured on the items set forth in subparagraph (A), (B), or (C) of this paragraph.

(c) For the purposes of paragraph (1) of subsection (b) of this Code section, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" shall not include possession by a shipping company on behalf of the purchaser.

(d)(1) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of advertising and promotional direct mail:

(A) A purchaser of advertising and promotional direct mail may provide the seller with either:

(i) A direct pay permit;

(ii) An agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; or

(iii) Information showing the jurisdictions to which the

advertising and promotional direct mail is to be delivered to recipients;

(B) If the purchaser provides the permit, certificate, or statement referred to in division (i) or (ii) of subparagraph (A) of this paragraph, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due;

(C) If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser; and

(D) If the purchaser does not provide the seller with any of the items listed in subparagraph (A) of this paragraph, the sale shall be sourced according to Section 310.A.5 of the Streamlined Sales and Use Tax Agreement. The state to which the advertising and promotional direct mail is delivered may disallow credit for tax paid on sales sourced under this paragraph.

(2) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of other direct mail:

(A) Except as otherwise provided in this paragraph, sales of other direct mail are sourced in accordance with subparagraph (b)(1)(C) of this Code section;

(B) A purchaser of other direct mail may provide the seller with either:

(i) A direct pay permit; or

(ii) An agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; and

(C) If the purchaser provides the permit, certificate, or statement referred to in paragraph (1) or (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to

collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding paragraph (1) of this subsection, the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

(3) For purposes of this subsection, the term:

(A) "Advertising and promotional direct mail" means:

(i) Printed material that meets the definition of direct mail, under Code Section 48-8-2;

(ii) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this division, the term "product" means tangible personal property, a product transferred electronically, or a service.

(B) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes, but is not limited to:

(i) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(iii) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational messages.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(4)(A)(i) This paragraph shall apply to a transaction characterized under this chapter as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of direct mail.

(ii) This paragraph shall not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.

(B) If a transaction is a bundled transaction that includes advertising and promotional direct mail, this subsection shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

(C) Nothing in this paragraph shall limit any purchaser's:

(i) Obligation for sales or use tax to any state to which the direct mail is delivered;

(ii) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(iii) Right to a refund of sales or use taxes overpaid to any jurisdiction.

(D) This subsection applies for purposes of uniformly sourcing direct mail transactions and does not otherwise impose requirements regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

(e)(1) Except for the defined telecommunications service in paragraph (3) of this subsection, the sale of telecommunications service sold on a call-by-call basis shall be sourced to:

(A) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications service in paragraph (3) of this subsection, a sale of telecommunications service sold on a basis other than a call-by-call basis shall be sourced to the customer's place of primary use.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with subsection (b) of this Code section; provided, however, that, in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of this Code section shall include as an option the location associated with the mobile telephone number.

(4) The sale of an ancillary service is sourced to the customer's place of primary use.

**History.** Code 1981, § 48-8-77, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2011, p. 38, § 8/HB 168; Ga. L. 2013, p. 141,

§ 48/HB 79; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2024, p. 1052, § 5(49)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, inserted "the term" following "this paragraph," in paragraph (b)(4).

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (e)(3).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2012, "paragraph (1)" was substituted for "paragraph (l)" in the last sentence of subparagraph (d)(2)(C).

Pursuant to Code Section 28-9-5, in 2013, "promotional" was substituted for "promotion" near the beginning of subparagraph (d)(4)(B).

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

## 48-8-77.1. Certification of review software by department; relief from liability.

(a) For purposes of this Code section, the definitions as provided in Code Section 48-8-161 shall apply.

(b) The department shall review software submitted to the Streamlined Sales Tax Governing Board for certification as a Certified Automated System under Section 501 of the Streamlined Sales and Use Tax Agreement. Such review shall include a review to determine that the program accurately reflects the taxability of the product categories included in the program. Upon approval by the department, the state will certify its acceptance of the software to the Streamlined Sales Tax Governing Board.

(c) The department shall relieve certified service providers and model 2 sellers from liability to the state and local jurisdictions in the state for not collecting sales or use taxes resulting from the certified service provider or model 2 seller relying on the certification provided by the state.

(d) The department shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under Code Section 48-8-38.

(e) If the department determines that an item or transaction is incorrectly classified as to the item or transaction's taxability, the department shall notify the certified service providers or model 2 sellers of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the department of the determination.

**History.**
Code 1981, § 48-8-77.1, enacted by Ga. L. 2011, p. 38, § 9/HB 168.

## 48-8-78. Appropriation for freight and logistic projects.

(a) For purposes of this Code section, the term "freight and logistics projects" means any project for capital construction and maintenance on freight rail assets owned or leased by a common carrier regulated by the United States Surface Transportation Board and found to be an expenditure of ample consideration for a substantial public benefit pursuant to subsection (f) of Code Section 32-2-41.3.

(b) It is the intention of the General Assembly, subject to appropriations, that the funds collected under this article upon the retail purchase, retail sale, rental, storage, use, or consumption of fuel to a contract or common carrier regulated by the United States Surface Transportation Board for use exclusively in the operation of locomotives by such carrier shall be appropriated to the Department of Transportation for use exclusively on freight and logistics projects located on or connected to publicly owned roads. Such appropriation shall be allocated for freight and logistics projects, including administration costs, consistent with the Georgia Freight Railroad Program as established by Code Section 32-2-41.3. Such allocation shall take into consideration the total track miles operated within the state by a common carrier and any other factors as determined appropriate by the commissioner.

(c) If at any time the funds collected as described in subsection (b) of this Code section are ever not appropriated for two consecutive or nonconsecutive fiscal years to freight and logistics projects, as determined by the House Budget and Research Office and the Senate Budget and Evaluation Office, then the tax levied and imposed upon the retail purchase, retail sale, storage, use, or consumption of fuel to a contract or common carrier regulated by the United States Surface Transportation Board for the exclusive use in the operation of locomotives shall be reduced by 50 percent. Upon the conclusion of a third fiscal year in which an amount is not so appropriated, this Code section shall stand repealed and reserved and such sales and use tax shall cease to be collected, on the date the appropriations Act for such fiscal year becomes effective. Such budget offices shall certify any such lack of appropriation to the Code Revision Commission for purposes of updating the Code in accordance with this subsection.

(d) The Department of Transportation shall prepare, by February 1 of each year, an accounting of the funds received pursuant to this Code section and expended. The report shall be made available to the Senate Transportation Committee, the House Committee on Transportation, and to members of the public upon request.

**History.**

Code 1981, § 48-8-78, enacted by Ga. L. 2021, p. 480, § 7/HB 588; Ga. L. 2024, p. 752, § 6/HB 516, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, substituted ", including administration costs, consistent with the Georgia Freight Railroad Program as established by Code Section 32-2-41.3. Such allocation shall take into consideration the" for "based upon a formula developed by the commissioner of transportation which shall include consideration of" in subsection (b).

**Editor's notes.**

Pursuant to the terms of subsection (c), funds have been appropriated in 2023 for FY 2024 and in 2024 for FY 2025.

**Law reviews.**

For annual survey on commercial transportation, see 73 Mercer L. Rev. 47 (2021).

## ARTICLE 2

## JOINT COUNTY AND MUNICIPAL SALES AND USE TAX (LOST)

**Law reviews.**

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For note, "The Local Option Sales Tax: A General Overview," see 31 Mercer L. Rev. 313 (1979).

For article surveying Georgia cases in the area of local government law from June 1979 through May 1980, see 32 Mercer L. Rev. 137 (1980).

For article surveying Georgia cases in the area of state and local taxation from June 1979 through May 1980, see 32 Mercer L. Rev. 203 (1980).

For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

### JUDICIAL DECISIONS

**Tax authorized by Ga. L. 1975, p. 984 is constitutional** whether viewed as a joint county-city tax which the General Assembly could and did authorize in the exercise of the state's inherent power to tax, or viewed as a special district tax authorized by Ga. Const. 1976, Art. IX, Sec. IV, Para. II (see now Ga. Const. 1983, Art. IX, Sec. II, Para. IV). Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193, 1980 Ga. LEXIS 760 (1980).

**Ga. L. 1975, p. 984 does not violate U.S. Const.,** amend. 14 or Ga. Const. 1976, Art. I, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193, 1980 Ga. LEXIS 760 (1980).

**Article does not violate the uniformity provision** in Ga. Const. 1976, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193, 1980 Ga. LEXIS 760 (1980).

**Article does not impermissibly delegate legislative authority to the localities.** Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193, 1980 Ga. LEXIS 760 (1980).

**Purpose.** — Purpose of Ga. L. 1975, p. 984 is to provide a measure of ad valorem tax relief both to county and city taxpayers. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315, 1979 Ga. LEXIS 908 (1979), superseded by statute as stated in Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**This is a county tax, and not a state tax.** City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315, 1979 Ga. LEXIS 908 (1979), superseded by statute as stated in Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**Constitutionality.** — Ga. L. 1975, p. 984 is unconstitutional in the statute's entirety and void. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315, 1979 Ga. LEXIS 908 (1979), superseded by statute as stated in Nielubowicz v.

Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**Purposes for which county may tax.** — Purposes for which a county may tax are listed in Ga. Const. 1976, Art. IX, Sec. IV, Para. II and Art. IX, Sec. V, Para. II (see now Ga. Const. 1983, Art. IX, Sec. II and Art. IX, Sec. IV), and taxation by counties for the purpose of sharing the resulting revenue with cities does not appear in that list. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315, 1979 Ga. LEXIS 908 (1979), superseded by statute as stated in Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**OPINIONS OF THE ATTORNEY GENERAL**

**Contractor who is performing work or services for the state** is not exempt under Ga. L. 1979, p. 401, § 20 (see now O.C.G.A. § 50-17-29) from local sales and use tax imposed pursuant to Ga. L. 1978, p. 309. 1980 Op. Att'y Gen. No. 80-76.

**Temporary loans authorized based upon revenues received.** — Revenues received by cities and counties collected under the provisions of O.C.G.A. § 48-8-80 et seq. may be included as part of the "total gross income from taxes collected in the last preceding year" for purposes of Ga. Const. 1983, Art. IX, Sec. V, Para. V (temporary loans). 1988 Op. Att'y Gen. No. U88-19.

**RESEARCH REFERENCES**

**ALR.**

Validity of so-called "sales tax," 110 A.L.R. 1485; 117 A.L.R. 846; 128 A.L.R. 893.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 A.L.R. 276; 171 A.L.R. 697.

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 A.L.R.2d 811.

## 48-8-80. "Qualified municipality" defined.

As used in this article, the term "qualified municipality" means only those incorporated municipalities which impose a tax other than the tax authorized by this article and which provide at least three of the following services:

(1) Water;

(2) Sewage;

(3) Garbage collection;

(4) Police protection;

(5) Fire protection; or

(6) Library.

**History.**

Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4609, enacted by Ga. L. 1979, p. 446, § 2.

**Law reviews.**
For survey article on local government law for the period from June 1, 2002, to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

**RESEARCH REFERENCES**

**C.J.S.**
62 C.J.S., Municipal Corporations, § 1 et seq.

## 48-8-81. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

**History.**
Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 9; Code 1933, § 91A-4610, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1429, § 1; Ga. L. 1979, p. 5, § 98; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4601, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64.

**JUDICIAL DECISIONS**

**Special district created by the Local Option Sales Tax Act, O.C.G.A. § 48-8-80 et seq., is the entire county.**
Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

## 48-8-82. Authority to impose joint sales and use tax; rate of tax.

(a) When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent, except as provided in subsection (b) of this Code section. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to:

(1) The sale of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2;

(2) The sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3; and

(3) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, to the extent allowed pursuant to Code Section 48-8-3.5.

(b) On or after July 1, 2015, such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon; provided, however, that, in any consolidated government levying a joint sales and use tax at 2 percent pursuant to Code Section 48-8-96, on or after July 1, 2015, any such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 2 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

**History.**

Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, §§ 1, 2; Ga. L. 1989, p. 62, § 10; Ga. L. 1991, p. 87, § 3; Ga. L. 1996, p. 1, § 2; Ga. L. 2007, p. 309, § 4/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 19/HB 1221; Ga. L. 2015, p. 236, § 5-8/HB 170; Ga. L. 2015, p. 1443, § 1/HB 106; Ga. L. 2018, Ex. Sess., p. ES7, § 3-5/HB 5EX; Ga. L. 2024, p. 1052, § 5(50)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2015, the amendment of this Code section by Ga. L. 2015, p. 236, § 5-8/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1443, § 1/HB 106, due to irreconcilable conflict.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For note on the 1991 amendment of this Code section, see 8 Georgia St. U.L. Rev. 190 (1992).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## JUDICIAL DECISIONS

**Subjects of taxation.** — Local option tax is restricted to the same types of items and transactions as defined in the state sales and use tax article and is not limited to those instances in which the state tax must actually be paid. C.W. Matthews

Contracting Co. v. Collins, 265 Ga. 448, 457 S.E.2d 171, 1995 Ga. LEXIS 369 (1995).

When a contractor purchased equipment in a particular county and paid the state sales and use tax there, and later used the equipment in other counties, assessment of a local option tax on the latter use was authorized, even though such use created no state tax obligation. C.W. Matthews Contracting Co. v. Collins, 265 Ga. 448, 457 S.E.2d 171, 1995 Ga. LEXIS 369 (1995).

**RESEARCH REFERENCES**

**Am. Jur. 2d.**

67B Am. Jur. 2d, Sales and Use Taxes, § 4.

**C.J.S.**

20 C.J.S., Counties, § 369 et seq. 64A C.J.S., Municipal Corporations, § 2225 et seq. 85 C.J.S., Taxation, § 2069.

## 48-8-82.1. [Repealed] One-year increase in tax rate.

**History.**

Ga. L. 1988, p. 543, § 1; repealed by Ga. L. 1989, p. 504, § 1, effective April 3, 1989.

**Editor's notes.**

Ga. L. 1989, p. 504, § 2, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. If on such effective date the rate of taxation under Article 2 of Chapter 8 of Title 48 has been increased from 1 percent to 2 percent under the authority of former Code Section 48-8-82.1, or if on such date all proceedings have been completed so as to authorize such an increase in the rate of taxation in any special district, then in such special district such increased rate of taxation shall be effective for the period of time specified by former Code Section 48-8-82.1."

## 48-8-83. Special districts where joint tax to be levied.

Effective January 1, 1980, the joint tax provided in Code Section 48-8-82 shall be levied in each special district in which prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p. 1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district.

**History.**

Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4603, enacted by Ga. L. 1979, p. 446, § 2.

## 48-8-83.1. Levying and collection of joint tax to be continued.

Notwithstanding any distribution certificate filing deadline otherwise required under Code Section 48-8-89, for each special district in which the tax provided for by Code Section 48-8-82 was levied and collected immediately prior to June 4, 2010, such tax shall continue to

be levied and collected; and the most recent distribution certificate which was executed on behalf of the county and on behalf of one or more qualified municipalities within the special district whose combined population within the special district is at least one-half of the combined total population of all qualified municipalities located within the special district and which was filed with the commissioner between June 4, 2010, and October 18, 2013, shall be valid and shall continue in force and effect until superseded by a subsequent distribution certificate properly executed and filed with the commissioner in accordance with Code Section 48-8-89 or Code Section 48-8-89.1, as applicable, or until such tax is subsequently discontinued and terminated pursuant to subsection (c) of Code Section 48-8-89 or pursuant to a referendum under Code Section 48-8-92.

**History.**
Code 1981, § 48-8-83.1, enacted by Ga. L. 2014, p. 840, § 1/HB 719.

## 48-8-84. Resolution by governing authorities of counties and municipalities in special districts imposing tax; time.

If the imposition of the tax provided for in Code Section 48-8-82 is to be levied pursuant to Code Section 48-8-83, the governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution on or prior to January 1, 1980, imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special district.

**History.**
Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4604, enacted by Ga. L. 1979, p. 446, § 2.

### RESEARCH REFERENCES

**C.J.S.**
20 C.J.S., Counties, § 145 et seq.

## 48-8-85. Referendum election for imposition of tax; procedures; subsequent elections; expenses.

(a) Whenever the governing authority of any county or qualified municipality located wholly or partially within a special district in which a joint county and municipal sales and use tax was not imposed on January 1, 1980, wishes to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is

conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the special district for approval or rejection. The election superintendent shall set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall a retail sales and use tax of 1 percent be levied within the special district within _____ County?" |
| ( ) NO | |

(b) All persons desiring to vote in favor of levying the tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this article; otherwise, the tax may not be levied, and the question of the imposition of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be his further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

**History.**
Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 13; Code 1933, § 91A-4603, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1460, § 1; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4605, enacted by Ga. L. 1979, p. 446, § 2.

**RESEARCH REFERENCES**

**C.J.S.**
20 C.J.S., Counties, § 369 et seq. 64A C.J.S., Municipal Corporations, § 2234 et seq.

## 48-8-86. Adoption of resolution imposing tax by governing authorities of county and municipality; effective dates and applicability; notice to commissioner.

If the imposition of the tax provided in Code Section 48-8-82 is approved in a referendum election as provided by Code Section 48-8-85, the governing authority of the county whose geographical boundary is

conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution during the first 30 days following the certification of the result of the election imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

**History.**
Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 1; Code 1933, § 91A-4604, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4606, enacted by Ga. L. 1979, p. 446, § 2.

**OPINIONS OF THE ATTORNEY GENERAL**

**Approval date referred to in Ga. L. 1975, p. 984 is the date the resolution approving the tax is adopted.** 1977 Op. Att'y Gen. No. U77-59.

**RESEARCH REFERENCES**

**C.J.S.**
64A C.J.S., Municipal Corporations, §§ 2281 et seq., 2398 et seq.

## 48-8-87. Administration and collection of tax by commissioner; applicability of Article 1 of this chapter; proceeds owed to the state; dealer compensation.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent

at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**

Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4605, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4607, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1992, p. 815, § 2; Ga. L. 2007, p. 309, § 5/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 20/HB 1221.

**JUDICIAL DECISIONS**

**County action against companies prohibited.** — Provision that taxes are to be exclusively administered and collected by the commissioner precluded an action by a county against companies for damages resulting from the improper remittance of local sales taxes. Cellular One v. Emanuel County, 227 Ga. App. 197, 489 S.E.2d 50, 1997 Ga. App. LEXIS 831 (1997).

Although cities and counties were authorized under O.C.G.A. § 48-8-87 to impose sales and use taxes, cities and counties had no standing to bring claims against online travel companies for their alleged failure to pay those taxes because the taxes were exclusively administered and collected by the state revenue commissioner. The commissioner was not required to involuntarily join the action under Fed. R. Civ. P. 19(a) because the action was vested solely in the commissioner and the commissioner alleged that any suit was premature in that the Department of Revenue had not determined that a liability existed; further, the cities and counties failed to establish subject matter jurisdiction to support their claim that the commissioner, or the cities and counties in the commissioner's stead, could bring an action for the allegedly unremitted sales and use taxes when the action would deprive the court of diversity jurisdiction. City of Rome v. Hotels.com, LP, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006), dismissed, 555 F. Supp. 3d 1314, 2021 U.S. Dist. LEXIS 250106 (N.D. Ga. 2021).

**RESEARCH REFERENCES**

**C.J.S.**

20 C.J.S., Counties, § 382 et seq. 64A C.J.S., Municipal Corporations, § 2430 et seq.

**ALR.**

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 A.L.R.2d 811.

## 48-8-88. Required information on sales tax returns; purpose.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

**History.**
Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4616, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4614, enacted by Ga. L. 1979, p. 446, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 205.

## 48-8-89. Distribution and use of proceeds; negotiated certificate of distribution for political subdivisions; absent municipalities; filing of certificates; renegotiations.

(a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the governing authority of each qualified municipality within the special district and to the governing authority of the county whose geographical boundary is conterminous with that of the special district for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(b) It is the intent of the General Assembly that no agreement as to the distribution of the proceeds of the tax shall enrich any political subdivision beyond a sum which in the absence of the distribution would be raised through other sources of revenue. The distribution shall be in accordance with a certificate which shall be executed in behalf of each respective governing authority, except as otherwise provided in this subsection, and which shall encompass all respective political subdivisions, shall be filed with the commissioner, and shall specify by percentage that portion of the remaining proceeds of the tax available for distribution which each such political subdivision shall receive. On or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the following criteria:

(1) The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic

events and the inherent value to a community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county;

(2) The service delivery responsibilities of each political subdivision to the resident population of the subdivision;

(3) The existing service delivery responsibility of each political subdivision;

(4) The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt;

(5) The point of sale and use which generates the tax to be apportioned;

(6) The existence of intergovernmental agreements among and between the political subdivisions;

(7) The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision; and

(8) Any coordinated plan of county and municipal service delivery and financing.

Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. No certificate may contain a total of specified percentages in excess of 100 percent. The certificate shall be filed with the commissioner by March 1, 1980, for those special districts in which the tax authorized by this article is being levied on January 1, 1980. For all other special districts in which the tax shall be imposed subsequent to January 1, 1980, the certificate shall be filed with the commissioner within 60 days after the tax is imposed within the district. The commissioner shall continue to distrib-

ute the proceeds of the tax as otherwise provided in this Code section until the first day of the next calendar year following the month in which the commissioner receives a certificate as provided in this Code section, which certificate shall provide other percentages upon which the commissioner shall make the distribution to the political subdivisions entitled to the proceeds of the tax. At such time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with the directions of the certificate.

(c) If the certificate provided for in subsection (b) of this Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on the first day of the second calendar month following the month in which the tax was initially imposed and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until he receives a certificate in behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the state's general fund.

(d)(1) A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a new distribution certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a new distribution certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority on behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the commissioner and all eligible political subdivisions within the special district.

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4) Reserved.

(5) If a new distribution certificate as provided for in this Code section is not received by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall transfer the proceeds to the state's general fund.

(6) If the commissioner receives a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was executed by the parties or the judge or the first day of the second calendar month following the month such certificate was executed by the parties or the judge, whichever is sooner.

(7) Costs of any conflict resolution under paragraph (3) or (4) of

this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the tax as reflected by the new distribution certificate.

(8) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment.

**History.**

Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 2; Code 1933, § 91A-4606, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4608, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64; Ga. L. 1994, p. 1816, §§ 1, 2; Ga. L. 2010, p. 958, § 1/HB 991; Ga. L. 2014, p. 840, § 2/HB 719; Ga. L. 2014, p. 866, § 48/SB 340.

**Law reviews.**

For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

**JUDICIAL DECISIONS**

**All qualified municipalities share proportionally in sales and use tax proceeds.** — General Assembly intended that all qualified municipalities share proportionally in the proceeds of the sales and use tax approved and paid for by the municipalities' citizens. City of Winder v. Collins, 259 Ga. 570, 385 S.E.2d 71, 1989 Ga. LEXIS 417 (1989).

**There is no constitutional requirement that local option sales tax revenues be used for educational purposes.** Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983).

**Only the portion of a city's population** that resides within the special tax district is included when calculating a municipality's pro rata share of the local option sales tax proceeds in that district. City of Atlanta v. Collins, 262 Ga. 261, 417 S.E.2d 141, 1992 Ga. LEXIS 437 (1992).

**Use of local option sales tax proceeds to reduce county-wide millage rate.** — When a county creates a special service tax district which consists of the unincorporated area of the county, and it levies a special service district tax on property located therein, it may use its proceeds from the local option sales tax (O.C.G.A. § 48-8-80 et seq.) to reduce the millage rate of the general maintenance and operation tax which is levied county-wide (i.e., is levied on property located in municipalities in the county and in the unincorporated area), and not just to reduce the millage rate in the special service tax district. Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**Distribution plan could not be imposed.** — When one city within a special tax district chose to be treated as an absent municipality, neither the revenue department nor the trial court had authority to impose a distribution plan on the county and cities. Jackson v. City of College Park, 230 Ga. App. 487, 496 S.E.2d 777, 1998 Ga. App. LEXIS 197 (1998).

**Effective date for a new distribution formula for local option sales tax,** when a minority municipality requests treatment as an absent municipal-

ity, is January 1 of the next calendar year, whether the county's political subdivisions file a distribution certificate or the commissioner institutes a new distribution formula that includes an absent municipality. City of Roswell v. City of Atlanta, 261 Ga. 657, 410 S.E.2d 28, 1991 Ga. LEXIS 852 (1991).

**Effective date for a replacement certificate** shall be January 1 following the month when the governing authorities file a distribution certificate with the commissioner or the commissioner institutes a new distribution formula after notifying the county that a minority municipality elects absent municipality status. City of Roswell v. City of Atlanta, 261 Ga. 657, 410 S.E.2d 28, 1991 Ga. LEXIS 852 (1991).

**OPINIONS OF THE ATTORNEY GENERAL**

**Neither initial nor replacement certificates expire, whether or not the certificates carry expiration dates,** assuming, that the tax itself has not been discontinued pursuant to Ga. L. 1979, p. 446, § 2 (see now O.C.G.A. § 48-8-80 et seq.). 1980 Op. Att'y Gen. No. 80-46 (issued prior to the 1994 addition of subsection (d), which provides for expiration of distribution certificates).

**Replacement certificates may be filed at any time after the filing of an initial certificate,** and replacement certificates always take effect on the January 1 next succeeding the date the replacement certificate is filed. 1980 Op. Att'y Gen. No. 80-46 (issued prior to the 1994 addition of subsection (d), which provides for expiration of distribution certificates).

**Percentage of local option sales and use tax to absent municipality.** — Absent municipality cannot be forced under O.C.G.A. § 48-8-89 to accept a smaller percentage of the local option sales and use tax proceeds distributed to all qualified municipalities in the county than the percentage the absent municipality's population is of the total population of all such qualified municipalities, regardless of whether that distribution is pursuant to a negotiated certificate or is based instead on an order by a superior court judge when the necessary parties are unable to agree. 2012 Op. Att'y Gen. No. U12-1.

**RESEARCH REFERENCES**

**C.J.S.**
20 C.J.S., Counties, § 382 et seq.

## 48-8-89.1. Procedure for certifying additional qualified municipalities; issuance of new distribution certificate; cessation of authority to collect tax.

(a) If there exists within any special district in which the tax authorized by this article is imposed a qualified municipality which was not a qualified municipality on the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89, such qualified municipality may request the commissioner to give notice of the qualified municipality's existence as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he determines that the requesting entity is not a qualified municipality, within 30 days give written notice of the qualified municipality's existence to the county which is conterminous with the special district in which the qualified municipality is located and to each other

qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality, the effective date of the notice, and a statement of the provisions of this Code section.

(b) Within 60 days after the effective date of the notice referred to in subsection (a) of this Code section, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. In the event such a petition is filed, a new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district shall be subject to the same requirements applicable to qualified municipalities located wholly or partially within the special district under paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall specify by percentage what portion of the proceeds of the tax available for distribution within the special district shall be received by the county in which the special district is located and by each qualified municipality located wholly or partially within the special district, including the new qualified municipality. No distribution certificate shall contain a total of specified percentages in excess of 100 percent.

(c) Except as otherwise provided in this subsection, a distribution certificate required by this Code section must be executed by the governing authorities of the county within which the special district is located and each qualified municipality located wholly or partially within the special district, including the new qualified municipality. Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed.

(d) If a new certificate is not filed for any special district as required by this Code section, the authority to impose the tax authorized by Code Section 48-8-82 within that special district shall cease on the first day of January of the year following the year in which the required distribution certificate could last have been timely filed. In any special district in which the authority to impose the tax is terminated pursuant to this subsection, the tax may thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86.

(e) If a new certificate is filed as required by this Code section, the commissioner shall begin to distribute the proceeds as specified in the new certificate on the first day of January of the first calendar year which begins more than 60 days after the effective date of the notice referred to in subsection (b) of this Code section. The commissioner shall continue to distribute the proceeds of the tax according to the new certificate until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

(f)(1) As used in this subsection, the term:

(A) "New qualified municipality" means a municipal corporation which has been chartered by local Act since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of the new municipality from the unincorporated area, constitutes less than 20 percent of the population of the county according to the most recent decennial census.

(B) "Newly expanded qualified municipality" means a municipal corporation which since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 has increased its population by more than 15 percent through one or more annexations and is located in the same county as a new qualified municipality.

(2) Notwithstanding any other provision of this Code section, if there exists within any special district in which the tax authorized by this article is imposed a new qualified municipality or a newly expanded qualified municipality or both, such qualified municipality or municipalities may request the commissioner to give notice of the qualified municipality's or municipalities' existence and status as a new qualified municipality or newly expanded qualified municipality as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he or she determines that the requesting entity is not a new qualified municipality or newly expanded qualified

municipality, within 30 days give written notice of the qualified municipality's existence and status to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality or newly expanded qualified municipality, the effective date of the notice, and a statement of the provisions of this subsection.

(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of this subsection, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality or newly expanded qualified municipality located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall address only the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate and shall specify as a percentage of the total proceeds of the tax what portion of the proceeds shall be received by the county in which the special district is located and by the new qualified municipality and newly expanded qualified municipality located wholly or partially within the special district, if any.

(4) Except as otherwise provided in this paragraph, a distribution certificate required by this subsection must be executed by the governing authorities of the county within which the special district is located, each new qualified municipality located wholly or partially within the special district, and each newly expanded qualified municipality, if any. If a new certificate is not filed within 60 days as required by paragraph (3) of this subsection, the commissioner shall distribute the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate such that:

(A) The new qualified municipality receives an allocation equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89; and

(B) Any newly expanded qualified municipality receives a total allocation of tax proceeds (including any amount previously

allocated) equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89.

Every other qualified municipality shall continue to receive the share provided by the existing distribution certificate or otherwise provided by law. The county shall receive the remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89. For the purpose of determining the population of qualified municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. For the purpose of determining population under this Code section, all calculations of population shall be according to the most recent decennial census, including the census data from such census applicable to any annexed territory.

(5) The commissioner shall begin to distribute the proceeds as specified in the newly filed certificate or, if such a certificate is not filed, as specified in paragraph (4) of this subsection on the first day of the first month which begins more than 60 days after the effective date of the notice referred to in paragraph (2) of this subsection. The commissioner shall continue to distribute the proceeds of the tax according to the existing certificate and the certificate applicable to the county and the new qualified municipality or, if such a certificate is not filed, as specified in paragraph (4) of this subsection until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

**History.**

Code 1981, § 48-8-89.1, enacted by Ga. L. 1983, p. 1461, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 2005, p. 185, § 4/HB 36; Ga. L. 2006, p. 901, § 1/HB 1403; Ga. L. 2010, p. 958, §§ 2, 3/HB 991; Ga. L. 2013, p. 141, § 48/HB 79.

**Editor's notes.**

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that this Act "shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session."

**JUDICIAL DECISIONS**

**All qualified municipalities share proportionally in sales and use tax proceeds.** — General Assembly intended that all qualified municipalities share proportionally in the proceeds of the sales and use tax approved and paid for by the municipalities' citizens. City of Winder v. Collins, 259 Ga. 570, 385 S.E.2d 71, 1989 Ga. LEXIS 417 (1989).

**When qualified municipality elects to be "absent municipality."** — Municipality that becomes qualified after a certificate of distribution has been submitted to the revenue department is

also guaranteed a proportional share of the taxes collected if the municipality elects to be an "absent municipality." City of Winder v. Collins, 259 Ga. 570, 385 S.E.2d 71, 1989 Ga. LEXIS 417 (1989).

**Only the portion of a city's population** that resides within the special tax district is included when calculating a municipality's pro rata share of the local option sales tax proceeds in that district. City of Atlanta v. Collins, 262 Ga. 261, 417 S.E.2d 141, 1992 Ga. LEXIS 437 (1992).

## 48-8-89.2. Distribution of tax proceeds upon qualified municipality ceasing to be qualified.

If the commissioner determines that a qualified municipality entitled to receive tax proceeds under this article has ceased to be a qualified municipality, he shall thereafter distribute the percentage of the proceeds of the tax to which that qualified municipality was entitled to the county which is conterminous with the special district and to each other qualified municipality within the special district pro rata according to the percentages of the tax to which each other such political subdivision is otherwise entitled; and such distribution formula shall remain in effect until a new certificate is filed and becomes effective as provided in Code Section 48-8-89.

**History.**
Code 1981, § 48-8-89.2, enacted by Ga. L. 1983, p. 1461, § 1.

## 48-8-89.3. Levy of tax in certain special districts; distribution of proceeds to qualified municipality.

(a) Notwithstanding any other provision of this article to the contrary, the tax provided for in Code Section 48-8-82 shall be levied in any special district in which:

(1) Prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p. 1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district;

(2) The tax provided for in Code Section 48-8-82 was actually collected during the period of January 1, 1980, to January 1, 1989; and

(3) There exists a qualified municipality which lies wholly or partially within the special district and which:

(A) Was a qualified municipality at the time of filing of the distribution certificate most recently filed with the commissioner under Code Section 48-8-89; and

(B) Was not assigned any percentage of the net proceeds of the tax under such distribution certificate.

In any special district which meets the criteria specified in this subsection, the tax provided for in Code Section 48-8-82 shall be levied without regard to any past defects in compliance with the procedures specified by this article for the imposition of the tax.

(b) A qualified municipality described in paragraph (3) of subsection (a) of this Code section, for which receipt of a portion of the net tax proceeds was not specified in the certificate most recently filed with the commissioner under Code Section 48-8-89, may request the commissioner to thereafter distribute a portion of the net tax proceeds to the qualified municipality as provided in this Code section. Upon receipt of such a request, the commissioner shall thereafter, unless he determines that the requesting municipality does not meet the criteria specified in this Code section, give written notice of a new distribution formula to the county which is conterminous with the special district, to the requesting qualified municipality, and to each other qualified municipality within the special district. Such new distribution formula shall be determined as follows:

(1) Begin with the percentages specified in the distribution certificate most recently filed with the commissioner;

(2) Assign to the requesting municipality a percentage of the net proceeds which is equal to the total percentage of the net proceeds previously distributed to all other qualified municipalities in the special district multiplied by a fraction, the numerator of which is the population of the requesting municipality and the denominator of which is the population of all qualified municipalities within the special district;

(3) Deduct the percentage of the net proceeds so assigned to the requesting municipality from the percentages previously assigned to all other qualified municipalities within the special district, such deductions to be pro rata on the basis of population; and

(4) Make no change in the percentage of the net proceeds previously distributed to the county which is conterminous with the special district.

(c) This new distribution formula shall be implemented at the earliest date deemed administratively practicable by the commissioner, and the notice specified in subsection (b) of this Code section shall include such date. This new distribution formula shall remain in effect until a subsequent distribution certificate is filed and becomes effective as provided in Code Section 48-8-89.

(d) For the purpose of all population based calculations under this

Code section, only that portion of the population of a qualified municipality which is located within the special district shall be computed.

**History.**
Code 1981, § 48-8-89.3, enacted by Ga. L. 1989, p. 1178, § 1.

**JUDICIAL DECISIONS**

**Only the portion of a city's population** that resides within the special tax district is included when calculating a municipality's pro rata share of the local option sales tax proceeds in that district. City of Atlanta v. Collins, 262 Ga. 261, 417 S.E.2d 141, 1992 Ga. LEXIS 437 (1992).

## 48-8-90. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and taxes so paid in another jurisdiction shall be credited first against the tax levied under this article and then against the tax levied under Article 3 of this chapter, if applicable.

**History.**
Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4614, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4612, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1985, p. 232, § 2; Ga. L. 2013, p. 141, § 48/HB 79.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 125, 129.

## 48-8-91. Condition precedent to authority to impose tax after first year; annual adjustment of millage rate; formula; information required on tax bills.

(a) As a condition precedent for authority to levy the tax or to collect

any proceeds from the tax authorized by this article for the year following the initial year in which it is levied and for all subsequent years, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality therein receiving any proceeds of the tax shall adjust annually the millage rate for ad valorem taxation of tangible property within such political subdivisions as provided in this subsection. The governing authority of each such political subdivision shall compute the millage rate necessary to produce revenue from taxation of tangible property in its respective political subdivision which, when combined with other revenues reasonably expected to be received by the political subdivision during the year other than revenues derived from the tax imposed pursuant to this article, would provide revenues sufficient to defray the expenses of the political subdivision for the year. The millage rate so ascertained shall then be reduced by a millage rate which, if levied against the tangible property within the political subdivision, would produce an amount equal to the distribution of the proceeds of the tax imposed by this article which were received by the political subdivision during the preceding year. The tax bill of each ad valorem taxpayer in the political subdivision shall show in a prominent manner the millage rate first ascertained as provided in this subsection and shall show such millage rate reduced by the millage rate required to raise an amount of revenue equal to the distribution of the proceeds of the tax imposed by this article during the previous year. The remainder shall be the millage rate upon which each taxpayer's bill shall be based. The tax authority of each such political subdivision shall cause to be shown in a prominent manner on the tax bill of each ad valorem taxpayer the dollar amount of reduction of ad valorem property taxes which the taxpayer has received as a result of the political subdivision's sharing in the proceeds of the tax authorized to be imposed by this article; provided, however, that the dollar amount of reduction of ad valorem property taxes shall not be calculated or shown on those forms used for the registration and taxation of motor vehicles or trailers.

(b) This Code section shall not be construed to require a county or municipality to prepare and mail ad valorem property tax bills when the ad valorem property tax millage rate in the county or municipality has been reduced to zero as a result of the receipt of proceeds from the tax levied pursuant to this article.

**History.**

Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, §§ 10, 11; Ga. L. 1977, p. 1008, § 1; Code 1933, §§ 91A-4611, 91A-4612, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1429, §§ 2, 3; Ga. L. 1978, p. 1460, §§ 2, 3; Ga. L. 1978, p. 1695, § 1; Ga. L. 1979, p. 5, §§ 99, 100; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4610, enacted by Ga. L. 1979, p. 446, § 2.

**JUDICIAL DECISIONS**

**Ad valorem tax reduction created by the local option sales tax is applicable to** "tangible property within the political subdivision" (i.e., the county), not just to property within a special service tax district, consisting of the unincorporated area of the county in which a special service district tax is levied on property therein. Nielubowicz v. Chatham County, 252 Ga. 330, 312 S.E.2d 802, 1984 Ga. LEXIS 677 (1984).

**Roll back of millage rate for county residents unauthorized.** — City ordinance violated the Joint County and Municipal Sales and Use Tax Act, O.C.G.A. § 48-8-66 et seq., by authorizing the city to use the city's pro rata share of revenue generated by another county's local option sales tax (LOST) to roll back the millage rate for county residents. Wells v. City of Baldwin, 275 Ga. 228, 565 S.E.2d 439, 2002 Ga. LEXIS 380 (2002).

**OPINIONS OF THE ATTORNEY GENERAL**

**Distribution of intangible tax receipts should not account for millage rate adjustments.** — Intangible tax receipts should be distributed among the various local taxing jurisdictions and the state in proportion to their tangible property millage rates, without taking into account adjustments made pursuant to Ga. L. 1975, p. 984. 1977 Op. Att'y Gen. No. 77-80.

**Legislative intent as to adjustment of millage rates on tangible property.** — Requirement that tangible property millage rates be adjusted makes clear the intent of the General Assembly that imposition of a local sales and use tax result initially in property tax relief, rather than in an automatic expansion of funds for local governmental services. This requirement also makes it clear that the General Assembly intended that a local taxing jurisdiction receive the same total revenue, irrespective of whether or not part of the total is generated by a local sales and use tax. 1977 Op. Att'y Gen. No. 77-80.

## 48-8-92. Referendum election to discontinue imposition of tax; ballot question; resubmission of question.

(a) Whenever the governing authority of any county and the governing authorities of at least one-half of qualified municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, such governing authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the

date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the 1 percent retail sales and use tax being levied within the special district within _____ County be terminated?"
"( ) NO

(b) All persons desiring to vote in favor of discontinuing the tax shall vote "Yes," and all persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be such superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

**History.**
Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4616, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 2010, p. 958, § 4/HB 991.

## 48-8-93. Inapplicability of tax to property ordered and delivered outside taxing special district.

No tax provided for in Code Section 48-8-82 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the joint tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4615, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4613, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2012, p. 580, § 19/HB 865.

### 48-8-94. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in Code Section 48-8-82 shall be imposed by a county or municipality upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the tax by the county or municipality and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.** Ga. L. 1978, p. 1678, § 1; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4615, enacted by Ga. L. 1979, p. 446, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 103, 120.

### 48-8-95. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article.

**History.** Ga. L. 1975, p. 984, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4611, enacted by Ga. L. 1979, p. 446, § 2.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, § 205 et seq.

### 48-8-96. Taxation of property in consolidated governments; change in tax rates.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities in which

consolidated government homestead property (exclusive of improvements) is valued for purposes of local ad valorem taxation according to a base year assessed value which does not change so long as the property is actually occupied by the same owner as a homestead, the provisions of this Code section shall control over any conflicting provisions of Article 1 of this chapter or this article.

(b) If the tax authorized by this article is in effect in the special district containing a consolidated government referred to in subsection (a) of this Code section, then the rate of tax imposed under this article in such special district may be increased from 1 percent to 2 percent if such increase is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall the retail sales and use tax levied within the special district within _____ |
| ( ) NO | County be increased from 1 percent to 2 percent?" |

(c) Such increased tax rate shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which such increase was approved by the voters. The proceeds of the increased tax shall be divided in the same proportions as the original tax.

(d) Such increased tax rate may be decreased from 2 percent to 1 percent if such decrease is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

| | |
|---|---|
| "( ) YES | Shall the retail sales and use tax levied within the special district within _____ |
| ( ) NO | County be decreased from 2 percent to 1 percent?" |

(e) Such decreased tax rate shall become effective on the first day of

the second calendar quarter following the month in which the commissioner receives certification of the result of the election.

(f) If the tax authorized by this article is to be newly imposed in the special district containing a consolidated government referred to in subsection (a) of this Code section, then such tax may be imposed in such special district at the rate of 2 percent if such rate is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES<br>( ) NO | Shall a retail sales and use tax of 2 percent be levied within the special district within _____ County?" |

(g) Such 2 percent tax may be discontinued if such discontinuation is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

| | |
|---|---|
| "( ) YES<br>( ) NO | Shall the retail sales and use tax levied within the special district within _____ County be terminated?" |

(h)(1) In the case of increase from 1 percent to 2 percent, the amount in excess of the initial 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(2) In the case of a newly imposed 2 percent sales and use tax under this Code section, only the amount in excess of a 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(i) In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government referred to in subsection (a) of this Code section shall be in the same manner as the levy of the tax by any other county.

**History.** Code 1981, § 48-8-96, enacted by Ga. L. 2004, p. 69, § 6; Ga. L. 2010, p. 662, § 21/HB 1221.

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

**Law reviews.**

For article on the 2004 enactment of this Code section, see 21 Georgia St. U.L. Rev. 226 (2004).

## 48-8-97. Levy of joint county and municipal sales and use tax by consolidated governments; use of proceeds; referendum.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities and where the tax authorized by this article is in effect, the provisions of this Code section shall control over any conflicting provisions of Article 1 of this chapter or this article.

(b) In a special district containing a consolidated government referred to in subsection (a) of this Code section, the rate of tax imposed under this article may be increased from 1 percent to 2 percent if such increase is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall the retail sales and use tax levied within the special district within _____ County be increased from 1 percent to 2 percent?" |
| ( ) NO | |

(c) Such increased tax rate shall become effective 60 days after the date of the election at which such increase was approved by the voters.

(d)(1) Any consolidated government that imposes the tax authorized by subsection (b) of this Code section shall:

(A) Only expend the proceeds of such tax in accordance with the provisions of paragraph (2) of this subsection; and

(B) Annually reduce the millage rate for ad valorem taxation of tangible property within the consolidated government to the extent required by paragraph (2) of this subsection.

(2)(A) As a condition precedent for authority to levy the tax or to collect any proceeds from the tax authorized by this article for the year following the initial year in which it is levied, the consoli-

dated government whose geographical boundary is conterminous with that of the special district and each qualified municipality therein receiving any proceeds of the tax shall reduce the millage rate for ad valorem taxation of tangible property within such political subdivisions by five mills.

(B) For all subsequent years, the consolidated government whose geographical boundary is conterminous with that of the special district and each qualified municipality therein receiving any proceeds of the tax shall adjust annually the millage rate for ad valorem taxation of tangible property within such political subdivisions as provided in this subsection. The governing authority shall compute the millage rate necessary to produce revenue from taxation of tangible property in its respective political subdivision which, when combined with other revenues reasonably expected to be received by the political subdivision during the year, other than revenues derived from the tax imposed pursuant to this article, would provide revenues sufficient to defray the expenses of the political subdivision for the year. The millage rate so ascertained shall then be reduced by the number of mills per dollar which, if levied against the tangible property within the political subdivision, would produce an amount equal to the distribution of the proceeds of the tax imposed by this article which were received by the political subdivision during the preceding year.

(e) The tax increase authorized by subsection (b) of this Code section shall cease to be imposed on the earlier of:

(1) The final day of the fifth calendar year following the year in which the increased tax rate became effective and levied; or

(2) As provided for in subsections (f) and (g) of this Code section.

(f)(1) Such increased tax rate may be decreased from 2 percent to 1 percent if such decrease is approved by:

(A) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(B) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall the retail sales and use tax levied within the special district within _____ |
| ( ) NO | County be decreased from 2 percent to 1 percent?" |

(2) Such decreased tax rate as provided for in this subsection shall become effective on the first day of the second calendar quarter following the month in which the commissioner receives certification of the result of the election.

(g)(1) Between 365 and 180 days prior to the expiration of the tax increase authorized by this Code section pursuant to paragraph (1) of subsection (e) of this Code section, or prior to any renewal of the tax increase pursuant to this subsection, the governing authority of the consolidated government may elect to renew the term of the increased tax rate another five years if such renewal is approved by:

(A) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(B) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES<br>( ) NO | Shall the retail sales and use tax levied within the special district within _____ County be renewed at 2 percent?" |

(2) If a term for the increased tax rate is approved and renewed, this renewed term for the increased tax rate shall become effective the first day of the calendar year following the expiration of the previous increased tax rate term as described in paragraph (1) of subsection (e) of this Code section.

(3) Any renewed term for the increased tax rate is subject to the condition precedent as described in paragraph (2) of subsection (d) of this Code section, provided that the proceeds of such tax shall be expended in accordance with the provisions of subparagraph (d)(2)(B) of this Code section during the entirety of any subsequent renewed terms.

(h) In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government referred to in subsection (a) of this Code section shall be in the same manner as the levy of the tax by any other county.

(i) If any tax authorized under this article is to be newly imposed in the county whose geographical boundary is conterminous with that of the special district containing a consolidated government, for any rental, lease, or other agreement related to property in the special district that is in effect at the time of levy of such tax, or may be entered into subsequently, which utilizes the millage rate of any such political subdivision or the consolidated government in calculating payments in

lieu of taxes payable by the tenant, lessee, or occupant, no reduction as set forth in subsection (d) of this Code section in the millage rate for ad valorem taxes of any political subdivision or consolidated government resulting from the tax authorized under this article shall apply to such agreements, unless the parties thereto specifically have provided that the effects of the tax to be imposed under this article be included in said calculations.

**History.**
Code 1981, § 48-8-97, enacted by Ga. L. 2021, p. 310, § 1/HB 575; Ga. L. 2022, p. 352, § 48/HB 1428.
**Amendments.**
**The 2022 amendment,** effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "subsections (f) and (g)" for "subsections (g) and (f)" in paragraph (e)(2).

## ARTICLE 2A

## HOMESTEAD OPTION SALES AND USE TAX (HOST)

### JUDICIAL DECISIONS

**Intergovernmental agreement was contrary to statute.** — Trial court erred in its reliance on judicial precedent holding that intergovernmental agreements between the county and cities was contrary to the express language of the HOST. HOST implemented a district tax under the "special district" provision of Ga. Const. art. IX, § II, para. VI, which was not a "county tax" as described in the judicial precedent relied upon. Distribution of the proceeds from the county to the cities was therefore allowable. The court noted the necessity of a ruling on whether the agreement was authorized under Ga. Const. art. IX, § III, para. I. City of Decatur v. DeKalb County, 277 Ga. 292, 589 S.E.2d 561, 2003 Ga. LEXIS 934 (2003).

### RESEARCH REFERENCES

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 56 et seq.

**C.J.S.**
84 C.J.S., Taxation, § 261 et seq.

## Part 1

## Homestead Option Sales and Use Tax

### 48-8-100. Short title.

This part shall be known and may be cited as the "Homestead Option Sales and Use Tax Act."

**History.**
Code 1981, § 48-8-100, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.

**Law reviews.**
For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003).

For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

**JUDICIAL DECISIONS**

**Arrangement between county and city allowable.** — Court of Appeals erred in finding that the Homestead Option Sales Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., did not allow a county to disburse funds to various cities in order to facilitate the capital outlay requirement under O.C.G.A. § 48-8-104(c)(2)(A) as HOST was implemented under the "special district" provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI, and as it was not a "county tax," it was subject to such an arrangement; however, the intergovernmental agreement between the county and cities had to be authorized under Ga. Const. 1983, Art. IX, Sec. III, Para. I in order to be valid. City of Decatur v. DeKalb County, 277 Ga. 292, 589 S.E.2d 561, 2003 Ga. LEXIS 934 (2003).

**HOST implements district tax.** — Homestead Option Sales Tax (HOST), O.C.G.A. § 48-8-100 et seq., implements a district tax under the "special district" provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI; intergovernmental contracts which are authorized under Ga. Const. 1983, Art. IX, Sec. III, Para. I cannot be limited by HOST. City of Decatur v. DeKalb County, 277 Ga. 292, 589 S.E.2d 561, 2003 Ga. LEXIS 934 (2003).

## 48-8-101. Definitions.

As used in this part, the term:

(1) "Ad valorem taxes for county purposes" means any and all ad valorem taxes for county maintenance and operation purposes levied by, for, or on behalf of the county, excluding taxes to retire general obligation bonded indebtedness of the county.

(2) "Existing municipality" means a municipality created prior to January 1, 2007, lying wholly within or partially within a county.

(3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(4) "Qualified municipality" means a municipality created on or after January 1, 2007, lying wholly within or partially within a county.

**History.**
Code 1981, § 48-8-101, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 1; Ga. L. 2007, p. 598, § 1/HB 264; Ga. L. 2015, p. 217, § 2/HB 215.

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
71 Am. Jur. 2d, State and Local Taxation, § 123.

## 48-8-101.1. Equal distribution of homestead option sales and use tax among counties and municipalities.

It is the intent of the General Assembly that the proceeds of the homestead option sales and use tax be distributed equitably to the counties and qualified municipalities such that the residents of a new incorporated municipality will continue to receive a benefit from that tax substantially equal to the benefit they would have received if the area covered by the municipality had not incorporated. The provisions of this part shall be liberally construed to effectuate such intent.

**History.**
Code 1981, § 48-8-101.1, enacted by Ga. L. 2007, p. 598, § 2/HB 264; Ga. L. 2015, p. 217, § 2/HB 215.

**JUDICIAL DECISIONS**

**Amendment to Homestead Option Sales and Use Tax not payment of gratuity.** — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a), because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay proceeds the legislature determined the city's residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the geographical boundaries of the county in expending HOST revenues for capital outlay projects that benefited the special tax district. DeKalb County v. Perdue, 286 Ga. 793, 692 S.E.2d 331, 2010 Ga. LEXIS 267 (2010).

## 48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b)(1) When the imposition of a local sales and use tax is authorized according to the procedures provided in this part within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent, except as provided in paragraph (2) of this subsection. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this part, except that the sales and use tax provided in

this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(2) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of the sales and use tax levied and collected under this part shall be used only for the purposes of funding capital outlay projects and of funding services within a special district equal to the revenue lost to the homestead exemption as provided in Code Section 48-8-104 and, in the event excess funds remain following the expenditure for such purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of Code Section 48-8-104.

(2) Prior to January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this part is imposed, such proceeds may be used for funding all or any portion of those services which are to be provided by the governing authority of the county whose geographic boundary is conterminous with that of the special district pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this part. Such exemption shall commence with taxable years beginning on or after January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this part is levied. Any such local Act shall incorporate by reference the terms and conditions specified under this part. Any such local Act shall not be subject to the provisions of Code Section 1-3-4.1. Any such homestead exemption under this part shall be in addition to and not in lieu of any other homestead exemption applicable to county taxes for county purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-103 is adopted prior to the issuance of the call for the referendum under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

(e) No sales and use tax shall be levied in a special district under this part in which a tax is levied and collected under Article 2 of this chapter.

**History.**

Code 1981, § 48-8-102, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1996, p. 1, § 3; Ga. L. 1997, p. 1, § 2; Ga. L. 1997, p. 157, § 1A; Ga. L. 2007, p. 309, § 6/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 22/HB 1221; Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2015, p. 236, § 5-9/HB 170.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

**JUDICIAL DECISIONS**

**Contract between county and cities.** — Trial court did not err in granting a county summary judgment in the cities' action for breach of an intergovernmental agreement (IGA) the parties entered into pursuant to the Homestead Option Sales and Use Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., because the IGA was not a valid intergovernmental contract under the Intergovernmental Contracts Clause of the Georgia Constitution, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a), since the focus and clear purpose of the IGA was to provide a formula for the distribution of the HOST revenues, and the IGA could not be deemed an agreement for the provision of authorized "services"; the IGA was an agreement about how to divide and distribute HOST revenues between the county and the cities, with the cities agreeing to expend the monies disbursed solely for capital outlay projects to be located within the geographical boundaries of the county and to be owned, operated, or both either by the county, one of more cities or any combination thereof, and the fact that the IGA required the cities to expend the tax proceeds in accordance with the mandates of the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-102, did not transform it into either a contract for services or one for the use of facilities. City of Decatur v. Dekalb County, 289 Ga. 612, 713 S.E.2d 846, 2011 Ga. LEXIS 551 (2011).

## 48-8-103. Submission to voters to determine imposition of tax.

(a) Whenever the governing authority of any county whose geographical boundary is conterminous with that of the special district

wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to impose a homestead exemption within such county and based on the amount of proceeds from the sales and use tax levied and collected pursuant to this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection and the ballot question specified by the required local Act:

> "NOTICE TO ELECTORS: Unless **BOTH** the homestead exemption **AND** the retail homestead option sales and use tax are approved, then neither the exemption nor the sales and use tax shall become effective."

Such statement shall be followed by the following:

| | |
|---|---|
| "( ) YES | Shall a retail homestead option sales and use tax of 1 percent be levied within the special district within _____ County for the purposes of funding capital outlay projects and of funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes?" |
| ( ) NO | |

Notwithstanding any other provision of law to the contrary, the statement, ballot question, and local Act ballot question referred to in this subsection shall precede any and all other ballot questions calling for the levy or imposition of any other sales and use tax which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying

the tax and approving the local Act providing such homestead exemption, then the tax shall be levied in accordance with this part; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in Code Section 48-8-102 is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized by Code Section 48-8-102 on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

**History.**
Code 1981, § 48-8-103, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 3; Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2016, p. 864, § 48/HB 737.

## 48-8-104. Administration and collection of tax; disbursement of proceeds.

(a) The sales and use tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first

to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection and the amount determined under subsections (d) and (e) of this Code section, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district; provided, however, that a county and any qualified municipality shall be authorized by intergovernmental agreement to waive the equalization amount otherwise required under subsections (d) and (e) of this Code section and provide for a different distribution amount. In the event of such waiver, except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district. As a condition precedent for the authority to levy the sales and use tax or to collect any proceeds from the tax authorized by this part for the year following the first complete calendar year in which it is levied and for all subsequent years except the year following the year in which the sales and use tax is terminated under Code Section 48-8-106, the county whose geographical boundary is conterminous with that of the special district shall, except as otherwise provided in subsection (c) of Code Section 48-8-102, expend such proceeds as follows:

(A) A portion of such proceeds shall be expended for the purpose of funding capital outlay projects as follows:

(i) The governing authority of the county whose geographical boundary is conterminous with that of the special district shall establish the capital factor which shall not exceed .200 and, for a county in which a qualified municipality is located, shall not be less than the level required by subsection (d) of this Code section; therefore, at a minimum, the county shall set the capital factor at a level that yields an amount of capital outlay proceeds that is equal to or greater than the sum of all equalization amounts due qualified municipalities and existing municipalities under subsection (e) of this Code section; and

(ii) Capital outlay projects shall be funded in an amount equal to the product of the capital factor multiplied by the net amount of the sales and use tax proceeds collected under this part during the previous calendar year, and this amount shall be referred to as capital outlay proceeds in subsections (d) and (e) of this Code section;

(B) A portion of such proceeds shall be expended for the purpose of funding services within the special district equal to the revenue lost to the homestead exemption as provided in this Code section as follows:

(i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus the capital factor times an amount equal to the net amount of sales and use tax collected in the special district pursuant to this part for the previous calendar year, and then dividing by the taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied, rounding the result to three decimal places;

(ii) If the homestead factor is less than or equal to 1.000, the amount of homestead exemption created under this part on qualified homestead property shall be equal to the product of the homestead factor multiplied times the net assessment of each qualified homestead remaining after all other homestead exemptions have been applied; and

(iii) If the homestead factor is greater than 1.000, the homestead exemption created by this part on qualified homestead property shall be equal to the net assessment of each homestead remaining after all other homestead exemptions have been applied; and

(C) If any of such proceeds remain following the distribution provided for in subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code section:

(i) The millage rate levied for county purposes shall be rolled back in an amount equal to such excess divided by the net taxable digest for county purposes after deducting all homestead exemptions including the exemption under this part; and

(ii) In the event the rollback created by division (i) of this subparagraph exceeds the millage rate for county purposes, the governing authority of the county whose boundary is conterminous with the special district shall be authorized to expend the surplus funds for funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d)(1) The commissioner shall distribute to the governing authority of each qualified municipality located in the special district a share of the capital outlay proceeds calculated as provided in this subsection and subsection (e) of this Code section which proceeds shall be expended for the purpose of funding capital outlay projects of such municipality.

(2) Both the tax commissioner and the governing authority for the county in which a qualified municipality is located shall cooperate with and assist the commissioner in the calculation of the equalization amounts under subsection (e) of this Code section and shall, on or before July 1 of each year, provide to the commissioner and the governing authority of each qualified municipality written certification of the following:

(A) The capital factor set by the county for the current calendar year; provided, however, that the capital factor may not exceed 0.200;

(B) The total amount, if any, due to be paid to existing municipalities from the capital outlay proceeds as required by any intergovernmental agreement between the county and such municipalities;

(C) The incorporated county millage rate in each qualified municipality;

(D) The net homestead digest for each qualified municipality;

(E) The total homestead digest; and

(F) The unincorporated county millage rate.

If the tax commissioner and the governing authority of the county fail to provide such certification on or before July 1, the commissioner shall not distribute to such county any additional proceeds of the sales and use tax collected after July 1 unless and until such certification is provided.

(3) The commissioner shall then calculate the equalization amount due each qualified municipality based on the certifications provided by the tax commissioner and the governing authority of the county and pay such amount to the governing authority of each qualified municipality in six equal monthly payments as soon as practicable during or after each of the last six months of the current calendar year. In the event an existing municipality that has entered into an intergovernmental agreement with a county at any time before January 1, 2007, to receive capital outlay proceeds of the homestead option sales and use tax and such intergovernmental agreement has become or does become null and void for any reason, such existing municipality shall be treated under this part the same as if it were a qualified municipality as defined in paragraph (4) of Code Section 48-8-101 and therefore receive payment of equalization amounts under this part as provided for under this part. The commissioner shall distribute to the governing authority of the county each month the net sales and use tax remaining after payment of equalization amounts to the qualified municipalities.

(e)(1) As used in this subsection, the term:

(A) "Equalization amount" means for a qualified municipality the product of the equalization millage times the net homestead digest for that qualified municipality.

(B) "Equalization millage" means for each qualified municipality the product of the homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section times the difference between the unincorporated county millage rate and the incorporated county millage rate for that qualified municipality.

(C) "Incorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in each of the qualified municipalities in the county.

(D) "Net homestead digest" means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of the qualified municipality located in the county remaining after all other homestead exemptions are applied.

(E) "Total homestead digest" means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(F) "Unincorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in the unincorporated areas of the county.

(2) For illustration purposes, a hypothetical example of the calculation of the equalization amount is provided below.

First, calculate the homestead factor in accordance with division (c)(2)(B)(i) of this Code section as follows:

| | |
|---|---|
| (A) Capital factor certified by county as required by subsection (d) of this Code section | 0.150 |
| (B) Net amount of sales and use tax collected in the special district pursuant to this part for the previous calendar year | $50 million |
| (C) Taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied | $100 million |
| (D) Calculation of homestead factor using figures above = [(1-.0150)($50 million/$100 million)] | .425 |

Next, calculate the equalization amount in accordance with paragraph (1) of this subsection as follows:

| | |
|---|---|
| (E) Unincorporated county millage rate | 15.0 mills |
| (F) Minus the incorporated county millage rate for qualified municipality "Y" | (10.0 mills) |
| Difference: | = 5.0 mills |
| (G) Times homestead factor (calculated above) | x .425 |
| (H) Equals the equalization millage: | = 2.125 mills |
| (I) Times net homestead digest for qualified municipality "Y" | $200 million |
| (J) Equals the equalization amount payable to municipality "Y" | $425,000.00 |

(3) In the event the total amount payable in a calendar year to all existing municipalities as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus the total equalization amount payable to all qualified municipalities in the special district exceeds the capital outlay proceeds calculated based on a maximum capital factor of 0.200, the commissioner shall pay to the governing

authority of each qualified municipality a share of such proceeds calculated as follows:

(A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200;

(B) Subtract the amount certified by the county as payable to existing municipalities pursuant to subparagraph (d)(2)(B) of this Code section;

(C) The remaining amount equals the portion of the capital outlay proceeds that may be used by the commissioner to pay equalization amounts to qualified municipalities.

The commissioner shall calculate each qualified municipality's share of such remaining amount by dividing the net homestead digest for each qualified municipality by the total homestead digest for all municipalities.

(4) In the event the incorporated county millage rate for a qualified municipality is greater than the unincorporated county millage rate, no payment shall be due from the governing authority of the qualified municipality to the governing authority of the county.

(5) In the event the amount of capital outlay proceeds exceeds the sum of the equalization amounts due all qualified municipalities plus the total amount certified under subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the commissioner shall distribute to each qualified municipality a portion of such excess equal to the net homestead digest for such municipality divided by the total homestead digest.

(6) If any qualified municipality is located partially in the county then only that portion so located shall be considered in the calculations contained in this subsection.

**History.**

Code 1981, § 48-8-104, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 4; Ga. L. 2007, p. 309, § 7/HB 219; Ga. L. 2007, p. 598, § 3/HB 264; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 23/HB 1221; Ga. L. 2015, p. 217, § 2/HB 215.

**JUDICIAL DECISIONS**

**Arrangement between county and city allowable.** — Court of Appeals erred in finding that the Homestead Option Sales Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., did not allow a county to disburse funds to various cities in order to facilitate the capital outlay requirement under O.C.G.A. § 48-8-104(c)(2)(A) as HOST was implemented under the "special district" provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI, and as it was not a "county tax," it was subject to such an arrangement; however, the intergovernmental agreement between the county and cities had to be authorized under Ga. Const. 1983, Art. IX, Sec. III, Para. I in order to be valid. City of Decatur

v. DeKalb County, 277 Ga. 292, 589 S.E.2d 561, 2003 Ga. LEXIS 934 (2003).

**Amendment to Homestead Option Sales and Use Tax not payment of gratuity.** — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a) because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay proceeds the legislature determined the city's residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the geographical boundaries of the county in expending HOST revenues for capital outlay projects that benefited the special tax district. DeKalb County v. Perdue, 286 Ga. 793, 692 S.E.2d 331, 2010 Ga. LEXIS 267 (2010).

## 48-8-105. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this part for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this part and then against the sales and use tax levied under Article 3 of this chapter, if applicable.

**History.**

Code 1981, § 48-8-105, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.

## 48-8-106. Submission to voters of question as to whether to discontinue tax.

(a) Whenever the governing authority of any county whose geographical boundary is conterminous with that of the special district in which the sales and use tax authorized by this part is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102

shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall be conducted only on the date of and in conjunction with a referendum provided for by local Act on the question of whether to repeal the homestead exemption within such county which is funded from the proceeds of the sales and use tax levied and collected pursuant to this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall the 1 percent retail homestead option sales and use tax being levied within the special district within _____ County for the purposes of funding capital outlay projects and of funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes be terminated?" |
| ( ) NO | |

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote "Yes," and those persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing the local Act providing for such homestead exemption, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of the discontinuing of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

**History.**
Code 1981, § 48-8-106, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 5; Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2016, p. 864, § 48/HB 737.

### 48-8-107. Inapplicability of tax to property ordered and delivered outside taxing special district.

No sales and use tax provided for in Code Section 48-8-102 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this part regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-107, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2012, p. 580, § 20/HB 865; Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-108. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in Code Section 48-8-102 shall be imposed in a special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax.

**History.**
Code 1981, § 48-8-108, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-109. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and

efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this part.

**History.**
Code 1981, § 48-8-109, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.

## Part 2

## Equalized Homestead Option Sales Tax

### 48-8-109.1. Short title.

This part shall be known and may be cited as the "Equalized Homestead Option Sales Tax Act of 2015."

**History.**
Code 1981, § 48-8-109.1, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-109.2. Referendum on suspension of taxation.

In any county where a homestead option sales and use tax under Part 1 of this article and a sales tax for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment, are being levied, the county governing authority may choose to submit to the electors of the special district the question of whether to suspend the sales and use tax authorized by Code Section 48-8-102 and replace such tax with a sales and use tax authorized by this part. Such referendum shall only be held in conjunction with a referendum submitting to the electors of the special district the question of whether to approve a special purpose local option sales and use tax pursuant to the provisions of Part 1 of Article 3 of this chapter. The electors of the special district must approve both of the sales and use taxes in order for either of them to be implemented. If either of the sales and use taxes is not approved by the electors, the homestead option sales and use tax under Part 1 of this article shall be continued in full force and effect.

**History.**
Code 1981, § 48-8-109.2, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-109.3. Creation of special districts; application of tax.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each

county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this part within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the same rate as provided in Part 1 of this article. Except as otherwise provided in this part, the local sales and use tax shall correspond to the tax imposed and administered by Part 1 of this article. The local sales and use tax levied pursuant to this part shall apply to all items and transactions subject to taxation pursuant to Part 1 of this article. No item or transaction which is not subject to taxation pursuant to Part 1 of this article shall be subject to the tax levied pursuant to this part.

(c) No sales and use tax shall be levied in a special district under this part in which a tax is levied and collected under Article 2 of this chapter.

**History.**
Code 1981, § 48-8-109.3, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

## 48-8-109.4. Role of election superintendent.

(a) Whenever the governing authority of any county whose geographical boundary is conterminous with that of the special district wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be held in conjunction with a referendum submitting to the electors of the special district the question of whether to approve a special purpose local option sales and use tax pursuant to the provisions of Part 1 of Article 3 of this chapter. The electors of the special district must approve both of the sales and use taxes in order for either of them to be implemented. If either of the taxes is not approved by the electors, the homestead option sales and use tax under Part 1 of this article shall be continued in full force and effect. If the sales and use tax under Part 1 of Article 3 of this chapter is not renewed, the sales and use tax under Part 1 of this article shall replace the sales and use

tax under this part upon expiration of the sales and use tax under Part 1 of Article 3 of this chapter. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection:

> "NOTICE TO ELECTORS: Unless **BOTH** the equalized homestead option sales and use tax **AND** the special purpose local option sales and use tax are approved, then neither sales and use tax shall become effective."

Such statement shall be followed by the following:

| | |
|---|---|
| "( ) YES | Shall an equalized homestead option sales and use tax be levied and the regular homestead option sales and use tax be suspended within the special district within _____ County for the purposes of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties?" |
| ( ) NO | |

Notwithstanding any other provision of law to the contrary, the statement and ballot question referred to in this subsection shall precede any and all other ballot questions which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this part; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in this part is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district

shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized in this part on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

**History.** Code 1981, § 48-8-109.4, enacted by Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2016, p. 864, § 48/HB 737.

## 48-8-109.5. Administration and collection of tax; disbursement of proceeds.

(a) The sales and use tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2, to the same extent that sales of motor fuels are subject to taxation pursuant to Part 1 of this article; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commis-

sioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds shall be disbursed to the governing authority of the county whose geographical boundary is conterminous with that of the special district, and each municipality located wholly or partially therein, and shall be utilized as follows:

(A) First, the proceeds shall be used to roll back, and eliminate if possible, the millage rates for any county ad valorem property tax line items levied uniformly throughout the county on homestead properties, including in all municipalities; and

(B) Next, any remaining proceeds shall be used to roll back at an equal and uniform rate across both of the following categories, and eliminate if possible:

(i) The millage rates for any county ad valorem property tax line items levied only in unincorporated portions of the county on homestead properties; and

(ii) The millage rates for any municipal ad valorem property tax line items levied in every municipality located wholly or partially in the county on homestead properties but not in unincorporated portions of the county.

If any municipality is located partially in the special district, then only that portion so located shall be considered in the calculations contained in this subsection.

(d) The form to collect ad valorem tax prepared by the county tax commissioner shall reflect the full amount owed by the taxpayer pursuant to the millage rates set by the county governing authority and any municipal governing authority. Under a separate heading, the form shall reflect the deductions from the gross ad valorem tax amount realized through the application of proceeds from the equalized homestead option sales and use tax.

(e) Notwithstanding any provision of law to the contrary except subsection (f) of this Code section, in any county levying a tax under this part, a tax levied pursuant to the provisions of Part 1 of Article 3 of this chapter in a special district in such county shall be strictly divided between the unincorporated portions of the county whose geographical boundary is conterminous with that of the special district and the municipalities wholly or partially located within the special district on a per capita basis, based on the most recent decennial

census, unless altered by an intergovernmental agreement between the county and all municipalities wholly located within the special district. Notwithstanding any provision of law to the contrary, the department shall disburse directly to the county and each municipality its share of the proceeds of the tax levied pursuant to Part 1 of Article 3 of this chapter.

(f) The tax levied in the special district under Part 1 of Article 3 of this chapter shall not be levied within the boundaries of any municipality wholly or partially located within the special district that is levying a tax pursuant to Article 4 of this chapter. No proceeds from the tax levied in the special district under Part 1 of Article 3 of this chapter shall be disbursed to any such municipality. Upon the expiration of the tax levied under Article 4 of this chapter in such municipality, the tax in the special district under Part 1 of Article 3 of this chapter shall be levied within such municipality and proceeds shall be disbursed to such municipality in accordance with this part.

**History.**
Code 1981, § 48-8-109.5, enacted by Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2017, p. 530, § 2/SB 156.

## 48-8-109.6. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this part for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this part and then against the sales and use tax levied under Article 3 of this chapter, if applicable.

**History.**
Code 1981, § 48-8-109.6, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

**48-8-109.7. Referendum on discontinuation of taxation; ballot.**

(a) Whenever the governing authority of any county whose geographical boundary is conterminous with that of the special district in which the sales and use tax authorized by this part is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall be conducted only on the date of and in conjunction with an election to repeal the special purpose local option sales and use tax pursuant to the provisions of Part 1 of Article 3 of this chapter. If either such sales and use tax is repealed, then both such sales and use taxes shall be repealed and the sales and use tax under Part 1 of this article shall replace the sales and use tax that was imposed under this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall the equalized homestead option sales and use tax being levied within the special district within _____ County for the purposes of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties be terminated?" |
| ( ) NO | |

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote "Yes," and those persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the sales and use tax, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of discontinuing the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It

shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

**History.**
Code 1981, § 48-8-109.7, enacted by Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2016, p. 864, § 48/HB 737.

### 48-8-109.8. Inapplicability of tax to property ordered and delivered outside taxing special district.

No sales and use tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this part regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-109.8, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-109.9. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in this part shall be imposed in a special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax.

**History.**
Code 1981, § 48-8-109.9, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

### 48-8-109.10. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this part.

**History.**
Code 1981, § 48-8-109.10, enacted by Ga. L. 2015, p. 217, § 2/HB 215.

## Part 3

## Revised Homestead Option Sales and Use Tax (RHOST)

### 48-8-109.15. Short title.

This part shall be known and may be cited as the "Revised Homestead Option Sales and Use Tax Act of 2020."

**History.**
Code 1981, § 48-8-109.15, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.16. Approval by electorate of sales and use taxes authorized by this part.

In any county where a homestead option sales and use tax under Part 1 of this article is being levied, the question of whether to suspend the sales and use tax authorized by Code Section 48-8-102 and replace such tax with a sales and use tax authorized by this part shall be submitted to the electors of the special district in the manner provided for in Code Section 48-8-109.18. If the sales and use tax is not approved by the electors, then the homestead option sales and use tax under Part 1 of this article shall continue in full force and effect.

**History.**
Code 1981, § 48-8-109.16, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.17. Creation of special districts; imposition of local sales and use tax within special district.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each

county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this part within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the same rate as provided in Part 1 of this article. Except as otherwise provided in this part, the local sales and use tax shall correspond to the tax imposed and administered by Part 1 of this article. The local sales and use tax levied pursuant to this part shall apply to all items and transactions subject to taxation pursuant to Part 1 of this article. No item or transaction which is not subject to taxation pursuant to Part 1 of this article shall be subject to the tax levied pursuant to this part.

(c) No sales and use tax shall be levied in a special district under this part in which a tax is levied and collected under Article 2 of this chapter.

**History.**
Code 1981, § 48-8-109.17, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.18. Petition for referendum to approve tax; ballot question; conduct of election; adoption of resolution.

(a) Whenever a petition is filed with the election superintendent of any county whose geographical boundary is conterminous with that of the special district and such petition is signed by at least 10 percent of the electors registered to vote in the last general election directing such election superintendent to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be imposed, the election superintendent shall determine the validity of such petition within 60 days of its being filed. In the event the election superintendent determines that such petition is valid, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following ballot question:

| | |
|---|---|
| "( ) YES | Shall the homestead option sales and use tax be suspended within the special district within _____ County and a revised homestead option sales and use tax be levied for the purpose of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties, with 99 percent of such tax being used to roll back ad valorem property tax millage rates?" |
| ( ) NO | |

Notwithstanding any other provision of law to the contrary, the ballot question referred to in this subsection shall precede any and all other ballot questions which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this part; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in this part is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized in this part on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

**History.**
Code 1981, § 48-8-109.18, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

## 48-8-109.19. Administration and collection of tax; disbursement of proceeds; remittance of taxes collected.

(a) The sales and use tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2, to the same extent that sales of motor fuels are subject to taxation pursuant to Part 1 of this article; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds shall be disbursed to the governing authority of the county whose geographical boundary is conterminous with that of the special district, and each municipality located wholly or partially therein, and shall be utilized as follows:

(A) The proceeds shall be used to roll back, and eliminate if possible, the millage rates for any county ad valorem property tax

line items levied uniformly throughout the county on homestead properties, including in all municipalities; and

(B) Any remaining proceeds shall be used to roll back at an equal and uniform rate across both of the following categories, and eliminate if possible:

(i) The millage rates for any county ad valorem property tax line items levied only in unincorporated portions of the county on homestead properties; and

(ii) The millage rates for any municipal ad valorem property tax line items levied in every municipality located wholly or partially in the county on homestead properties but not in unincorporated portions of the county.

If any municipality is located partially in the special district, then only that portion so located shall be considered in the calculations contained in this subsection.

(d) The form to collect ad valorem tax prepared by the county tax commissioner shall reflect the full amount owed by the taxpayer pursuant to the millage rates set by the county governing authority and any municipal governing authority. Under a separate heading, the form shall reflect the deductions from the gross ad valorem tax amount realized through the application of proceeds from the revised homestead option sales and use tax.

**History.**
Code 1981, § 48-8-109.19, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.20. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this part for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction

shall be credited first against the sales and use tax levied under this part and then against the sales and use tax levied under Article 3 of this chapter, if applicable.

**History.**
Code 1981, § 48-8-109.20, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.21. Referendum election to decide imposition of tax; procedure.

(a) Whenever the governing authority of any county whose geographical boundary is conterminous with that of the special district in which the sales and use tax authorized by this part is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. If such sales and use tax is repealed, then the sales and use tax under Part 1 of this article shall replace the sales and use tax that was imposed under this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES<br>( ) NO | Shall the revised homestead option sales and use tax being levied within the special district within _____ County for the purpose of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties, with 99 percent of such tax being used to roll back ad valorem property tax millage rates, be terminated?" |

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote "Yes," and those persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the sales and use tax, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the

result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of discontinuing the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

**History.**
Code 1981, § 48-8-109.21, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.22. Inapplicability of tax to property ordered and delivered outside taxing special district.

No sales and use tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this part regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-109.22, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.23. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in this part shall be imposed in a special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is

conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax.

**History.**
Code 1981, § 48-8-109.23, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

### 48-8-109.24. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this part.

**History.**
Code 1981, § 48-8-109.24, enacted by Ga. L. 2020, p. 674, § 1/HB 1102.

## ARTICLE 2B

## SPECIAL DISTRICT OPTION SALES AND USE TAX

**Delayed effective date.**
Ga. L. 2024, p. 20, § 4-1/HB 581, provides this article becomes effective on January 1, 2025, provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025, and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. See Editor's notes for applicability.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this article applicable to taxable years beginning on or after January 1, 2025.

### 48-8-109.30. (For effective date, see note.) Creation of special districts.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundaries of each county shall correspond with and shall be conterminous with the geographical boundaries of the 159 special districts.

(b) The territory of each special district shall include all of the territory within the county including all municipalities, to the extent the municipal boundaries lie within the geographical boundaries of the county and any consolidated government.

**History.**
Code 1981, § 48-8-109.30, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes

this Code section applicable to taxable years beginning on or after January 1, 2025.

For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.31. (For effective date, see note.) Imposition of special sales and use tax within special district; limited time and purpose.

(a) Subject to the requirement of approval by local referendum and the other requirements of this article, to impose within any given special district a special sales and use tax for a limited period of time for the limited purpose of property tax relief.

(b) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to sales of motor fuels as prepaid local tax as defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3.

(c) The special sales and use tax provided for in subsection (a) of this Code section may be imposed by a special district in 0.05 percent increments, but in no event shall such tax exceed 1 percent in total. The levy of such tax upon sales of motor fuels as defined in Code Section 48-9-2 shall only be imposed on the retail sales price of the motor fuel which is not more than $3.00 per gallon.

(d)(1) As a condition precedent to the issuance of the call for the referendum:

(A) The governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority or authorities of all municipalities that levy an ad valorem tax on property, other than those municipalities that are excluded from the special district pursuant to paragraph (3) of this subsection, shall have in effect a base year value or adjusted base year value homestead exemption; and

(B) The governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority or authorities, if any, that represent at least 50 percent of the special district's residents of municipalities that levy an ad valorem tax on property, other than those municipalities that are excluded from the special district pursuant to paragraph (3) of this subsection, shall enter into an intergovernmental agreement calling for the tax authorized under this article

and specifying the proposed rate of the tax, the proposed maximum period of time that the tax is to be levied, and the proposed distribution of the tax.

(2) If the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all municipalities located within the special district that levy an ad valorem tax on property, the political subdivisions entering into the intergovernmental agreement shall, on behalf of such absent municipalities, specify a percentage of that portion of the remaining proceeds which each municipality that levies an ad valorem tax on property shall receive, which percentage shall not be less than that proportion which each such absent municipality's population bears to the total population of all municipalities that levy ad valorem taxes on property within the special district multiplied by that portion of the remaining proceeds which are received by all such municipalities within the special district. No portion of the tax shall be apportioned to counties and municipalities that do not levy an ad valorem tax on property or do not have a base year value or adjusted base year value homestead exemption in effect.

(3) Subject to the limitation provided for in Code Section 48-8-6, any special district which wholly or partially contains a jurisdiction levying the tax provided for under Article 4 of this chapter is authorized to levy the tax authorized under this article. Such tax authorized under this article may only be levied in the areas of the special district outside of the jurisdiction levying the tax provided for under Article 4 of this chapter. Any jurisdiction levying the tax provided for under Article 4 of this chapter shall not be considered within the procedure necessary to levy the tax under this article and shall not be entitled to any portion of said tax.

**History.**
Code 1981, § 48-8-109.31, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

## 48-8-109.32. (For effective date, see note.) Maximum period of time of the tax; submission to voters to determine imposition of tax; ballot language; expenses of election.

(a) The intergovernmental agreement required by this article shall specify the maximum period of time of the tax, to be stated in calendar years or calendar quarters not to exceed five years in total.

(b) Each such intergovernmental agreement shall prescribe that the county election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax authorized by this article to the voters of the county. The call for and conduct of any such election shall be in the manner authorized under Code Section 21-2-540, on a date specified by the intergovernmental agreement from among the dates allowed under paragraph (2) of subsection (c) of Code Section 21-2-540. Such election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the legal organ of the county or in a newspaper having general circulation in the county at least equal to that of the legal organ.

(c) The exact ballot language shall be prescribed in the intergovernmental agreement which imposes the tax authorized by this article, but shall contain, at a minimum, the purpose of the tax, the rate of the tax, and the duration for which the tax shall be imposed.

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this article; otherwise, the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the special district until after 12 months immediately following the month in which the election was held; provided, however, that, if an election date authorized under paragraph (2) of subsection (c) of Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the special district on such date. The county election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. Such election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

**History.**

Code 1981, § 48-8-109.32, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.

**Editor's notes.**

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.

For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.33. (For effective date, see note.) Timing for imposition of tax following approval; termination of tax.

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar

quarter which begins more than 50 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services that are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner to ensure it is received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the final day of the maximum period of time specified for the imposition of the tax.

(c) For any special district in which a tax authorized by this article is in effect may, while such tax is in effect, the General Assembly may pass a local Act calling for a reimposition of a tax as authorized by this article upon the termination of the tax then in effect, and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-109.32. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect.

**History.**
Code 1981, § 48-8-109.33, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.

**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.

For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.34. (For effective date, see note.) Administration and collection of tax.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the county government or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was

not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. Such dealer deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-109.34, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.35. (For effective date, see note.) Remittance of taxes collected.

Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-109.35, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.36. (For effective date, see note.) Disbursement of proceeds.

The proceeds of the tax collected by the commissioner under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury to defray the costs of administration; and

(2) The remaining proceeds of the tax shall be distributed to the county whose boundary is conterminous with the boundary of the special district to be distributed thereafter by such county among the political subdivisions within the special district in accordance with

the distribution schedule, which shall be prescribed in the intergovernmental agreement imposing the tax.

**History.**
Code 1981, § 48-8-109.36, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.37. (For effective date, see note.) Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or any political subdivision within the special district; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, then against the tax levied under Part 1 of Article 3 of this chapter, if applicable, then against the tax levied under Part 2 of Article 3 of this chapter, if applicable, and then against the tax levied under this article.

**History.**
Code 1981, § 48-8-109.37, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.38. (For effective date, see note.) Inapplicability of tax to property ordered and delivered outside taxing special. district.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes,

if the delivery is made by the seller's vehicle, and including United States mail or common carrier or by a private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-109.38, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.39. (For effective date, see note.) Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract for which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.**
Code 1981, § 48-8-109.39, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.40. (For effective date, see note.) Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized by this article.

**History.**
Code 1981, § 48-8-109.40, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

### 48-8-109.41. (For effective date, see note.) Impact on other taxes.

The tax authorized by this article shall be in addition to any other

local sales and use tax. The imposition of any other local sales and use tax within a county, municipality, or special district shall not affect the authority of a county, municipality, or special district to impose the tax authorized by this article, and the imposition of the tax authorized by this article shall not affect the imposition of any otherwise authorized local sales and use tax within a county, municipality, or special district.

**History.**
Code 1981, § 48-8-109.41, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

## 48-8-109.42. (For effective date, see note.) Use of tax proceeds; property tax relief requirements; noncompliance.

(a) Any proceeds received by a political subdivision from the tax authorized by this article shall be used by such political subdivision exclusively for tax relief and in conjunction with all limitations provided in the intergovernmental agreement authorizing the tax for such political subdivision.

(b)(1) Each taxpayer's ad valorem tax bill shall clearly state the dollar amount by which the property tax has been reduced as a result of the imposition of the tax imposed under this article.

(2) The roll-back rate for the political subdivision, which is calculated under Code Section 48-5-32.1, shall be reduced annually by the millage equivalent of the net proceeds of the tax authorized under this article, which proceeds were received by the political subdivision during the prior taxable year.

(c) If any political subdivision is not in compliance with the use of the proceeds of a tax levied under this article, the commissioner shall not certify the tax digest of such political subdivision until it complies with this Code section.

**History.**
Code 1981, § 48-8-109.42, enacted by Ga. L. 2024, p. 20, § 3-2/HB 581.
**Editor's notes.**
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.
For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

# ARTICLE 3

# COUNTY SALES AND USE TAXES

**Administrative rules and regulations.** Special County Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Rule 560-12-6-.01 et seq.

## PART 1

## COUNTY SPECIAL PURPOSE LOCAL OPTION SALES TAX (SPLOST)

**Law reviews.** For article on 2004 amendment of Code sections in this part, see 21 Georgia St. U.L. Rev. 226 (2004).

### 48-8-110. Definitions.

As used in this part, the term:

(1) "Capital outlay project" means major, permanent, or long-lived improvements or betterments, such as land and structures, such as would be properly chargeable to a capital asset account and as distinguished from current expenditures and ordinary maintenance expenses. Such term shall include, but not be limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment.

(2) "County-wide project" means a capital outlay project or projects as defined in paragraph (1) of this Code section of the county for the use or benefit of the citizens of the entire county and is further defined as follows:

(A) "Level one county-wide project" means a county-wide project or projects of the county to carry out functions on behalf of the state and is limited to a county courthouse; a county administrative building primarily for county constitutional officers or elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department facility; or any combination of such projects; and

(B) "Level two county-wide project" means a county-wide project or projects of the county or one or more municipalities, other than a level one county-wide project, which project or projects are to be owned or operated or both either by the county, one or more municipalities, or any combination thereof.

(3) "Intergovernmental agreement" means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution between a county and one or more qualified municipalities located within the special district containing a combined total of no less than

50 percent of the aggregate municipal population located within the special district.

(4) "Qualified municipality" means only those incorporated municipalities which provide at least three of the following services, either directly or by contract:

(A) Law enforcement;

(B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;

(C) Road and street construction or maintenance;

(D) Solid waste management;

(E) Water supply or distribution or both;

(F) Waste-water treatment;

(G) Storm-water collection and disposal;

(H) Electric or gas utility services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Planning and zoning;

(K) Recreational facilities; or

(L) Library.

**History.**

Code 1981, § 48-8-110, enacted by Ga. L. 2004, p. 69, § 8.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2009, "Article IX" was substituted for "Article XI" in paragraph (3).

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 8, redesignated former Code Section 48-8-110 as present Code Section 48-8-110.1 concerning authorization for special county 1 percent sales and use tax.

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8 (this Code section), 9, 10, 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

## OPINIONS OF THE ATTORNEY GENERAL

**Borrowing from tax proceeds.** — County may not borrow from Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than voter-approved capital projects

authorized in the SPLOST statutes. 2007 Op. Att'y Gen. No. 2007-5.

## 48-8-110.1. Creation of special districts; authority to impose special sales and use tax; rate of tax.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Except as provided in subsection (d) of this Code section, any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3.

(d) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

**History.**

Code 1981, § 48-8-110, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1989, p. 62, § 11; Ga. L. 1991, p. 87, § 4; Ga. L. 1996, p. 1, § 4; Code 1981, § 48-8-110.1, as redesignated by Ga. L. 2004, p. 69, § 8; Ga. L. 2007, p. 309, § 8/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 24/HB 1221; Ga. L. 2015, p. 236, § 5-10/HB 170.

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8 (this Code section), 9, 10, 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

**JUDICIAL DECISIONS**

**Subjects of taxation.** — Intent of the provision that no item or transaction which is not subject to taxation by the state sales and use tax shall be subject to the tax levied pursuant to the local sales and use tax provisions was to restrict taxation under the local sales and use tax statutes to the same types of items and transactions defined as subject to taxation by the state sales and use tax law; thus, the fact that no state use tax was due on the taxpayer's construction equipment did not mean that no local use taxes could be imposed. Collins v. C.W. Matthews Contracting Co., 213 Ga. App. 109, 444 S.E.2d 100, 1994 Ga. App. LEXIS 451 (1994), cert. denied, No. S94C1300, 1994 Ga. LEXIS 1029 (Ga. Sept. 20, 1994), aff'd, 265 Ga. 448, 457 S.E.2d 171, 1995 Ga. LEXIS 369 (1995).

**OPINIONS OF THE ATTORNEY GENERAL**

**Proceeds not payable directly to cities.** — Special county one percent sales and use tax is a county tax, and the state revenue commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax cannot be paid directly to a city by the commissioner for the city's use in making capital improvements to the city's water system. 1989 Op. Att'y Gen. U89-15.

**Specificity of referendum questions relative to the special county one percent sales and use tax.** — Referendum questions relative to the special county one percent sales and use tax provided for under O.C.G.A. § 48-8-110 (see now O.C.G.A. § 48-8-110.1) et seq. must only be so specific as to place the electorate on fair notice as to which projects the tax proceeds will be devoted, and when there is municipal participation in such projects, identification of the municipalities and projects involved would be required. 1990 Op. Att'y Gen. No. U90-18.

## 48-8-111. Procedure for imposition of tax; resolution or ordinance; notice to county election superintendent; election.

(a) Prior to the issuance of the call for the referendum and prior to

the vote of a county governing authority within a special district to impose the tax under this part, such governing authority may enter into an intergovernmental agreement with any or all of the qualified municipalities within the special district. Any county that desires to have a tax under this part levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss the possible projects for inclusion in the referendum, including municipally owned or operated projects. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, the governing authority of the county within the special district voting to impose the tax authorized by this part shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify eligible expenditures identified by the county and any qualified municipality for use of proceeds distributed pursuant to subsection (b) of Code Section 48-8-115. Such ordinance or resolution shall also specify:

(1) The purpose or purposes for which the proceeds of the tax are to be used and may be expended, which purpose or purposes may consist of capital outlay projects located within or outside, or both within and outside, any incorporated areas in the county in the special district or outside the county, as authorized by subparagraph (B) of this paragraph for regional facilities, and which may include any of the following purposes:

(A) A capital outlay project consisting of road, street, and bridge purposes, which purposes may include sidewalks and bicycle paths;

(B) A capital outlay project or projects in the special district and consisting of a courthouse; administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facilities as defined under paragraph (27.1) or (35) of Code Section 12-8-22, as amended, excluding any solid waste thermal treatment technology facility, including, but not limited to, any facility for purposes of incineration or waste to energy direct conversion; local or regional recovered materials processing facilities as defined under paragraph (26) of Code Section 12-8-22, as amended; or any combination of such projects;

(C) A capital outlay project or projects which will be operated

by a joint authority or authorities of the county and one or more qualified municipalities within the special district;

(D) A capital outlay project or projects, to be owned or operated or both either by the county, one or more qualified municipalities within the special district, one or more local authorities within the special district, or any combination thereof;

(E) A capital outlay project consisting of a cultural facility, a recreational facility, or a historic facility or a facility for some combination of such purposes;

(F) A water capital outlay project, a sewer capital outlay project, a water and sewer capital outlay project, or a combination of such projects, to be owned or operated or both by a county water and sewer district and one or more qualified municipalities in the county;

(G) The retirement of previously incurred general obligation debt of the county, one or more qualified municipalities within the special district, or any combination thereof;

(H) A capital outlay project or projects within the special district and consisting of public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities, or any combination of such purposes;

(I) A capital outlay project or projects within the special district, consisting of capital equipment for use in voting in official elections or referendums;

(J) A capital outlay project or projects within the special district consisting of any transportation facility designed for the transportation of people or goods, including but not limited to railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;

(K) A capital outlay project or projects within the special district and consisting of a hospital or hospital facilities that are owned by a county, a qualified municipality, or a hospital authority within the special district and operated by such county, municipality, or hospital authority or by an organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code, which operates the hospital through a contract or lease with such county, municipality, or hospital authority;

(L) The repair of capital outlay projects, including, but not limited to, roads, streets, and bridges, located, in part or in whole, within the special district that have been damaged or destroyed by a natural disaster;

(M) A capital outlay project or projects that are owned, operated, or administered by the state and located, in part or in whole, within the special district; or

(N) Any combination of two or more of the foregoing;

(2) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the maximum period of time for which the tax may be levied shall not exceed six years;

(3) The estimated cost of the project or projects which will be funded from the proceeds of the tax, which estimated cost shall also be the estimated amount of net proceeds to be raised by the tax, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum; and

(4) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the local government issuing the debt, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county within the special district. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued by the county or any qualified municipality within the special district in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority or the governing authority or authorities of the qualified municipalities imposing the tax within the special district, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot submitting the question of the imposition of the tax authorized by this part to the voters of the county within the special district shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall a special 1 percent sales and use tax be imposed in the special district of _____ County for a period of time not to exceed _____ and for the raising |
| ( ) NO | of an estimated amount of $_____ for the purpose of _____?" |

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this part; otherwise, the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county within the special district until after 12 months immediately following the month in which the election was held; provided, however, that, if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the county within the special district on such date. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I or Article IX, Section V, Paragraph II of the Constitution is given to the proper officers of the county or qualified municipality within the special district issuing such debt; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing

authority of the county or qualified municipality within the special district issuing such debt may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality within the special district issuing such debt from the tax authorized by this part. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality within the special district issuing such debt; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipality within the special district issuing such debt.

**History.**

Code 1981, § 48-8-111, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1985, p. 868, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1987, p. 1322, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 2998, § 1; Ga. L. 1994, p. 1668, §§ 1-4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 172, §§ 1, 2; Ga. L. 1995, p. 288, § 1; Ga. L. 1996, p. 230, § 1; Ga. L. 1996, p. 1643, § 4; Ga. L. 1997, p. 969, § 1; Ga. L. 1997, p. 1412, § 3; Ga. L. 1998, p. 585, § 1; Ga. L. 1999, p. 781, § 1; Ga. L. 2000, p. 1375, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 576, § 2; Ga. L. 2004, p. 69, § 9; Ga. L. 2015, p. 200, § 1/SB 122; Ga. L. 2017, p. 530, § 3/SB 156; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2023, p. 578, § 1/HB 431, effective July 1, 2023; Ga. L. 2024, p. 1052, § 5(51)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2023 amendment,** effective July 1, 2023, deleted the undesignated proviso following subparagraph (a)(1)(N), which read: "provided, however, that a tax authorized under this part which is submitted to the voters for approval in connection with an equalized homestead option sales tax pursuant to Part 2 of Article 2A of this chapter shall be used for transportation purposes which shall include roads, bridges, public transit, rails, airports, buses, seaports, and including without limitation road, street, and bridge purposes pursuant to paragraph (1) of subsection (b) of Code Section 48-8-121, for public safety facilities and related capital equipment used in the operation thereof, for debt service purposes for which a municipality used proceeds from the homestead option sales and use tax, and for the repair of capital outlay projects; provided, however, that the amount of proceeds used for the repair of capital outlay projects shall not exceed 15 percent of the total proceeds which are collected under this part for a capital outlay project or projects authorized under this paragraph;".

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

**Editor's notes.**

Former subsection (c.1), relating to the validity of an election held pursuant to an

ordinance or resolution with respect to taxes imposed or to be imposed under this article, was repealed by its own terms December 31, 1999.

Ga. L. 2002, p. 576, § 3, not codified by the General Assembly, provides in part that the amendments to this Code section "shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after July 1, 2002."

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9 (the amendment to this Code section), 10, 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Ga. L. 2017, p. 530, § 4(c)/SB 156, not codified by the General Assembly, provides: "Sections 1 and 3 of this Act shall apply to all equalized homestead option sales and use taxes which are implemented on and after the effective date specified in subsection (a) of this section and to all county special purpose local option sales taxes which are implemented in conjunction with an equalized homestead option sales and use tax implemented on and after such date." Subsection (a) of this section provides that the Act becomes effective upon approval of the Governor which occurred on May 8, 2017.

## JUDICIAL DECISIONS

**Termination of tax.** — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide in its resolution for general obligation debt, was to be measured by the period of time specified in the resolution. Jackson v. Shadix, 272 Ga. 631, 533 S.E.2d 706, 2000 Ga. LEXIS 551 (2000) (reversing Shadix v. Carroll County, 239 Ga. App. 191, 521 S.E.2d 99, 1999 Ga. App. LEXIS 989 (1999)).

## OPINIONS OF THE ATTORNEY GENERAL

**Retiring earlier incurred indebtedness.** — Tax under O.C.G.A. § 48-8-110 et seq. may not be imposed to retire bonded indebtedness incurred in conjunction with capital outlay projects which were not planned contemporaneously with the imposition of the tax. 1986 Op. Att'y. Gen. No. U86-6.

Special county one percent sales and use tax may be levied for the purpose of retiring county general obligation debt which was incurred prior to the imposition of the tax in order to purchase a hospital used by or benefiting the citizens of the entire county. 1991 Op. Att'y Gen. No. U91-1.

**Annual payments to hospital authority.** — Jefferson County may not levy a special county one percent sales and use tax under O.C.G.A. § 48-8-111 for the purpose of obtaining funds to make certain annual payments to the Hospital Authority of Jefferson County and the City of Louisville. 1986 Op. Att'y. Gen. No. U86-6.

**Water and sewer project operated by county board of utilities commissioners.** — Water or sewer project operated in whole or in part by the Board of Utilities Commissioners of Catoosa County would not fall within O.C.G.A. § 48-8-111(a)(1)(C), and the local government attorneys would have to review the particular contract and project

to determine whether or not the ownership and operation requirement and the power to contract prerequisite of O.C.G.A. § 48-8-111(a)(1)(D) can be met in this instance. 1985 Op. Att'y Gen. No. U85-24.

**Purpose in O.C.G.A. § 48-8-111(a)(1)(F) as added by the 1987 amendment** to the special county one percent sales and use tax law does not replace the purposes in O.C.G.A. § 48-8-111(a)(1)(C) and (a)(1)(D) but is in addition thereto. 1989 Op. Att'y Gen. U89-15.

**Payments to city for project not identified in tax resolution not authorized.** — To the extent the question of whether a city can use a portion of "the money" for the construction of a civic center which can be used by both the residents of the city and all the county residents relates to a flow-through of tax proceeds under the Act directly to cities for usage on another project independent of the purpose identified in the resolution of the county calling for imposition of the tax, such payments or usage of the taxes, apart from payments under appropriate contracts, would not be authorized. 1985 Op. Att'y Gen. No. U85-24.

**Use of proceeds to repay loan from state revolving fund.** — Local government may improve the local sewer and water systems by means of a loan from a state revolving fund and repay with funds derived from a special, county one percent sales tax, when voters have approved the tax and the capital project, but the referendum ballot did not state that the debt would be used to finance the work. 1990 Op. Att'y Gen. No. U90-7.

It is an expenditure for an authorized capital outlay project although proceeds (proceeds paid to a city) are spent in repaying loans rather than in paying project costs directly. 1990 Op. Att'y Gen. No. U90-7.

Loans by the Department of Natural Resources pursuant to O.C.G.A. § 12-5-38.1 and loans by the Georgia Environmental Facilities Authority pursuant to O.C.G.A. § 50-23-1 et seq. do not cause a city or county to incur debt in accordance with Ga. Const. 1983, Art. IX, Sec. V, Para. I. The constitutional underpinning of these programs is in the intergovernmental contract clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Thus, the procedural requirements in O.C.G.A. § 48-8-111 for submitting a debt question are not triggered when proceeds derived from the sales tax are to be applied to repayment of the loans by the Department of Natural Resources or the Georgia Environmental Facilities Authority. 1990 Op. Att'y Gen. No. U90-7.

**Specificity of referendum questions relative to the special county one percent sales and use tax.** — Referendum questions relative to the special county one percent sales and use tax provided for under O.C.G.A. § 48-8-110 (see now O.C.G.A. § 48-8-110.1) et seq. must only be so specific as to place the electorate on fair notice as to which projects the tax proceeds will be devoted, and when there is municipal participation in such projects, identification of the municipalities and projects involved would be required. 1990 Op. Att'y Gen. No. U90-18.

**General obligations of municipalities** which were incurred under a constitutionally authorized joint contract with the county may not be retired with proceeds from the special county one percent sales and use tax. Excess proceeds from the tax first must be used to reduce other county indebtedness, and then must be paid into the county general fund. 1991 Op. Att'y Gen. No. U91-1.

**Borrowing from tax proceeds.** — County may not borrow from the Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than voter-approved capital projects authorized in the SPLOST statutes. 2007 Op. Att'y Gen. No. 2007-5.

## 48-8-111.1. Application of part to consolidated government.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities, the provisions

of this Code section shall control over any conflicting provisions of this part.

(b) The tax authorized by this part, if imposed by a consolidated government, shall not be subject to any maximum period of time for which the tax may be levied if general obligation debt is to be issued in conjunction with the imposition of the tax. In such case the resolution or ordinance calling for the imposition of the tax shall not be required to state a maximum period of time for which the tax is to be levied; and the language relating to the maximum period of time for which the tax is to be levied shall be omitted from the ballot. The resolution or ordinance calling for the imposition of the tax shall state the maximum amount of revenue to be raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of subsection (b) of Code Section 48-8-112.

(c) A consolidated government shall be authorized to levy a tax for any capital outlay project provided for in subparagraphs (a)(1)(C), (a)(1)(D), and (a)(1)(F) of Code Section 48-8-111, or any combination thereof, without the necessity of operating such project jointly with a qualified municipal governing authority, owning or operating such projects with one or more qualified municipalities, or entering into a contract with one or more qualified municipalities with respect to such project.

(d) In all respects not otherwise provided for in this Code section, the levy of a tax under this part by a consolidated government shall be in the same manner as the levy of the tax by any other county.

**History.**

Code 1981, § 48-8-111.1, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1995, p. 172, § 3; Ga. L. 2004, p. 69, § 10; Ga. L. 2013, p. 141, § 48/HB 79.

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10 (the amendment to this Code section), 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

## 48-8-112. Effective date of tax; termination of tax; limitation on taxation; continuation of tax.

(a) If the imposition of the tax is approved at the special election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters. With respect to services

which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the county and qualified municipalities within the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the tax, unless the provisions in paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum.

(c)(1) At any time no more than a single 1 percent tax under this part may be imposed within a special district.

(2) The governing authority of a county in a special district in which a tax authorized by this part is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized by this part upon the termination of the tax then in effect; and a special election may be held for this purpose while the tax is in effect. Proceedings for the reimposition of a tax shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that, in the event of emergency conditions under which a county is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this part, the governing authority of a county within a special district may initiate

proceedings for the reimposition of a tax under this part in the same manner as provided in this part for initial imposition of such tax.

**History.**

Code 1981, § 48-8-112, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1987, p. 1322, § 2; Ga. L. 1995, p. 172, § 4; Ga. L. 1997, p. 519, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2004, p. 69, § 11; Ga. L. 2024, p. 1052, § 5(52)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(2).

**Editor's notes.**

Ga. L. 1997, p. 519, § 2, not codified by the General Assembly, provides that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after April 14, 1997.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11 (the amendment to this Code section), 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Former subsection (d) was repealed on its own terms effective December 31, 2008.

**Law reviews.**

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

**JUDICIAL DECISIONS**

**Termination of tax.** — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide in its resolution for general obligation debt was to be measured by the period of time specified in the resolution. Jackson v. Shadix, 272 Ga. 631, 533 S.E.2d 706, 2000 Ga. LEXIS 551 (2000) (reversing Shadix v. Carroll County, 239 Ga. App. 191, 521 S.E.2d 99, 1999 Ga. App. LEXIS 989 (1999)).

## 48-8-113. Administration and collection of tax.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified

municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**

Code 1981, § 48-8-113, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 815, § 3; Ga. L. 1992, p. 2998, § 2; Ga. L. 2004, p. 69, § 12; Ga. L. 2007, p. 309, § 9/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 25/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12 (the amendment to this Code section), 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

**JUDICIAL DECISIONS**

**County action against companies prohibited.** — Provision that taxes are to be exclusively administered and collected by the commissioner precluded an action by a county against companies for damages resulting from the improper remittance of local sales taxes. Cellular One v. Emanuel County, 227 Ga. App. 197, 489 S.E.2d 50, 1997 Ga. App. LEXIS 831 (1997).

**OPINIONS OF THE ATTORNEY GENERAL**

**Proceeds not payable directly to cities.** — Special county one percent sales and use tax is a county tax, and the State Revenue Commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax cannot be paid directly to a city by the State Revenue Commissioner for the city's use in making capital improvements to its water system. 1989 Op. Att'y Gen. U89-15.

## 48-8-114. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this part shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by

the commissioner that all taxes imposed by this part are collected and distributed according to situs of sale.

**History.** Code 1981, § 48-8-114, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.

### 48-8-115. Disbursement of proceeds.

(a) The proceeds of the tax collected by the commissioner in each county within a special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed to the governing authority of the county within the special district imposing the tax as specified in subsection (b) of this Code section.

(b) The county within the special district shall distribute any such proceeds as follows:

(1) To the county governing authority and any qualified municipalities as specified in an intergovernmental agreement. Where an intergovernmental agreement has been entered into, the agreement shall, at a minimum, include the following:

(A) The specific capital outlay project or projects to be funded pursuant to the agreement;

(B) The estimated or projected dollar amounts allocated for each project from tax proceeds from the tax authorized by this part;

(C) The procedures for distributing proceeds from the tax authorized by this part to qualified municipalities;

(D) A schedule for distributing proceeds from the tax authorized by this part to qualified municipalities which schedule shall include the priority or order in which projects will be fully or partially funded;

(E) A provision that all capital outlay projects included in the agreement shall be funded from proceeds from the tax authorized by this part except as otherwise agreed;

(F) A provision that proceeds from the tax authorized by this part shall be maintained in separate accounts and utilized exclusively for the specified purposes;

(G) Record-keeping and audit procedures necessary to carry out the purposes of this part; and

(H) Such other provisions as the county and participating municipalities choose to address; or

(2) Where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection, the county within the special district shall distribute the proceeds of the tax authorized by this part as follows:

(A)(i) To the governing authority of the county for one or more level one county-wide projects specified by the governing authority of the county in the ordinance or resolution required by subsection (a) of Code Section 48-8-111; provided, however, that any tax levied under this part that funds level one county-wide projects where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection shall be levied for a five-year period. In the event that any or all level one county-wide projects are estimated to cost an amount which exceeds the proceeds projected to be collected during a 24 month period of the levy of the tax, the tax shall be levied for a six-year period.

(ii) In the event that no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the county for one or more level two county-wide projects specified by the governing authority of the county in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. In the event no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111 and the governing authority of the county has specified one or more municipal projects as level two county-wide projects in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the appropriate municipality or municipalities for such level two county-wide projects specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. The total estimated cost of all level two county-wide projects specified under this division shall not exceed 20 percent of the proceeds projected to be collected during the period specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111; or

(B) In the event that no county-wide project is included in the resolution or ordinance calling for the imposition of the tax or in the event that tax proceeds exceed that amount required to fund

the county-wide project or projects, the remaining proceeds shall be distributed in the following manner:

(i) As specified in an intergovernmental agreement other than the agreement specified in paragraph (1) of this subsection. The intergovernmental agreement shall include, at a minimum, the information required in paragraph (1) of this subsection; or

(ii) To the qualified municipalities within the special district based upon the ratio that the population of each qualified municipality bears to the total population of the county within the special district. If any qualified municipality is located in more than one county, only that portion of its population that is within the special district shall be counted. The remainder of such proceeds shall be distributed to the governing authority of the county within the special district. Capital outlay projects included in the referendum ballot by the county or any qualified municipalities within the special district shall be based upon the anticipated proceeds and distribution of the tax. The governing authority of the county within the special district shall distribute all proceeds received by the county for the tax levied pursuant to this part to the qualified municipalities within the special district on a monthly basis where proceeds are distributed in accordance with this division.

**History.**

Code 1981, § 48-8-115, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2004, p. 69, § 13; Ga. L. 2005, p. 60, § 48/HB 95.

**Editor's notes.**

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13 (the amendment to this Code section), 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

## OPINIONS OF THE ATTORNEY GENERAL

**Proceeds not payable directly to cities.** — Special county one percent sales and use tax is a county tax, and the State Revenue Commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax cannot be paid directly to a city by the State Revenue Commissioner for the city's use in making capital improvements to the city's water system. 1989 Op. Att'y Gen. U89-15.

### 48-8-116. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, and then against the tax levied under this part.

**History.** Code 1981, § 48-8-116, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141 § 48/HB 79.

### 48-8-117. Inapplicability of tax to property ordered and delivered outside taxing county.

No tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.** Code 1981, § 48-8-117, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 2012, p. 580, § 21/HB 865; Ga. L. 2013, p. 141, § 48/HB 79.

### 48-8-118. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construc-

tion or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this part shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.**
Code 1981, § 48-8-118, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.

## 48-8-119. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this part.

**History.**
Code 1981, § 48-8-119, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.

## 48-8-120. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized by this part shall be in addition to any other local sales and use tax. Except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of such a county to impose the tax authorized by this part and the imposition of the tax authorized by this part shall not affect the imposition of any otherwise authorized local sales and use tax within the county within the special district.

**History.**
Code 1981, § 48-8-120, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2004, p. 69, § 14.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2004, "this part" was substituted for "part" twice in the last sentence.

**Editor's notes.**
Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13, 14 (the amendment to this Code section), and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

**48-8-121. Use of tax proceeds; requirements for general obligation debt.**

(a)(1) The proceeds received from the tax authorized by this part shall be used by the county and qualified municipalities within the special district receiving proceeds of the sales and use tax exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of such county and each qualified municipality receiving proceeds of the sales and use tax and shall not in any manner be commingled with other funds of such county and each qualified municipality receiving proceeds of the sales and use tax prior to the expenditure.

(2) The governing authority of the county and the governing authority of each qualified municipality within the special district receiving any proceeds from the tax pursuant to this part shall maintain a record of each and every project for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(3) In the event that a qualified municipality fails to comply with the requirements of this part, the county within the special district shall not be held liable for such noncompliance.

(b)(1) If the resolution or ordinance calling for the imposition of the tax specified that the proceeds of the tax are to be used in whole or in part for capital outlay projects consisting of road, street, and bridge purposes, then authorized uses of the tax proceeds shall include:

(A) Acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths;

(B) Construction of roads, streets, bridges, sidewalks, and bicycle paths;

(C) Renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing;

(D) Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths;

(E) Improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; and

(F) Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths.

(2) Storm-water capital outlay projects and drainage capital outlay projects may be funded pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 or in conjunction with road, street, and bridge capital outlay projects.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the governing authority of the county or qualified municipalities within special district issuing the debt determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the county or qualified municipalities within special district issuing such debt will receive from the tax authorized by this part net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipalities within the special district issuing such debt from the tax authorized by this part. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipalities within the special district issuing such debt; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipalities within the special district issuing such debt.

(d) The resolution or ordinance calling for imposition of the tax authorized by this part may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (g) of this Code section.

(e) The resolution or ordinance calling for the imposition of the tax authorized by this part may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the other purposes for which such proceeds will be used; and such other purposes shall be a part of the capital outlay project or projects for which the tax is to be imposed. In such a case no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(f) The resolution or ordinance calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the purpose or purposes for which the proceeds will be used.

(g)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the county or qualified municipality within the special district receives from the tax net proceeds in excess of the estimated cost of the capital outlay project or projects stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such capital outlay project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-112 by reason of denial of validation of debt, then all net proceeds received by the county or qualified municipality within the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Unless otherwise provided in this part or in an intergovernmental agreement entered into pursuant to this part, excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county within the special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the county within the special district, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes.

**History.**

Code 1981, § 48-8-121, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1987, p. 1322, § 3; Ga. L. 1990, p. 382, § 1; Ga. L. 1992, p. 2998, § 3; Ga. L. 1994, p. 97, § 48; Ga. L. 1994, p. 1668, §§ 5-7; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 172, § 5; Ga. L. 1996, p. 1643, § 4A; Ga. L. 1997, p. 541, § 1; Ga. L. 1998, p. 579, § 1; Ga. L. 2004, p. 69, § 15.

**Editor's notes.**

Ga. L. 1994, p. 1668, § 8, not codified by the General Assembly, provided that §§ 6 and 7 of that Act are applicable with respect to taxes imposed prior to April 19, 1994, as well as with respect to taxes imposed on or after that date.

Ga. L. 1994, p. 1668, § 7, which added subsection (h), relating to the development of a sanitary landfill, also provided for the repeal of that subsection, effective July 1, 1999.

Ga. L. 1997, p. 541, § 2, not codified by the General Assembly, provides that that

Act shall apply with respect to taxes imposed prior to April 14, 1997.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13, 14, and 15 (the amendment to this Code section) of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

**Law reviews.**

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

## JUDICIAL DECISIONS

**Termination of tax.** — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide in its resolution for general obligation debt, was to be measured by the period of time specified in the resolution. Jackson v. Shadix, 272 Ga. 631, 533 S.E.2d 706, 2000 Ga. LEXIS 551 (2000) (reversing Shadix v. Carroll County, 239 Ga. App. 191, 521 S.E.2d 99, 1999 Ga. App. LEXIS 989 (1999)).

**Use of proceeds.** — Board of county commissioners was not authorized to use proceeds from SPLOST tax for a purpose entirely different from that contained in the SPLOST budget and account reports; the board was bound by the reports to complete all projects listed therein unless circumstances arose which dictated that projects which initially seemed feasible were no longer so and in this regard the governing authority had discretion to make adjustments in the plans for these projects, but could not abandon the projects altogether. Dickey v. Storey, 262 Ga. 452, 423 S.E.2d 650, 1992 Ga. LEXIS 1006 (1992).

Mandamus was not appropriate under O.C.G.A. § 9-6-20 as members of a county board of commissioners did not fail to perform the board's official duties by entering into a 2006 intergovernmental agreement to have $12 million raised by a 1999 Special Local Option Sales Tax (SPLOST) referendum used to upgrade and build two local waste water facilities as the SPLOST funds were insufficient to upgrade the county's existing centralized system of waste water treatment; the 2006 intergovernmental agreement utilized the funds for the purposes specified in the 1999 resolution under O.C.G.A. § 48-8-121(a)(1), just by a different means. Hicks v. Khoury, 283 Ga. 407, 658 S.E.2d 616, 2008 Ga. LEXIS 242 (2008).

**Excess proceeds.** — Actual cost, rather than estimated cost, established the maximum amount of Special Purpose Local Option Sales Tax (SPLOST) revenue that could have been expended, and when actual cost exceeded estimated cost, actual cost was the determinative standard; when the actual cost of the projects exceeded the maximum cost of the projects stated in the SPLOST resolution, no "excess" proceeds existed so long as the project remained incomplete. Haugen v. Henry County, 277 Ga. 743, 594 S.E.2d 324, 2004 Ga. LEXIS 185, cert. denied, 543 U.S. 816, 125 S. Ct. 63, 160 L. Ed. 2d 22, 2004 U.S. LEXIS 5612 (2004).

## OPINIONS OF THE ATTORNEY GENERAL

**Interest earned on education taxes and in special county taxes** becomes part of the tax proceeds in the account fund, which fund is required to be used

exclusively for the purpose(s) specified in the resolution or ordinance calling for the imposition of the tax. 2001 Op. Att'y Gen. No. 2001-3.

**Borrowing from tax proceeds.** — County may not borrow from Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than voter-approved capital projects authorized in the SPLOST statutes. 2007 Op. Att'y Gen. No. 2007-5.

## 48-8-122. Annual reporting to public.

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this part or under Article 4 of this chapter shall maintain a record of each and every project for which the proceeds of the tax are used. Not later than 180 days following the close of each fiscal year, the governing authority of each local government receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such local government and in a prominent location on the local government website, if such local government maintains a website, a simple, nontechnical report which shows for each project or purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior fiscal years, amounts expended in the most recently completed fiscal year, any excess proceeds which have not been expended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the most recently completed fiscal year. In the case of road, street, and bridge purposes, such information shall be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost if it is not the original estimated cost, and the total amounts expended in prior fiscal years and the most recently completed fiscal year for all such projects and not a separate enumeration of such information with respect to each such individual road, street, or bridge project. The report shall also include a statement of what corrective action the local government intends to implement with respect to each project which is underfunded or behind schedule.

**History.**

Code 1981, § 48-8-123, enacted by Ga. L. 2004, p. 69, § 21; Ga. L. 2012, p. 954, § 2/SB 332; Ga. L. 2019, p. 720, § 1/HB 379.

**Editor's notes.**

Former Code Section 48-8-122, concerning the repeal of this article upon an increase of current state sales and use tax rate, was based on Ga. L. 1987, p. 1322, § 4, and Ga. L. 1988, p. 543, § 2, and was repealed by Ga. L. 1989, p. 62, § 12, effective April 1, 1989.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

**Law reviews.**

For article on the 2004 amendment of this Code section, see 21 Georgia St. U.L. Rev. 226 (2004).

**48-8-123. Procedure for modification of infeasible projects previously approved by referendum.**

(a) For purposes of this Code section, the term "infeasible" means that the project has, in the judgment of the governing authority as expressed in the resolution or ordinance required by subsection (b) of this Code section, become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the citizens of the special district or the municipality.

(b)(1) Notwithstanding any other provision of this part to the contrary, if the tax authorized by this part has been imposed within a special district for a purpose or purposes authorized by subsection (a) of Code Section 48-8-111 and one or more projects authorized therein become or are determined to be infeasible, then the provisions of this Code section shall apply. However, this Code section shall not apply until and unless the governing authority or governing authorities specified under paragraph (2) of this subsection adopt a resolution or ordinance determining that such project or projects for which the levy has been approved have become infeasible in accordance with paragraph (2) of this subsection.

(2)(A) If a project that has become infeasible is a project for which the county is responsible, an ordinance or resolution of the county shall be required determining that the project has become infeasible.

(B) If a project that has become infeasible is a municipal project, an ordinance or resolution of the municipality responsible for the project shall be required determining that the project has become infeasible. Upon its approval by the municipality, such ordinance or resolution shall be transmitted to the governing authority of the county. The county governing authority shall rely on the determination by the municipality that the municipal project has become infeasible.

(C) If a project that has become infeasible is a joint project of the county or a county authority and one or more municipalities or a joint project of two or more municipalities, an ordinance or resolution of all of the jurisdictions involved in the joint project shall be required determining that the project has become infeasible.

(3) If the governing authority desiring to determine that a project is infeasible has incurred or entered into financing for such project, whether through an intergovernmental contract, a multiyear lease or purchase contract under Code Section 36-60-13, or other form of indebtedness, no such ordinance or resolution shall be adopted until

the governing authority discharges in full the obligation incurred or provides for the defeasance of such obligation.

(c) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the tax shall continue to be imposed for the same period of time and for the raising of the same amount of revenue as originally authorized. Subject to approval in a referendum required by subsection (d) of this Code section, the county, or any municipality if the infeasible project is a project owned or operated by the municipality, or those entities that are part of a joint project, may expend the previously collected and future proceeds of the tax, or such portion thereof as was intended for the purpose that has been determined to be infeasible if the tax were imposed for more than one purpose, to reduce any general obligation indebtedness of the affected jurisdiction within the special district other than indebtedness incurred pursuant to this part, or by paying such proceeds into the general fund of the county or municipality to be used for the purpose of reducing ad valorem taxes, or both. In the event of a joint project in which there is an intergovernmental agreement apportioning the project, the proceeds shall be divided among the entities to such joint agreement according to such apportionment. In the event of a joint project in which there is no agreement apportioning the project, the proceeds shall be divided equally among the entities to the joint project.

(d)(1) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the governing authority of the county shall notify the county election superintendent by forwarding to the superintendent a copy of a resolution or ordinance calling for the modification of the purpose for which proceeds of the tax authorized by this part may be expended. Such ordinance or resolution shall specify the modified purpose for which the balance of proceeds of the tax are to be used and an estimate of the amount of the proceeds available to be used for the modified purpose.

(2) Upon receipt of the resolution or ordinance required by this subsection, the election superintendent shall issue the call for an election for the purpose of submitting to the voters of the county within the special district the question of modifying the project or projects for which the proceeds of the levy may be expended. The election superintendent shall issue the call and shall conduct the election, in conjunction with the next election held, to submit to the electors of the special district the imposition of a tax under this part and shall conduct the election in the manner specified in subsection (b) of Code Section 48-8-111.

(3) The ballot submitting a question of the approval of the modified purpose for a levy previously approved by the electors of the county within the special district as authorized by this Code section shall have written or printed thereon the following:

"( ) YES Shall the capital outlay project consisting of _____ approved for use of proceeds of the special 1 percent sales and use tax imposed in the special district of
( ) NO _____ County in a referendum on _____ be modified so as to authorize use of such proceeds for the purpose of (reducing debt, reducing ad valorem taxes, or reducing debt and ad valorem taxes) of the (county) (municipality)?"

(4) If there are multiple projects to be submitted to the electors for approval of modified purpose, there shall be one question for all projects of the county or its authorities, one question for all projects of municipalities, and one question for joint projects.

(5) All persons desiring to vote in favor of modifying the project or projects shall vote "Yes," and all persons opposed to modifying the project or projects shall vote "No." If more than one-half of the votes cast are in favor of modifying the project or projects, then the proceeds of the tax imposed as provided in this part shall be used for such modified purpose; otherwise, the proceeds of the tax shall not be used for such modified purpose. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e) This Code section shall not apply to a board of education which levies the sales tax for educational purposes pursuant to Part 2 of this article and Article VIII, Section VI, Paragraph IV of the Constitution.

**History.**
Code 1981, § 48-8-123, enacted by Ga. L. 2011, p. 294, § 1/HB 240.

## 48-8-124. Enforcement.

The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this part, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person or entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this part.

**History.**
Code 1981, § 48-8-124, enacted by Ga. L. 2012, p. 954, § 3/SB 332.

PART 2

SALES TAX FOR EDUCATIONAL PURPOSES
(ESPLOST)

**Cross references.**

Performance audit requirements for projects funded by sales tax for educational purposes, § 20-2-491.

**Editor's notes.**

The following local school systems are authorized to impose sales and use tax in addition to the tax authorized by this part pursuant to local Constitutional amendments: Bulloch County School System (Ga. L. 1981, p. 1931); Chattooga County School District/Trion Independent School District (Ga. L. 1982, p. 2675; Ga. L. 1985, p. 4447; Ga. L. 1986, p. 3712); Colquitt County School System (Ga. L. 1980, p. 2127); Habersham County School District (Ga. L. 1982, p. 2566; Ga. L. 1980, p. 2280); Houston County School System (Ga. L. 1982, p. 2600); Mitchell County School District/Pelham Independent School District (Ga. L. 1982, p. 2643); Rabun County School District (Ga. L. 1982, p. 2522); Towns County School District (Ga. L. 1982, p. 2540).

## 48-8-140. Authority and legislative intent.

This part is enacted pursuant to the authority of Article VIII, Section VI, Paragraph IV of the Constitution of Georgia and it is the intent of the General Assembly in the enactment of this part to further define and implement such provision of the Constitution.

**History.**

Code 1981, § 48-8-140, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3.

## 48-8-141. Manner of imposition of tax; report; rate.

(a) Except as otherwise expressly provided in Article VIII, Section VI, Paragraph IV of the Constitution of Georgia, the sales tax for educational purposes which may be levied by a board of education of a county school district or concurrently by the board of education of a county school district and the board of education of each independent school district located within such county shall be imposed and levied by such board or boards of education and collected by the commissioner on behalf of such board or boards of education in the same manner as provided for under Part 1 of this article and the provisions of Part 1 of this article in particular, but without limitation, the provisions regarding the authority of the commissioner to administer and collect this tax, retain the 1 percent administrative fee, and promulgate rules and regulations governing this tax shall apply equally to such board or boards of education. The report required pursuant to Code Section 48-8-122 shall be applicable; provided, however, that, in addition to posting such report in a newspaper of general circulation as required by such Code section, such report may be posted on the searchable website provided for under Code Section 50-6-32.

(b) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

**History.**

Code 1981, § 48-8-141, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3; Ga. L. 2010, p. 906, § 1/HB 1013; Ga. L. 2015, p. 236, § 5-11/HB 170; Ga. L. 2024, p. 1052, § 5(53)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-142. Issuance of general obligation debt in conjunction with tax; required contents of resolution and ballot.

If general obligation debt is to be issued in conjunction with the imposition of the sales tax for educational purposes authorized by Article VIII, Section VI, Paragraph IV of the Constitution, the resolution or concurrent resolutions imposing such tax shall specify the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt. If such general obligation debt is to be issued, the ballot shall have written or printed thereon, in addition to the descriptions required by Article VIII, Section VI, Paragraph IV(c) of the Constitution, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

**History.**

Code 1981, § 48-8-142, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3.

### 48-8-143. Distribution of sales tax for educational purposes.

The net proceeds of the sales tax for educational purposes shall be distributed in the manner provided under Article VIII, Section VI, Paragraph IV(g) of the Constitution unless another distribution formula is provided for by the enactment of a local Act. Any such local Act providing for an alternate distribution formula shall not be amended during the time period for which the tax was imposed.

**History.**
Code 1981, § 48-8-143, enacted by Ga. L. 1998, p. 591, § 1.

### 48-8-144. Local charter schools and state chartered special schools as capital outlay project.

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

(1) "Local charter school" means a local charter school as defined in paragraph (7) of Code Section 20-2-2062.

(2) "State chartered special school" means a state chartered special school as defined in paragraph (16) of Code Section 20-2-2062 and with respect to which the referendum required under Article VIII, Section V, Paragraph VII of the Constitution has been conducted and approved.

(b) A county or independent board of education shall be authorized to include local charter schools, state chartered special schools, or both as capital outlay projects in projects specified in the ballot language for a proposed tax under Article VIII, Section VI, Paragraph IV of the Constitution and this part.

**History.**
Code 1981, § 48-8-144, enacted by Ga. L. 2008, p. 167, § 1/HB 1065.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2008, "of the Constitution" was inserted in paragraph (a)(2).

## Part 3

## Consolidated Government Coliseum Project Sales Tax

### 48-8-145. Definitions.

As used in this part, the term:

(1) "Coliseum capital outlay project" means any capital outlay project or projects, as defined in paragraph (1) of Code Section 48-8-110, within the special district and consisting of the acquisition, construction, renovation, improvement, and equipping of buildings,

structures, and facilities as a successor facility to a multiuse coliseum or civic center type of facility, or a combination of such facilities, in operation on the same site for a minimum of 35 years and that includes, among other facilities, an arena originally constructed with a minimum of 5,000 permanent seats, such successor facility to be owned or operated, or both, either by the qualified consolidated government, one or more local authorities within the special district, or any combination thereof.

(2) "Project cost" means the cost of acquiring, constructing, reconstructing, renovating, repairing, improving, and installing any coliseum capital outlay project, or any combination of the foregoing.

(3) "Qualified consolidated government" means a consolidated government created by the consolidation of a county and one or more municipalities and within the geographic boundaries of the county in which such consolidated government exists there exist on the date of the call of the election pursuant to subsection (b) of Code Section 48-8-147 two or more incorporated municipalities.

**History.** Code 1981, § 48-8-145, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

## 48-8-146. Imposing taxes for funding coliseum capital outlay projects; tax rate.

(a) The governing authority of any qualified consolidated government whose geographic boundary is coterminous with that of the special district in which the sales and use tax authorized by Part 1 of Article 3 of this chapter is being levied may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time for the purpose of funding coliseum capital outlay projects and project costs.

(b) Except as provided in subsection (c) of this Code section, any tax imposed under this part shall be at the rate of 0.5 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3.

(c) Such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 0.5 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

**History.** Code 1981, § 48-8-146, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-147. Requirements for ordinance or resolution authorizing tax; ballot question; expenses of election; resubmission of question; general obligation debt.

(a) The governing authority of a qualified consolidated government voting to impose the tax authorized by this part within the special district shall notify the qualified consolidated government election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify:

(1) The aggregate maximum cost of the project or projects which shall be funded from the proceeds of the tax;

(2) The maximum amount of net proceeds to be raised by the tax, which shall be equal to the amount specified in paragraph (1) of this subsection; and

(3) If general obligation debt is to be issued in conjunction with the imposition of the tax, as authorized by this part, the principal amount of the debt to be issued, which shall not exceed $250 million; the interest rate or rates or the maximum interest rate or rates which such debt is to bear; and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the qualified consolidated government election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the qualified consolidated government. The qualified consolidated government election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The qualified consolidated government election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the legal organ of the qualified consolidated government or in a newspaper having general circulation in the qualified consolidated government at least equal to that of the legal organ. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the qualified consolidated government election superintendent shall also include, in such form as may be specified by the qualified consolidated government governing authority, the principal amount of the debt which shall not exceed $250 million, the rate or rates of interest or the maximum rate or rates of interest the debt shall bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of

notice by the qualified consolidated government election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall a special 0.5 percent sales and use tax be imposed in the special district of _____ in order to raise $_____ to |
| ( ) NO | fund coliseum capital outlay projects and related project costs?" |

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this part; otherwise, the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the qualified consolidated government until after 12 months immediately following the month in which the election was held; provided, however, that, if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the qualified consolidated government on such date. The qualified consolidated government election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The qualified consolidated government election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from qualified consolidated government funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the qualified consolidated government; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the qualified consolidated government may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36, except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14, except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the qualified consolidated government from the tax authorized by this part. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the qualified consolidated government; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the qualified consolidated government.

**History.**

Code 1981, § 48-8-147, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023; Ga. L. 2024, p. 1052, § 5(54)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2023, an ending quote was added following "project costs?" in the form in paragraph (c)(1).

## 48-8-148. Timing for imposition of tax following approval; termination of tax; maximum general obligation debt and combined rate of taxes; renewal prohibited.

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services that are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner to ensure it is received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the earliest of the following:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt; or

(2) As of the end of the calendar quarter during which the commissioner determines that the tax raised revenues sufficient to provide to the qualified consolidated government net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) In no event shall the principal amount of general obligation bonds issued under this part by a qualified consolidated government exceed $250 million.

(2) No qualified consolidated government shall at any time impose more than a single 0.5 percent tax under this part.

(3) In no event shall the tax authorized by this part be renewed or reauthorized. Each qualified consolidated government shall be limited to one imposition of the tax authorized by this part.

**History.** Code 1981, § 48-8-148, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

## 48-8-149. Administration and collection of tax.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the qualified consolidated government imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the qualified consolidated government or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall

be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-149, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023; Ga. L. 2024, p. 1052, § 5(55)/SB 448, effective July 1, 2024.
**Amendments.**
**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "on behalf of" for "in behalf of" in the second sentence.

### 48-8-150. Remittance of taxes collected.

Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-150, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-151. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each qualified consolidated government under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury to defray the costs of administration; and

(2) The remaining proceeds of the tax shall be distributed to the governing authority of the qualified consolidated government imposing the tax.

**History.**
Code 1981, § 48-8-151, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-152. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall

pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the tax imposed under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the qualified consolidated government or in a special district which includes the qualified consolidated government; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, then against the tax levied under Part 1 of Article 3 of this chapter, if applicable, then against the tax levied under Part 2 of Article 3 of this chapter, if applicable, and then against the tax levied under this part.

**History.** Code 1981, § 48-8-152, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-153. Inapplicability of tax to property ordered and delivered outside geographical area of taxing consolidated government.

No tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the qualified consolidated government in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, and including United States mail or common carrier or by a private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.** Code 1981, § 48-8-153, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-154. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

No tax provided for in this part shall be imposed upon the sale or use of building and construction materials when the contract pursuant for which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.** Code 1981, § 48-8-154, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-155. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized by this part.

**History.** Code 1981, § 48-8-155, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-156. Impact on other taxes.

The tax authorized by this part shall be in addition to any other local sales and use tax. The imposition of any other local sales and use tax within a county, municipality, or special district shall not affect the authority of a qualified consolidated government to impose the tax authorized by this part and the imposition of the tax authorized by this part shall not affect the imposition of any otherwise authorized local sales and use tax within a county, municipality, or special district.

**History.** Code 1981, § 48-8-156, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

### 48-8-157. Use of tax proceeds; requirements for general obligation debt.

(a) The proceeds received from the tax authorized by this part shall be used by the qualified consolidated government exclusively for:

(1) Coliseum capital outlay projects and project costs;

(2) The repayment of general obligation indebtedness incurred in conjunction with the imposition of the tax authorized by this part; or

(3) The repayment of any loans made to such qualified consolidated government with respect to such coliseum capital outlay projects and project costs.

Such proceeds shall be kept in a separate account from other funds of the qualified consolidated government and shall not in any manner be commingled with other funds of the qualified consolidated government prior to expenditure.

(b) The governing authority of the qualified consolidated government shall maintain a record of every project cost for which the proceeds of the tax are used. In each annual audit a schedule shall be included that shows for each ongoing such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the

financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the qualified consolidated government governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the qualified consolidated government shall receive from the tax authorized by this part net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the qualified consolidated government from the tax authorized by this part. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the qualified consolidated government; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the qualified consolidated government.

(d) The resolution or ordinance calling for imposition of the tax authorized by this part may specify that all proceeds from the tax shall be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (e) of this Code section. In such a case no part of the net proceeds from the tax received in any year shall be used for other project costs until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the qualified consolidated government receives from the tax net proceeds in excess of the maximum cost of the project or projects calling for the imposition of the tax, or the actual cost of such project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-148 by reason of denial of validation of

debt, then all net proceeds received by the qualified consolidated government from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the qualified consolidated government other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the qualified consolidated government, it being the intent that any funds so paid into the general fund of the qualified consolidated government be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-157, enacted by Ga. L. 2023, p. 47, § 2/HB 230, effective April 24, 2023.

## ARTICLE 3A

## UNIFORM SALES AND USE TAX ADMINISTRATION

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2004, this article, which was enacted as Article 4, containing Code Sections 48-8-160 through 48-8-166, was redesignated as Article 3A, containing Code Sections 48-8-160 through 48-8-166.

**Editor's notes.**
Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
67B Am. Jur. 2d, Sales and Use Taxes, §§ 21, 205 et seq.

### 48-8-160. Short title.

This article shall be known and may be cited as the "Uniform Sales and Use Tax Administration Act."

**History.**
Code 1981, § 48-8-160, enacted by Ga. L. 2004, p. 410, § 8.

### 48-8-161. Definitions.

As used in this article, the term:

(1) "Agent" means a person appointed by a seller to represent the seller before the member states.

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(3) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(4) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(5) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(6) "Model 2 seller" means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(7) "Model 3 seller" means a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(8) "Model 4 seller" means a seller that is not a Model 1 seller, a Model 2 seller, or a Model 3 seller.

(9) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(10) "Sales tax" means the taxes levied under this chapter.

(11) "Seller" means any person making sales, leases, or rentals of personal property or services.

(12) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) "Use tax" means the taxes levied under this chapter.

**History.**
Code 1981, § 48-8-161, enacted by Ga. L. 2004, p. 410, § 8; Ga. L. 2010, p. 662, § 26/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 48/SB 340.

### 48-8-162. Authorization to enter Streamlined Sales and Use Tax Agreement with other states.

The department is authorized to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this Code section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or its designee, is authorized to represent this state before the other states that are signatories to the agreement.

**History.**
Code 1981, § 48-8-162, enacted by Ga. L. 2004, p. 410, § 8.

**Law reviews.**
For article, "Revenue and Taxation: Sales and Use Taxes," see 35 Georgia St. U.L. Rev. 187 (2018).

### 48-8-163. Effect upon other statutory provisions.

No provision of the agreement authorized by this article in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

**History.**
Code 1981, § 48-8-163, enacted by Ga. L. 2004, p. 410, § 8.

### 48-8-164. Purpose.

The agreement authorized by this article is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

**History.**
Code 1981, § 48-8-164, enacted by Ga. L. 2004, p. 410, § 8.

## 48-8-165. Benefit is to the state; no individual right to challenge or contest application.

(a) The agreement authorized by this article binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a) of this Code section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

**History.**
Code 1981, § 48-8-165, enacted by Ga. L. 2004, p. 410, § 8.

## 48-8-166. Certified service provider as agent of seller; responsibility for proper functioning of automated systems; failure to meet performance standards by sellers of proprietary systems.

(a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this Code section. A seller that contracts with a certified service provider is not liable to the state for sales or use taxes due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check

of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of taxes attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of taxes due on transactions and has signed an agreement establishing a performance standard for that system is liable to the state for the failure of the system to meet the performance standard.

**History.**
Code 1981, § 48-8-166, enacted by Ga. L. 2004, p. 410, § 8.

## 48-8-167. Member of Streamlined Sales Tax Governing Board.

The Georgia members of the Streamlined Sales Tax Governing Board shall be a member of the House of Representatives appointed by the Speaker of the House of Representatives, a member of the Senate appointed by the President Pro Tempore of the Senate, and a designee of the commissioner.

**History.**
Code 1981, § 48-8-167, enacted by Ga. L. 2010, p. 662, § 27/HB 1221.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2010, Code Section 48-7-167, as enacted by Ga. L. 2010, p. 662, § 27, was redesignated as Code Section 48-8-167.

# ARTICLE 4

# WATER AND SEWER PROJECTS AND COSTS TAX

**Editor's notes.**
Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

**RESEARCH REFERENCES**

**Am. Jur. 2d.**
64 Am. Jur. 2d, Public Utilities, §§ 1 et seq., 122.70C Am. Jur. 2d, Special or Local Assessments, § 46. 71 Am. Jur. 2d, State and Local Taxation, § 115. 72 Am. Jur. 2d, State and Local Taxation, § 635.

**C.J.S.**
73B C.J.S., Public Utilities, § 1 et seq. 85 C.J.S., Taxation, § 2106.

**48-8-200. Definitions.**

As used in this article, the term:

(1) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(2) "Dealer" means a dealer as defined in Code Section 48-8-2.

(3) "Municipality" means:

(A) A municipality in which the average waste-water flow of such municipality is not less than 85 million gallons per day; or

(B) A municipality that operates a waste-water system that interconnects with the waste-water system of a municipality that has an average waste-water flow that is not less than 85 million gallons per day.

(4) "Water and sewer projects and costs" means:

(A) Any capital outlay project or projects for the development, storage, treatment, purification, or distribution of water;

(B) Any capital outlay project or projects for storm-water and sewage collection and disposal systems;

(C)(i) With respect to any project or projects provided for under subparagraph (A) or (B) of this paragraph:

(I) Any cost of project or cost of any project as defined under paragraph (3) of Code Section 50-23-4; and

(II) Any maintenance and operation costs.

(ii) In no event shall any expenditure of tax proceeds pursuant to this subparagraph exceed annually an amount equal to the annual debt service payments of such municipality with respect to revenue bond indebtedness incurred for drinking water projects and storm-water and sewage collection and disposal projects; or

(D) Any combination of any of the foregoing.

**History.**

Code 1981, § 48-8-200, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 28/HB 1221; Ga. L. 2021, p. 654, § 1/HB 160.

**Law reviews.**

For article on the 2004 amendment of this Code section, see 21 Georgia St. U.L. Rev. 226 (2004).

**48-8-201. Intergovernmental contract for distribution of tax proceeds; approval of referendum by voters; cap on aggregate amount of tax; rate.**

(a)(1) In any county in which the provisions of paragraph (2) of subsection (a) of Code Section 48-8-6 will be applicable if the tax under Part 1 of Article 3 of this chapter is imposed pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, or a combination of such projects, the governing authority of a municipality, the majority of which is located wholly or partially in such county, may deliver or mail a written copy of a resolution of such municipal governing authority calling for the imposition by the county of the tax under Part 1 of Article 3 of this chapter pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs, or any combination thereof.

(2) Within ten days following the date of delivery of such resolution to the governing authority of such county, the governing authorities of such county and municipality may enter into an intergovernmental contract as authorized by Article IX, Section III of the Constitution which shall specify the allocation of the proceeds of the tax between such county and municipality according to the ratio the population of such municipality bears to the population of such county according to the United States decennial census of 2000 or any future such census so that such municipality's share of the total net proceeds shall be the percentage of the total population of such municipality divided by the total population of such county. Such intergovernmental contract shall specify that the proceeds allocated to the municipality shall only be expended for water and sewer projects and costs.

(3) Immediately following the entering into of the intergovernmental contract under paragraph (2) of this subsection, the governing authority of such county may select the next practicable date authorized under Code Section 21-2-540 for conducting a special election on the question of imposing such tax under Part 1 of Article 3 of this chapter. The governing authority of such county shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution of the governing authority of such municipality calling for the imposition of the tax in such county. Following receipt of the resolution, the election superintendent shall issue the appropriate call for an election for the purpose of submitting

the question of the imposition of the tax to the voters of such county in the manner specified in Code Section 48-8-111. If approved in such referendum, the tax shall be levied and imposed as provided in this Code section and Part 1 of Article 3 of this chapter.

(b) If the governing authority of the county takes no action under paragraph (2) or (3) of subsection (a) of this Code section, it shall provide notice thereof by resolution to the governing authority of the municipality not later than ten days following the date of delivery of such municipality's resolution to the county under subsection (a) of this Code section. Upon receipt by the governing authority of the municipality of such county resolution or if timely notice of no action is not provided by the governing authority of the county to the governing authority of the municipality or if the county referendum is conducted but is not approved by the voters, the governing authority of any municipality in this state may, subject to the requirement of referendum approval and the other requirements of this article, immediately commence proceedings to seek to impose within the municipality a special sales and use tax for a limited period of time for the purpose of funding water and sewer projects and costs. Any tax imposed under this article shall be at the rate of 1 percent. Except as otherwise provided in this article, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.

(c) In the event a tax imposed under this article is imposed only by the municipality:

(1) No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to:

(A) Sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2;

(B) The sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3;

(C) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold, notwithstanding paragraph (70) of Code Section 48-8-3; and

(D) The furnishing for value to the public of any room or rooms, lodgings, or accommodations which is subject to taxation under Article 3 of Chapter 13 of this title; and

(2) A tax imposed under this article shall not apply to the sale of motor vehicles.

(d) On and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(e) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

**History.**

Code 1981, § 48-8-201, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 10/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 29/HB 1221; Ga. L. 2015, p. 236, § 5-12/HB 170.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2004, "expended" was substituted for "expanded" in the last sentence of paragraph (a)(2).

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-202. Requirement of municipal ordinance or resolution authorizing tax; voter approval; form for ballot.

(a) A municipal governing authority voting to impose the tax authorized by this article shall notify the municipal election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the municipal governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify the following:

(1) The maximum period of time of the tax, to be stated in calendar years or calendar quarters and not to exceed four years;

(2) The aggregate maximum cost of the project or projects and maintenance and operation costs which will be funded from the proceeds of the tax, which aggregate maximum cost shall also be the maximum amount of net proceeds to be raised by the tax; and

(3) If general obligation debt is to be issued in conjunction with the imposition of the tax, as authorized by this article, the principal amount of the debt to be issued, the interest rate or rates or the

maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the municipality. The municipal election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The municipal election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the legal organ of the county in which the majority of the municipal population resides or in a newspaper having general circulation in the municipality at least equal to that of the legal organ. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the municipal election superintendent shall also include, in such form as may be specified by the municipal governing authority, the principal amount of the debt, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the municipal election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot shall have written or printed thereon the following:

"( ) YES Shall a special 1 percent sales and use tax be imposed in _____ for a period of time not to exceed _____ and for the raising of not more than $_____ for
( ) NO the purpose of funding water and sewer projects and costs?"

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this article; otherwise, the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the municipality until after 12 months

immediately following the month in which the election was held; provided, however, that, if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the municipality on such date. The municipal election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The municipal election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from municipal funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the municipality; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the municipality may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax authorized by this article. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the municipality; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the municipality.

**History.**

Code 1981, § 48-8-202, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 1052, § 5(56)/SB 448, effective July 1, 2024.

**Amendments.**

**The 2024 amendment,** effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

**48-8-203. Timing for imposition of tax following approval; termination of tax.**

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective with respect to and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner so that it will be received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the municipality net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No municipality shall impose at any time more than a single 1 percent tax under this article.

(2) A municipality in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as authorized by this article upon the termination of the tax then in effect; and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall not be conducted more than six times; shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-202; and shall be solely within the discretion of the governing authority of the municipality without regard to any requirement of county participation otherwise specified

under subsection (a) of Code Section 48-8-201. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a municipality is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article which has been renewed six times under paragraph (2) of this subsection, a municipality shall not be authorized to initiate proceedings for the reimposition of a tax under this article or to reimpose such tax.

**History.**
Code 1981, § 48-8-203, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 30/HB 1221; Ga. L. 2010, p. 1163, § 6/HB 1069; Ga. L. 2018, p. 347, § 1/HB 929; Ga. L. 2020, p. 493, § 48/SB 429.

## 48-8-204. Administration and collection of tax.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the municipality imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-204, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 11/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 31/HB 1221.

### 48-8-205. Remittance of taxes collected.

Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-205, enacted by Ga. L. 2004, p. 69, § 7.

### 48-8-206. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each municipality under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds of the tax shall be distributed to the governing authority of the municipality imposing the tax.

**History.**
Code 1981, § 48-8-206, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2005, p. 60, § 48/HB 95.

### 48-8-207. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the municipality or in a special district which includes the municipality; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, then against the tax levied under Article 3 of this chapter, if applicable, then

against the tax levied under Article 2A of this chapter, if applicable, and then against the tax levied under this article.

**History.**
Code 1981, § 48-8-207, enacted by Ga. L. 2004, p. 69, § 7.

### 48-8-208. Inapplicability of tax to property ordered and delivered outside taxing municipality.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the municipality in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-208, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2012, p. 580, § 22/HB 865.

### 48-8-209. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.**
Code 1981, § 48-8-209, enacted by Ga. L. 2004, p. 69, § 7.

### 48-8-210. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article.

**History.**
Code 1981, § 48-8-210, enacted by Ga. L. 2004, p. 69, § 7.

### 48-8-211. Impact on other taxes.

The tax authorized by this article shall be in addition to any other

local sales and use tax. The imposition of any other local sales and use tax within a county, municipality, or special district shall not affect the authority of a municipality to impose the tax authorized by this article and the imposition of the tax authorized by this article shall not affect the imposition of any otherwise authorized local sales and use tax within the county, municipality, or special district.

**History.**
Code 1981, § 48-8-211, enacted by Ga. L. 2004, p. 69, § 7.

## 48-8-212. Use of tax proceeds; requirements for general obligation debt.

(a) The proceeds received from the tax authorized by this article shall be used by the municipality exclusively for:

(1) Water and sewer projects and costs;

(2) The repayment of general obligation indebtedness incurred in conjunction with the imposition of the tax authorized by this article; or

(3) The repayment of any loans made to such municipality with respect to such water and sewer projects and costs. Such proceeds shall be kept in a separate account from other funds of the municipality and shall not in any manner be commingled with other funds of the municipality prior to expenditure.

(b)(1) The governing authority of the municipality shall maintain a record of each and every water and sewer project and cost for which the proceeds of the tax are used. In each annual audit a schedule shall be included which shows for each ongoing such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(2) The Governor, the Speaker of the House of Representatives, or the Lieutenant Governor may order, up to once each year, an independent and comprehensive audit of the tax imposed by this article to be conducted by the state auditor in a timely manner. The taxing jurisdiction under audit shall fully cooperate with the state auditor and provide all requested documents, records, or other

relevant information. The results of such audit, regardless of who ordered the audit, shall be distributed to the Governor, the Speaker of the House of Representatives, the Lieutenant Governor, and the municipality imposing the tax. This paragraph shall not be applicable to any municipality that conducts an independent audit, at least annually, that includes the tax imposed by this article, provided that any such independent audits are made available by such municipality to the state auditor for inspection upon his or her request.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the municipal governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the municipality will receive from the tax authorized by this article net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax authorized by this article. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the municipality; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the municipality.

(d) The resolution or ordinance calling for imposition of the tax authorized by this article may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (f) of this Code section.

(e) The resolution or ordinance calling for the imposition of the tax authorized by this article may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. In such a case no part of the net proceeds from the tax received in any year shall be used for other water and sewer projects until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the municipality receives from the tax net proceeds in excess of the maximum cost of the project or projects calling for

the imposition of the tax or in excess of the actual cost of such project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-203 by reason of denial of validation of debt, then all net proceeds received by the municipality from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the municipality other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the municipality, it being the intent that any funds so paid into the general fund of the municipality be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-212, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2021, p. 654, § 2/HB 160.

## ARTICLE 5

## SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX (TSPLOST)

**Editor's notes.**
Ga. L. 2010, p. 778, § 1/HB277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

### PART 1

### IN GENERAL

### 48-8-240. Findings; purpose.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The General Assembly finds that the design and construction of transportation projects is a critical local government service for which adequate funding is not presently available. Many transportation projects cross multiple jurisdictional boundaries and must be coordinated in their design and construction. The General Assembly finds that the most efficient means to coordinate and fund such projects is through the creation of special districts that correspond with the boundaries of existing regional commissions. The purpose of this article is to provide for special districts that will enable the coordinated design and construction of transportation projects that will develop and

promote the essential public interests of the state and its citizens at the state, regional, and local levels. The General Assembly intends through the creation of such special districts to enable the citizens within each district to decide in an election whether to authorize the imposition of a special district transportation sales and use tax to fund the projects on an investment list collaboratively developed by the affected local governments and the state. This article shall be construed liberally to achieve its purpose.

**History.**
Code 1981, § 48-8-240, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

### 48-8-241. Creation of special districts; tax rate.

(a) There are created within this state 12 special districts. The geographical boundary of each special district shall correspond with and shall be conterminous with the geographical boundary of the applicable region of the 12 regional commissions provided for in subsection (f) of Code Section 50-8-4.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a special district, subject to the requirement of referendum approval and the other requirements of this article, a special sales and use tax shall be imposed within the special district for a period of ten years which tax shall be known as the special district transportation sales and use tax.

(c) Nothing in this article shall be construed as limiting the establishment of a fund or funds which would provide at least 20 years of maintenance and operation costs from proceeds of the special district transportation sales and use tax used to construct, finance, or otherwise develop transit capital projects; provided, however, that the Metropolitan Atlanta Rapid Transit Authority, created by an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, shall not be authorized to use any proceeds from the special district transportation sales and use tax for expenses of maintenance and operation of such portions of the transportation system of such authority in existence on January 1, 2011.

(d) Except as otherwise provided in subsection (e) of this Code section, any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, and a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code Section 48-8-3.5;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale; or

(5) Motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit.

The tax imposed pursuant to this article shall only be levied on the first $5,000.00 of any transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

(e) Any tax imposed under this article on or after July 1, 2015, may be at a rate of up to 1 percent but shall not be more than 1 percent. Any rate less than 1 percent shall be in an increment of .05 percent. This subsection shall not apply to taxes under this article imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2015.

(f) Any tax imposed under this article on or after July 1, 2015, shall be required to expend at least 30 percent of the estimated revenue on projects included in the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

**History.**

Code 1981, § 48-8-241, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 236, § 7-1/HB 170; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2018, Ex. Sess., p. ES7, § 3-6/HB 5EX.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as

it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-242. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia State Financing and Investment Commission;

(2) "Cost of project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project of the special district or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project of the special district or for any facilities related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project of the special district;

(C) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project of the special district;

(D) All expenses for inspection of any project of the special district;

(E) All fees of any type charged to the special district in connection with any project of the special district;

(F) All expenses of or incidental to determining the feasibility or practicability of any project of the special district;

(G) All costs of plans and specifications for any project of the special district;

(H) All costs of title insurance and examinations of title with respect to any project of the special district;

(I) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(J) Administrative expenses of the special district and such other expenses as may be necessary or incidental to any project of the special district or the financing thereof; and

(K) The establishment of a fund or funds or such other reserves as the commission may approve with respect to the financing and operation of any project of the special district.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project of the special district and may be paid or reimbursed as otherwise authorized by this article.

(3) "County" means any county created under the Constitution or laws of this state.

(4) "Dealer" means a dealer as defined in paragraph (8) of Code Section 48-8-2.

(5) "Director" means the director of planning provided for in Code Section 32-2-43.

(6) "LARP factor" means the sum of one-fifth of the ratio between the population of a local government's jurisdiction and the total population of the special district in which such local government is located plus four-fifths of the ratio between the paved and unpaved centerline road miles in the local government's jurisdiction and the total paved and unpaved centerline road miles in the special district in which such local government is located.

(7) "Local government" means any municipal corporation, county, or consolidated government created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Metropolitan planning organization" or "MPO" means the policy board of an organization created and designated to carry out the metropolitan transportation planning process as defined in 23 C.F.R. Section 450.

(9) "Municipal corporation" means any incorporated city or town in this state.

(10) "Project" means, without limitation, any new or existing airports, bike lanes, bridges, bus and rail mass transit systems, freight and passenger rail, pedestrian facilities, ports, roads, terminals, and all activities and structures useful and incident to providing, operating, and maintaining the same. The term shall also include direct appropriations to a local government for the purpose of serving as a local match for state or federal funding.

(11) "Regional transportation roundtable" or "roundtable" means a conference of the local governments of a special district created pursuant to this article held at a centralized location within the district as chosen by the director for the purpose of establishing the investment criteria and determining projects eligible for the investment list for the special district. The regional transportation roundtable shall consist of the chairperson, sole commissioner, mayor, or chief executive officer of the county governing authority from each county in the special district. In the event any county in the special district has a consolidated government, the consolidated government shall elect a second elected member of the county consolidated government to the regional roundtable. In counties without a consolidated government, the second member of the regional roundtable from that county shall be one mayor elected by the mayors of the county; provided, however, that, in the event such an election ends in a tie, the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census shall be deemed to have been elected as a representative unless that mayor is already part of the roundtable. In such case, the mayor of the municipal corporation with the second highest population shall be deemed to have been elected as a representative. If a county has more than 90 percent of its population residing in municipal corporations, such county shall have the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census as an additional representative. The regional transportation roundtable shall elect five representatives from among its members to serve as an executive committee. The executive committee shall also include two members of the House of Representatives selected by the chairperson of the House Transportation Committee and one member of the Senate selected by the chairperson of the Senate Transportation Committee. Each member of the General Assembly appointed to the executive committee shall be a nonvoting member of the executive committee and shall represent a district which lies wholly or partially within the region represented by the executive committee. The executive committee shall not have more than one representative from any one county, but any member of the General Assembly serving on the executive committee shall not count as a representative of his or her county.

(12) Reserved.

(13) "State-wide strategic transportation plan" means the official state-wide transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

(14) "State-wide transportation improvement program" means a state-wide prioritized listing of transportation projects as defined in paragraph (7) of subsection (a) of Code Section 32-2-22.

(15) "Transportation improvement program" means a prioritized listing of transportation projects as defined in paragraph (8) of subsection (a) of Code Section 32-2-22.

**History.**

Code 1981, § 48-8-242, enacted by Ga. L. 2010 p. 778, § 6/HB 277 and Ga. L. 2010, p. 818, § 3/SB 520; Ga. L. 2015, p. 236, § 7-2/HB 170.

**Code Commission notes.**

The enactment of this Code section by Ga. L. 2010, p. 778, § 6, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 818, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2010, "paragraph (8)" was substituted for "paragraph (3)" in paragraph (4).

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-243. Criteria for development of investment list of projects and programs; report; gridlock.

(a) Within 60 calendar days following approval by the Governor of the state-wide strategic transportation plan, the State Transportation Board shall consider the state-wide strategic transportation plan in accordance with the provisions of subsection (c) of Code Section 32-2-22. Upon approval of the state-wide strategic transportation plan by the State Transportation Board, the director shall provide in written form to the local governments and any MPO's within each special district across the state recommended criteria for the development of an investment list of projects and programs. The establishment of such criteria shall comport with the state-wide strategic transportation plan. The recommended criteria shall include performance goals, allocation

of investments in alignment with performance, and execution of projects. The state fiscal economist shall develop an estimate of the proceeds of the special district transportation sales and use tax for each special district using financial data supplied by the department. Such estimate shall include reasonable ranges of anticipated growth, if any. The director shall include such estimates and ranges in the recommended criteria for developing the draft investment list. Any local government or MPO desiring to submit comments on the recommended criteria shall make such submission to the director no later than September 30, 2010. On or before November 10, 2010, the mayors in each county shall elect the mayoral representative to the regional transportation roundtable and notify the county commission chairperson and the director of that mayor's name. The director shall accept comments from any MPO located wholly or partially within each special district in finalizing the recommended district criteria in a written report on or before November 15, 2010. Such report shall also include notice of the date, time, and location of the first regional transportation roundtable for each special district for the purpose of considering the recommended district criteria and for electing members of the executive committee for each special district. Any amendment to the recommended criteria, approval of such criteria, and election of the executive committee shall be enacted by a majority vote of the representatives present at the roundtable meeting. Upon approval of the criteria, the director shall promptly deliver a report to the commissioner of transportation, local governments, any MPO located wholly or partially within each special district and the members of the General Assembly whose districts lie wholly or partially within each special district detailing the criteria approved by the roundtable.

(b) With regard to any area of a special district that is not part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such area, the local governments in such area may submit projects to the director to assemble a list of example investments for such special district that comport with the special district's investment criteria. With regard to any area of a special district that is part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such area, the local governments may submit projects to the director and to the MPO for the director to use to assemble a list of example investments for such special district that comport with the special district's investment criteria. The list of example investments for each special district shall not be required to be fiscally constrained within the budget of the revenues projected to be generated by each special

district's sales and use tax and shall be submitted to the executive committee for each regional transportation roundtable for consideration. The executive committee in collaboration with the director shall choose from the list of example investments to create the draft investment list, which shall be approved by majority vote of the executive committee. Such draft investment list shall be fiscally constrained within the ranges of revenues projected to be generated by the special district sales and use tax, as determined by the state fiscal economist. The special district's draft investment list as approved by the executive committee shall be considered by the regional transportation roundtable. The director shall deliver the draft investment list to the local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district not later than August 15, 2011. The director shall include in the draft investment list a statement of the specific public benefits to be expected upon the completion of each project on the investment list and how the special district's investment criteria are furthered by each project. Examples of specific public benefits include, but are not limited to, congestion mitigation, increased lane capacity, public safety, and economic development. The director shall include in such delivery notice of the date, time, and location of each district's executive committee meeting and final regional transportation roundtable. Prior to holding the final regional transportation roundtable, the executive committee shall hold, after proper notice to the public, at least two public meetings in the region for the purpose of receiving public comment on the draft regional investment list. The executive committee shall prepare and deliver to all members of the regional roundtable and the director a summary of the public comment on the regional investment list. The local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within such special district may submit comments on the draft investment list addressed to both the director and the executive committee no later than two weeks prior to the dates of the final regional transportation roundtable and the executive committee meeting, respectively, for the special district. At the final regional transportation roundtable, the draft investment list approved by the executive committee shall be considered for approval by a majority vote of the representatives present at the roundtable. Should the roundtable reject the draft investment list approved by the executive committee, the roundtable then may negotiate amendments that meet the district's investment criteria to the draft investment list, which shall be chosen from the list of example investments for each special district, each voted on separately and requiring a majority vote of the representatives present at the roundtable for approval. Upon consideration of all offered amendments, upon motion, the roundtable shall vote as to the approval of the amended draft list, requiring a majority vote of the representatives

present at the roundtable. The approved investment list, if any, shall be provided to the director. On or before October 15, 2011, the director shall deliver such list to the commission, the commissioner of transportation, the executive director of the Atlanta-region Transit Link "ATL" Authority, local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district. The approved investment list shall include:

(1) The specific transportation projects to be funded;

(2) The anticipated schedule of such projects;

(3) The approximate cost of such projects; and

(4) The estimated amount of net proceeds to be raised by the tax including the amount of proceeds to be distributed to local governments pursuant to subsection (e) of Code Section 48-8-249.

If a roundtable does not approve the original draft investment list or an amended draft investment list on or before October 15, 2011, then a special district gridlock shall be declared by the director and no election shall be held in such special district. The question of levying the tax shall not be submitted to the voters of the special district until after 24 months immediately following the month in which the special district gridlock was reached.

(c) In the event a special district gridlock is declared, the local governments in such special district shall be required to provide a 50 percent match for any local maintenance and improvement grants by the Department of Transportation. Such 50 percent match requirement shall remain in place until the special district roundtable approves an investment list meeting the special district's investment criteria and an election is held within the special district on the levy of the special district transportation sales and use tax.

**History.**

Code 1981, § 48-8-243, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2018, p. 377, § 4-13/HB 930; Ga. L. 2020, p. 371, § 7/HB 1098.

**Editor's notes.**

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides, in part, that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

PART 2

ELECTION, IMPOSITION, AND PROCEDURES

**48-8-244. Election; ballot.**

(a) Simultaneously with the director's delivery of the approved investment list in accordance with subsection (b) of Code Section 48-8-243, the roundtable shall deliver a notice to the election superintendents of each county within the respective special districts. Upon receipt of the notice, the election superintendents shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters within each special district. The election superintendents shall issue the call and shall conduct the election in the manner authorized under Code Section 21-2-540. The first election shall be held on the date of the general state-wide primary in 2012. The election superintendents shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organs of their respective counties.

(b) The ballot submitting the question of the levy of the special district transportation tax authorized by this article to the voters within each special district shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall _____ County's transportation system and the transportation network in this region and the state be improved by providing for a 1 percent special district transportation sales and use tax for the purpose of transportation projects and programs for a period of ten years?" |
| ( ) NO | |

(c) All persons desiring to vote in favor of levying the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast throughout the entire special district are in favor of levying the tax, then the tax shall be levied as provided in this article; otherwise the tax shall not be levied and the question of levying the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. Each election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. Each election superintendent shall canvass the returns from his or her county, declare the result of the election in that county, and certify the result to the Secretary of State. The Secretary of State shall compile the results from each county in the special district, declare the result of the election in the special district, and certify the

result to the governing authority of each local government and MPO within the special district and the state revenue commissioner. The expense of the election in each county within each special district shall be paid from funds of each county.

(d) In the event a special district sales and use tax election is held and the voters in a special district do not approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 30 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for at least 24 months and until such time as a special district sales and use tax is approved. In the event the voters in a special district approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 10 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for the duration of the levy of the special district transportation sales and use tax.

**History.**
Code 1981, § 48-8-244, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2017, p. 774, § 48/HB 323.

### 48-8-244.1. Effect of special district levy on state allocation of funds under Code Section 32-5-27.

The approval of the levy of the special district transportation sales and use tax in a special district shall not in any way diminish the percentage of funds allocated to a special district or any of the local governments within a special district under the provisions of subsection (c) of Code Section 32-5-27. The amount of funds expended in a special district shall not be decreased due to the use of proceeds from the special district transportation sales and use tax to construct transportation projects that have a high priority in the state-wide strategic transportation plan. If a special district constructs a project on the approved investment list using proceeds from the special district tax, then the state funding under subsection (c) of Code Section 32-5-27 shall not be diverted to priority projects in other special districts.

**History.**
Code 1981, § 48-8-244.1, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

### 48-8-245. Timing for imposition of tax following approval; termination of tax.

(a) If the imposition of the special district transportation sales and use tax is approved at the special election, the collection of such tax

shall begin on the first day of the next succeeding calendar quarter beginning more than 80 days after the date of the election. With respect to services which are regularly billed on a monthly basis, however, the tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) On the final day of the ten-year period of time specified for the imposition of the tax; or

(2) As of the end of the calendar quarter during which the state revenue commissioner determines that the tax has raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the special district transportation tax.

(c)(1) No more than a single tax under this article may be collected at any time within a special district.

(2) Upon the adoption of resolutions by the governing bodies of a majority of the counties within a special district in which a tax authorized by this article is in effect, an election may be held for the reimposition of the tax while the tax is in effect. Proceedings for the development of an investment list and for the reimposition of a tax shall be in the same manner as provided for in Code Sections 48-8-241 and 48-8-243.

(3) Following the expiration of the special district transportation sales and use tax under this article, or following a special election in which voters in a special district rejected the imposition of the tax, upon the adoption of resolutions by the governing bodies of a majority of counties within a special district, an election may be held for the imposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. The election superintendents shall issue the call and conduct the election in the manner authorized by general law. The development of the investment list for such special district shall follow the dates established in Code Section 48-8-243 with the years adjusted appropriately, and such schedule shall be posted on a website developed by the state revenue commissioner to be used exclusively for matters related to the special district transportation sales and use tax within 30 days of the later of the state revenue commissioner's receipt of notice from the final county governing body required to adopt a resolution.

**History.** Code 1981, § 48-8-245, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2015, p. 236, § 7-3/HB 170.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

## 48-8-246. Administration and collection of tax.

A tax levied pursuant to this article shall be exclusively administered and collected by the state revenue commissioner for the use and benefit of the special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the state revenue commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the state revenue commissioner may rely upon a representation by or in behalf of the special district or the Secretary of State that such a tax has been validly imposed, and the state revenue commissioner and the state revenue commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**

Code 1981, § 48-8-246, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

## 48-8-247. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the state revenue commissioner that all taxes im-

posed by this article are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-247, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

### 48-8-248. Disbursement of proceeds.

The proceeds of the tax collected by the state revenue commissioner in each special district under this article shall be disbursed as soon as practicable after collection to the Georgia State Financing and Investment Commission to be maintained in a trust fund and administered by the commission on behalf of the special district imposing the tax. Such proceeds for each special district shall be kept separate from other funds of the commission and shall not in any manner be commingled with other funds of the commission.

**History.**
Code 1981, § 48-8-248, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

### 48-8-249. Use of tax proceeds; contracts; delivery of projects.

(a) The proceeds received from the tax authorized by this article shall be used within the special district receiving proceeds of the tax exclusively for the projects on the approved investment list for such district as provided in subsection (b) of Code Section 48-8-243. Authorized uses of tax proceeds in connection with such projects shall include the cost of project defined in paragraph (2) of Code Section 48-8-242.

(b) The commission shall be responsible for the proper application of the proceeds received from the tax authorized by this article for the approved investment list for each special district. The commission shall delegate the management of the budget, schedule, execution, and delivery of the projects contained in the approved investment list as follows:

(1) The commission shall contract with the Department of Transportation for all transportation projects except bus and rail mass transit systems and passenger rail in any special district the boundaries of which are not wholly contained within a single MPO; and

(2) The commission shall contract with the Atlanta-region Transit Link "ATL" Authority only for projects that are bus and rail mass transit systems and passenger rail within any special district the boundaries of which are wholly contained within a single MPO.

Upon entering into contracts with the Department of Transporta-

tion or the Atlanta-region Transit Link "ATL" Authority as provided above, the commission shall dispense funds upon the request of the commissioner of transportation or the executive director of the Atlanta-region Transit Link "ATL" Authority, which request shall include certification of the completion of the project or project element for which funds are requested. Payment shall be made promptly upon approval by the construction division or the financing and investment division of the commission, and such payments shall not require any other official action by the commission. The use of funds so dispensed shall be subject to review and audit by the construction division and the financing and investment division of the commission and action by the commission upon receipt of complaint or if otherwise warranted. The Department of Transportation and Atlanta-region Transit Link "ATL" Authority shall consult with the commission on at least a quarterly basis regarding the progress and performance in the execution, schedule, and delivery of projects on the approved investment list.

(c) In managing the execution, schedule, and delivery of the projects on the approved investment list for a special district, the Department of Transportation or Atlanta-region Transit Link "ATL" Authority, as appropriate, shall determine whether a project should be designed and constructed by the Department of Transportation, by a local government, or by another public or private entity. In making such determination the following shall be considered:

(1) Whether such project is on the state-wide transportation improvement program, the state-wide strategic transportation plan, or a transportation improvement program;

(2) The type and estimated cost of the project;

(3) The location of the project and whether it encompasses multiple jurisdictions;

(4) The experience of a local government or governments or a public or private entity in designing and constructing such project as set forth in an application in a form to be provided by the commissioner of transportation or the executive director of the Atlanta-region Transit Link "ATL" Authority; and

(5) The recommendation of the MPO, if any, for such special district.

Following the decision, the Department of Transportation, the local government or governments, or another public or private entity as determined under this subsection shall contract for implementing the projects in accordance with applicable state and federal requirements.

(d) The commission shall maintain or cause to be maintained an adequate record-keeping system for each project funded by a special

district transportation sales and use tax. An annual audit shall be paid for by each special district and conducted by an independent auditing firm as selected by the commission. Such audit shall include a schedule which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. Such audit shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The audit report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(e) Twenty-five percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are not conterminous with an MPO. Fifteen percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are wholly contained within a single MPO. Such percentages shall be allocated to each local government by multiplying the LARP factor of each local government by the total amount of funds to be distributed to all the local governments in the special district. Proceeds described in this subsection shall be distributed to the local governments on an ongoing basis as they are received by the commission. Such proceeds shall be used by the local governments only for transportation projects as defined in paragraph (10) of Code Section 48-8-242 and may also serve as the local match as required for state transportation projects and grants. If a special district receives from the tax net proceeds in excess of the investment list approved by the roundtable for the imposition of the tax or in excess of the actual cost of the project or projects on such investment list, then such excess proceeds shall be distributed among the local governments within the special district in accordance with this subsection.

**History.**

Code 1981, § 48-8-249, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2018, p. 377, § 4-13/HB 930.

**Editor's notes.**

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides, in part, that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

## 48-8-250. Annual reporting to public.

Not later than December 15 of each year, the state revenue commis-

sioner shall publish, on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245, a simple, nontechnical report which shows for each project in the investment list approved by the director the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year with respect to each such project. The report shall also include a statement of what corrective action the commissioner of transportation and the executive director of the Atlanta-region Transit Link "ATL" Authority intend to implement with respect to each project which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a project.

**History.**

Code 1981, § 48-8-250, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2018, p. 377, § 4-13/HB 930.

**Editor's notes.**

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides, in part, that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

### 48-8-251. Citizens Review Panel; membership; vacancy; recommendations; report.

(a) There is created a Citizens Review Panel for each special district in which voters approved the levy of the special district sales and use tax to be composed of three citizen members appointed by the Speaker of the House of Representatives and two citizen members appointed by the Lieutenant Governor. Each member must be a resident of the special district of which Citizens Review Panel they are appointed to serve.

(b) In the event that any vacancy for any cause shall occur in the membership of the committee, such vacancy shall be filled by an appointment made by the official authorized by law to make such appointment within 45 days of the occurrence of such vacancy.

(c) The panel shall, by majority vote of those members present and voting, elect from their number a chairperson and vice chairperson who shall serve at the pleasure of the panel.

(d) The panel shall meet in regular session at least three days each year either at the state capitol in Atlanta or at such other meeting place within the state and may have such other additional meetings as may be called by the chairperson or by a majority of the members of the panel upon reasonable written notice to all members of the panel. Further, the chairperson of the panel is authorized from time to time to call meetings of subcommittees of the panel which are established by

panel policy at places inside or outside the state when, in the opinion of the chairperson, the meetings of the subcommittee are needed to attend properly to the panel's business. A majority of the panel shall constitute a quorum for the transaction of all business. Any power of the panel may be exercised by a majority vote of those members present at any meeting at which there is a quorum.

(e) Members shall receive for each day of actual attendance at meetings of the panel and the subcommittee meetings the per diem and transportation costs prescribed in Code Section 45-7-21, and a like sum shall be paid for each day actually spent in studying the transportation needs of the state or attending other functions as a representative of the panel, not to exceed ten days in any calendar year, but no member shall receive such per diem for any day for which such member receives any other per diem pursuant to such Code section. In addition, members shall receive actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance and study. Such per diem and expense shall be paid from the funds of the special district's revenues from the special district sales and use tax upon presentation, by members of the panel, of vouchers approved by the chairperson.

(f) The panel shall be charged with review of the administration of the projects and programs included on the approved investment list. The panel may make such recommendations to and require such reports from the Department of Transportation, the Atlanta-region Transit Link "ATL" Authority, any other agency or instrumentality of the state, any political subdivision of the state, and any agency or instrumentality of such political subdivisions as it may deem appropriate and necessary from time to time in the interest of the region.

(g) Upon the completion of a project on the investment list, the panel shall annually review the specific public benefits identified in the investment list to ascertain the degree to which such benefits have been attained. This benefit review report shall be delivered to the director and the state revenue commissioner and shall be published on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245.

(h) Beginning January 1, 2013, and annually thereafter, the panel shall provide a report to the General Assembly of its actions during the previous year. The report shall be available for public inspection on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245. The report shall include, but not be limited to, an update on the progress on each project on the investment list for the region, including the amount of funds spent on each project.

**History.**
Code 1981, § 48-8-251, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2018, p. 377, § 4-13/HB 930.
**Editor's notes.**
Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides, in part, that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

## 48-8-252. Credit for tax paid in another jurisdiction.

Where a special district transportation sales and use tax under this article has been paid with respect to tangible personal property by the purchaser either in another special district within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The state revenue commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other sales and use tax levied in the special district.

**History.**
Code 1981, § 48-8-252, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

## 48-8-253. Inapplicability of tax to property ordered and delivered outside taxing special district.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety.

**History.**
Code 1981, § 48-8-253, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2012, p. 580, § 23/HB 865.

## 48-8-254. Inapplicability of tax to certain sales or uses of building and construction materials for projects bid prior to referendum on tax.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

**History.**
Code 1981, § 48-8-254, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

## 48-8-255. Rules and regulations.

Subject to the approval of the House and Senate Transportation Committees, the state revenue commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the special district transportation sales and use tax authorized by this article.

**History.**
Code 1981, § 48-8-255, enacted by Ga. L. 2010, p. 778, § 6/HB 277.

## 48-8-256. Allocation or balancing of state and federal funds.

The tax authorized by this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, nor may such proceeds be considered or taken into account in any such allocation or balancing.

**History.**
Code 1981, § 48-8-256, enacted by Georgia L. 2010, p. 778, § 6/HB 277.

# ARTICLE 5A

# SPECIAL DISTRICT MASS TRANSPORTATION SALES AND USE TAX

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2015, the enactment of this article by Ga. L. 2015, p. 236, § 7-5/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1443, § 2/HB 106, due to irreconcilable conflict.

**Editor's notes.**

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

**Law reviews.**

For article on the 2015 enactment of this article, see 32 Georgia St. U.L. Rev. 261 (2015).

## PART 1

## GENERAL PROVISIONS

### 48-8-260. Definitions.

As used in this article, the term:

(1) "Intergovernmental agreement" means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution.

(2) "Mass transportation" means any mode of transportation serving the general public which is appropriate to transport people by highways or rail.

(3) "Qualified municipality" means a qualified municipality as defined in paragraph (4) of Code Section 48-8-110 which is located wholly or partly within a special district.

(4) "Transportation purposes" means and includes:

(A) Roads, bridges, public transit, rails, airports, buses, seaports, including without limitation road, street, and bridge purposes pursuant to paragraph (1) of subsection (b) of Code Section 48-8-121, and all accompanying infrastructure and services necessary to provide access to these transportation facilities, including new general obligation debt and other multiyear obligations issued to finance such purposes;

(B) The retirement of previously incurred general obligation debt with respect only to such purposes as identified in subparagraph (A) of this paragraph;

(C) A capital outlay project or projects under subparagraph (a)(1)(M) of Code Section 48-8-111, with respect only to such purposes as identified in subparagraph (A) of this paragraph; or

(D) Any combination of two or more of the foregoing.

**History.**

Code 1981, § 48-8-260, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 1/HB 134; Ga. L. 2024, p. 680, § 1/HB 946, effective May 6, 2024.

**Amendments.**

**The 2024 amendment,** effective May 6, 2024, deleted ", but only if an intergovernmental agreement has been entered into under this part" from the end of subparagraph (4)(B). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes subparagraph (4)(B) of this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-261. Creation of special districts; authority to impose a transportation special purpose local option sales and use tax.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, 159 special districts are created within this state. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts created.

(b) Any county:

(1) That is not located within a special district levying a special sales and use tax pursuant to Article 5 of this chapter;

(2) That is not defined as a metropolitan county special district that is governed by the provisions of Part 2 of this article; and

(3) In which a tax is currently being levied and collected pursuant to:

(A) Part 1 of Article 3 of this chapter;

(B) A local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment; or

(C) Code Section 48-8-96

may, by following the procedures required by this part, impose for a limited period of time within the special district under this part a

transportation special purpose local option sales and use tax, the proceeds of which shall be used only for transportation purposes.

(c) At any time, more than one tax under this part shall be authorized to be imposed concurrently within a special district as long as the combined rate of the taxes does not exceed 1 percent.

**History.**
Code 1981, § 48-8-261, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 2/HB 134.

## 48-8-262. Notice; agreement memorializing levy and rate of tax; rate; resolution required.

(a) Prior to the issuance of the call for the referendum required by Code Section 48-8-263, any county that desires to levy a tax under this part shall:

(1) Determine whether the region has proposed a referendum on a tax under Article 5 of this chapter. This determination shall be based on whether, pursuant to paragraphs (2) and (3) of subsection (c) of Code Section 48-8-245, a majority of the governing authorities of counties within the region containing the county proposing the tax have passed resolutions calling for the levy of a tax under Article 5 of this chapter. If a majority of the governing authorities of the counties in the region have passed such a resolution, the county proposing a tax under this part shall postpone the referendum under this part until the regional referendum has been decided. No ballot shall propose a tax under this part and under Article 5 of this chapter at the same election;

(2) After the determination under paragraph (1) of this subsection has been made, if a county is qualified to levy a tax under this part, deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss possible projects for inclusion in the referendum and the rate of tax. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum.

(b)(1) Following the meeting required by paragraph (2) of subsection (a) of this Code section and prior to any tax being imposed under this part, the county and qualified municipalities therein shall execute an intergovernmental agreement memorializing their agreement to the levy of a tax and the rate of such tax.

(2) The intergovernmental agreement required by paragraph (1) of this subsection shall, at a minimum, include the following:

(A) A list of the projects and purposes qualifying as transportation purposes proposed to be funded from the tax, including an expenditure of at least 30 percent of the estimated revenue from the tax on projects consistent with the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22;

(B) The estimated or projected dollar amounts allocated for each transportation purpose from proceeds from the tax;

(C) The procedures for distributing proceeds from the tax to qualified municipalities;

(D) A schedule for distributing proceeds from the tax to qualified municipalities which shall include the priority or order in which transportation purposes will be fully or partially funded;

(E) A provision that all transportation purposes included in the agreement shall be funded from proceeds from the tax except as otherwise agreed;

(F) A provision that proceeds from the tax shall be maintained in separate accounts and utilized exclusively for the specified purposes;

(G) Record-keeping and audit procedures necessary to carry out the purposes of this part; and

(H) Such other provisions as the county and qualified municipalities choose to address.

(c)(1) If an intergovernmental agreement is entered into by the county and one or more qualified municipalities within the special district, and the combined population of the territory of all qualified municipalities lying within the special district which are absent from the agreement is less than one-half of the total population of the territory of all qualified municipalities lying within the special district, then the rate of the tax may be up to 1 percent, provided that such intergovernmental agreement provides for the percentage or the proceeds of the tax collected pursuant to this part that each absent municipality is to receive, which shall not be less than the absent municipality minimum percentage.

(2) As used in this subsection, the term:

(A) "Absent municipality minimum percentage" means, for any given absent municipality, the product of the absent municipality ratio and the percentage of the total proceeds in the intergovernmental agreement that are not allocated to the county.

(B) "Absent municipality ratio" means, for any given municipality, the sum of its municipal population ratio and its municipal centerline mile ratio.

(C) "Municipal centerline mile ratio" means, for any given municipality, the product of 0.67 multiplied by the quotient of the municipality's total paved and unpaved centerline road miles within the special district divided by the total paved and unpaved centerline road miles for all municipal roads within the special district.

(D) "Municipal population ratio" means, for any given municipality, the product of 0.33 multiplied by the quotient of the municipality's population which is located inside the special district divided by the total municipal population of the special district.

(3)(A) For purposes of determining population in this subsection, the most recent census estimates published by the Bureau of the Census of the United States Department of Commerce prior to the date the intergovernmental agreement was entered into shall be used.

(B) For purposes of determining the paved and unpaved centerline road miles, the most recent annual certification of paved and unpaved centerline road miles submitted by a local government to the Georgia Department of Transportation prior to the date the intergovernmental agreement was entered into shall be used.

(4) Any intergovernmental agreement entered into pursuant to this subsection shall provide for the disbursement of proceeds in an amount which shall account for 100 percent.

(d)(1) As soon as practicable after the meeting between the governing authorities of the county and qualified municipalities and the execution of an intergovernmental agreement, the governing authority of the county shall by a majority vote on a resolution offered for such purpose submit the list of transportation purposes and the question of whether the tax should be approved to electors of the special district in the next scheduled election and shall notify the county election superintendent within the special district by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax. Such list, or a digest thereof, shall be available during regular business hours in the office of the county clerk.

(2) The resolution authorized by paragraph (1) of this subsection shall describe:

(A) The specific transportation purposes to be funded;

(B) The approximate cost of such transportation purposes, which shall be the maximum amount of net proceeds to be raised by the tax; provided, however, that, if an intergovernmental agreement has been entered into pursuant to subsection (b) of this Code section, the maximum amount of net proceeds to be raised shall correspond to the period of time the tax shall be imposed as set forth in subparagraph (C) of this paragraph; and

(C) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed five years; provided, however, that, if an intergovernmental agreement is entered into by a county and all qualified municipalities within the special district, the maximum period of time for the imposition of the tax shall not exceed six years.

**History.**

Code 1981, § 48-8-262, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 3/HB 134; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2022, p. 256, § 1/HB 934; Ga. L. 2024, p. 680, § 2/HB 946, effective May 6, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, in subparagraph (d)(2)(B), deleted "also" following "shall" near the beginning, and added the proviso near the end. See Editor's notes for applicability.

**The 2024 amendment,** effective May 6, 2024, in paragraph (b)(1), deleted "all" preceding "qualified" and substituted "shall" for "may"; in paragraph (b)(2), substituted "The" for "If an" at the beginning, "required" for "authorized" near the middle, and deleted "is entered into, it" following "subsection"; substituted the current provisions of subsection (c) for the former provisions, which read: "(1) If an intergovernmental agreement is entered into by the county and all qualified municipalities, the rate of the tax may be up to 1 percent.

"(2) If an intergovernmental agreement is not entered into by the county and all qualified municipalities, the maximum rate of the tax shall not exceed 0.75 percent and such rate shall be determined by the governing authority of the county."; deleted ", if applicable," following "agreement" in the first sentence in paragraph (d)(1); and added the proviso at the end of subparagraph (d)(2)(C). See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2024, the comma was retained after "agreement" in the first sentence in paragraph (d)(1).

**Editor's notes.**

Ga. L. 2022, p. 256, § 5/HB 934, not codified by the General Assembly, provides, in part, that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after May 2, 2022.

Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-263. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of the tax to the voters within the special district shall have written or printed thereon the following:

"( ) YES Shall a special ____ percent sales and use tax be imposed in the special district consisting of _____ County for a period of time not to exceed _____ and for the raising of an
( ) NO estimated amount of $_____ for transportation purposes?"

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the entire special district are in favor of imposing the tax, then the tax shall be imposed as provided in this part.

(c) Where such question is not approved by the voters, the county may resubmit such question from time to time upon compliance with the requirements of this part.

(d)(1) If the intergovernmental agreement and proposal include the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county or qualified municipality; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county or qualified municipality may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such

debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county or qualified municipality.

**History.**

Code 1981, § 48-8-263, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 4/HB 134; Ga. L. 2022, p. 256, § 2/HB 934; Ga. L. 2024, p. 680, § 3/HB 946, effective May 6, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, deleted "not more than" following "raising of" in the form in paragraph (a)(1). See Editor's notes for applicability.

**The 2024 amendment,** effective May 6, 2024, deleted ", if applicable," following "agreement" near the beginning of the first sentence in paragraph (d)(1). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2022, p. 256, § 5/HB 934, not codified by the General Assembly, provides, in part, that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after May 2, 2022.

Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes paragraph (d)(1) of this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-264. Timing for imposition of tax following approval; termination of tax; maximum combined rate of taxes; timing for reimposition.

(a)(1) If the imposition of the tax is approved at the election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of

competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax; provided, however, that, if an intergovernmental agreement has been entered into by the county and all qualified municipalities therein, the tax shall cease to be imposed on the final day of the maximum period of time specified for the imposition of the tax in the resolution.

(c)(1)(A) At any time, more than a single tax under this part may be imposed within a special district as long as the combined rate of such taxes does not exceed 1 percent.

(B) Any single tax imposed under this part may, subject to the requirements of subsection (c) of Code Section 48-8-262, be imposed at a rate of up to 1 percent but shall not exceed 1 percent.

(C) Any single tax imposed under this part at a rate of less than 1 percent shall be in an increment of 0.05 percent.

(2) In any special district in which a tax is in effect under this part, proceedings may be commenced, while the tax is in effect, calling for the reimposition of the tax upon the termination of the tax then in effect; and an election may be held at the next scheduled election for this purpose while the tax is in effect. Such proceedings for the reimposition of a tax under this part shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect.

(3) Following the expiration of a tax under this part, proceedings for the reimposition of a tax under this part may be initiated in the same manner as provided in this part for initial imposition of such tax.

**History.**

Code 1981, § 48-8-264, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 5/HB 134; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2022, p. 256, § 3/HB 934; Ga. L. 2024, p. 680, § 4/HB 946, effective May 6, 2024.

**Amendments.**

**The 2022 amendment,** effective May 2, 2022, added the proviso at the end of paragraph (b)(3). See Editor's notes for applicability.

**The 2024 amendment,** effective May 6, 2024, substituted "by the county and all qualified municipalities therein" for "pursuant to subsection (b) of Code Section

48-8-262" in paragraph (b)(3). See Editor's notes for applicability.

**Editor's notes.**

Ga. L. 2022, p. 256, § 5/HB 934, not codified by the General Assembly, provides, in part, that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after May 2, 2022.

Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes paragraph (b)(3) of this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-264.1. Referendum timing.

On and after July 1, 2022, notwithstanding any provision of law to the contrary, no referendum to impose a tax authorized by this part shall be held at any time other than:

(1) In odd-numbered years, on the Tuesday after the first Monday in November; or

(2) In even-numbered years:

(A) On the date of and in conjunction with the presidential preference primary if one is held that year;

(B) On the date of the general primary; or

(C) On the Tuesday after the first Monday in November.

**History.**

Code 1981, § 48-8-264.1, enacted by Ga. L. 2022, p. 256, § 4/HB 934.

**Cross references.**

Conduct of special primaries and special elections generally, § 21-2-540.

**Editor's notes.**

In 2022, the Georgia General Assembly passed HB 907 and HB 934, both of which contained provisions relating to dates for special elections. HB 907, codified at § 21-2-540, was signed by the Governor on February 15, 2022 (Act No. 310, Ga. L. 2022, p. 1). HB 934, codified at § 48-8-264.1, was signed by the Governor on May 2, 2022 (Act No. 752, Ga. L. 2022, p. 256). The effect of codifying both is unclear.

Ga. L. 2022, p. 256, § 5/HB 934, not codified by the General Assembly, provides, in part, that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after May 2, 2022.

## 48-8-265. Administration and collection of tax.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within the special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the special district or the Secretary

of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-265, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

## 48-8-266. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this part shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this part are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-266, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

## 48-8-267. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed pursuant to the terms of the intergovernmental agreement.

**History.**
Code 1981, § 48-8-267, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2024, p. 680, § 5/HB 946, effective May 6, 2024.
**Amendments.**
**The 2024 amendment,** effective May 6, 2024, substituted the current provisions of this Code section for the former provisions, which read: "(a) The proceeds of the tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

"(1) One percent of the amount collected shall be paid into the general fund of the

state treasury in order to defray the costs of administration; and

"(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed:

"(A) Pursuant to the terms of the intergovernmental agreement, if applicable; or

"(B) If no intergovernmental agreement has been entered into, in accordance with subsection (b) of this Code section.

"(b) In the event an intergovernmental agreement has not been entered into, then distribution of the proceeds shall be as follows:

"(1) The state auditor shall determine the most recent three fiscal years for which an audit under Code Section 36-81-7 has been made;

"(2) Utilizing the audit information under paragraph (1) of this subsection, the county and each qualified municipality shall receive a proportional amount of proceeds of the tax based upon the amount of expenditures made for transportation in the most recent three fiscal years. The proportional amount for the county and each qualified municipality shall be determined by dividing the average expended on transportation during the most recent three fiscal years by the county or qualified municipality by the aggregate average expended on transportation by the county and all qualified municipalities in the special district during the most recent three fiscal years. Amounts expended on transportation include transportation maintenance and operation costs and shall correspond with classifications and subclassifications specified in the local government uniform chart of accounts under subsection (e) of Code Section 36-81-3 within section 4200, including noncapital expenditures within sections 4210-4270, and shall be reported in the local government audit. Total general fund expenditures by the local government within these categories shall be specified in the footnotes of the audited financial statement. If such transportation expenditures include maintenance and operation costs to support local government airport and transit operations, reported in functions 7561 and 7563 of the uniform chart, the general fund costs for those functions shall be included in the footnotes of the local government's audited financial report; and

"(3) Following the determinations made pursuant to paragraph (2) of this subsection and at least 30 days prior to the referendum, the state auditor shall certify the appropriate distribution percentages to the commissioner and the commissioner shall utilize such percentages for the distribution of proceeds for the term of the tax." See Editor's notes for applicability.

**Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2024, "this Code section" was substituted for "this subsection" in paragraph (2).

**Editor's notes.**

Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-268. Allocation or balancing of state and federal funds.

(a) The proceeds of a tax under this part shall not be subject to any allocation or balancing of state and federal funds provided for by general law, and such proceeds shall not be considered or taken into account in any such allocation or balancing.

(b) The approval of the tax under this part shall not in any way diminish the percentage of state or federal funds allocated to any of the local governments under Code Section 32-5-27 within the special district levying the tax. The amount of state or federal funds expended in the county or any qualified municipality within the special district shall not be decreased or diverted due to the use of proceeds from the

tax levied under this part for transportation purposes that have a high priority in the state-wide strategic transportation plan.

**History.**
Code 1981, § 48-8-268, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

### 48-8-269. Exemption from taxation.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code Section 48-8-3.5;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

**History.**
Code 1981, § 48-8-269, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2018, Ex. Sess., p. ES7, § 3-7/HB 5EX.

### 48-8-269.1. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less

than the amount of the tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county.

**History.**
Code 1981, § 48-8-269.1, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

### 48-8-269.2. Inapplicability of tax to property ordered and delivered outside taxing special district.

No tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier.

**History.**
Code 1981, § 48-8-269.2, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 6/HB 134.

### 48-8-269.3. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax.

**History.**
Code 1981, § 48-8-269.3, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

### 48-8-269.4. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized under this part shall be in addition to any other local sales and use tax. Except as otherwise provided in this part and except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of a county to impose the tax authorized under this part, and the imposition of the tax authorized under this part shall not affect the imposition of any otherwise authorized local sales and use tax within the special district.

**History.**
Code 1981, § 48-8-269.4, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369.

## 48-8-269.5. Use of tax proceeds; requirements for general obligation debt.

(a)(1) The proceeds received from the tax shall be used by the county and qualified municipalities within the special district exclusively for the transportation purposes specified in the resolution calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of any county or qualified municipality receiving proceeds of the tax and shall not in any manner be commingled with other funds of any county or qualified municipality prior to the expenditure.

(2) The governing authority of each county and the governing authority of each qualified municipality receiving any proceeds from the tax under this part shall maintain a record of each and every purpose for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each purpose in the resolution calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the county or qualified municipality governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due, the county or qualified municipality will receive from the tax net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality from the tax. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county or qualified municipality.

(c) The intergovernmental agreement and resolution calling for the imposition of the tax may specify that all of the proceeds of the tax will

be used for payment of general obligation debt issued in conjunction with the imposition of the tax, and, in that event, such proceeds shall be solely for such purpose except as otherwise provided in subsection (f) of this Code section.

(d) The intergovernmental agreement and resolution calling for the imposition of the tax may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. The intergovernmental agreement and resolution shall specifically state the other purposes for which such proceeds will be used. In such a case, no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. The intergovernmental agreement and resolution shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the special district receives from the tax net proceeds in excess of the maximum cost of the transportation projects and purposes stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects and purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection unless otherwise specified in the intergovernmental agreement.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-264 by reason of denial of validation of debt, then all net proceeds received by the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of any county or qualified municipality within the special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into

the general fund of such county or qualified municipality, it being the intent that any funds so paid into the general fund of such county or qualified municipality be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-269.5, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 179, § 7/HB 134; Ga. L. 2024, p. 680, § 6/HB 946, effective May 6, 2024.
**Amendments.**
**The 2024 amendment,** effective May 6, 2024, deleted ", if applicable," following "intergovernmental agreement" in subsections (c), (d), and (e), and deleted ", if applicable" at the end of subparagraph (f)(1)(B). See Editor's notes for applicability.
**Editor's notes.**
Ga. L. 2024, p. 680, § 7/HB 946, not codified by the General Assembly, makes subsections (c), (d), and (e) and subparagraph (f)(1)(B) of this Code section not applicable to or affect any intergovernmental agreement entered into prior to May 6, 2024.

## 48-8-269.6. Annual reporting to public.

Not later than December 31 of each year, the governing authority of each county and each qualified municipality receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such county or municipality, a simple, nontechnical report which shows for each purpose in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the county or qualified municipality intends to implement with respect to each purpose which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose.

**History.**
Code 1981, § 48-8-269.6, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106; Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2016, p. 864, § 48/HB 737.

## Part 2

## Metropolitan County Special Districts

## 48-8-269.7. Creation of special districts; applicability to metropolitan county special districts.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, 159 special districts are created within this state. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts created.

(b) The provisions of this part shall only be applicable to special districts in which:

(1) A tax is currently being levied and collected pursuant to a local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment; and

(2) Eighty percent or more of the geographic area of the special district is located within one or more qualified municipalities as defined in paragraph (4) of Code Section 48-8-260.

(c) Any special district in this state meeting the qualifications contained in subsection (b) of this Code section shall be known as a metropolitan county special district.

**History.**
Code 1981, § 48-8-269.7, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.

## 48-8-269.8. Authority to impose a transportation special purpose local option sales and use tax; notice; meeting; resolution.

(a) After July 1, 2016, any part of a metropolitan county special district that is outside the boundaries of a metropolitan municipality special district, as provided for in Code Section 48-8-269.22, may, by following the procedures required by this part, impose for a limited period of time within such part of the metropolitan county special district a transportation special purpose local option sales and use tax, the proceeds of which shall be used only for transportation purposes.

(b) Prior to the issuance of the call for the referendum required by Code Section 48-8-269.9, the governing authority of the county in which the part of a metropolitan county special district that desires to levy a tax under this part is located shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within such part of the metropolitan county special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authority of such county and of each qualified municipality are to meet to discuss possible projects for inclusion in the referendum and the rate of tax. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum.

(c)(1) Upon approval of the qualified municipalities or county representing at least 60 percent of the population of the part of the metropolitan county special district not within the boundaries of a metropolitan municipality special district, the governing authority of

the county, unless there is a vote against the resolution by a majority plus one of the members of such governing authority of the county, shall sign a resolution offered for such purpose and shall submit the list of transportation purposes, as approved by the qualified municipalities or county representing at least 60 percent of the population of the part of the metropolitan county special district and the question of whether the tax should be approved to electors of the part of the metropolitan county special district not within the boundaries of a metropolitan municipality special district in the next scheduled election and shall notify the county election superintendent by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax. Such list, or a digest thereof, shall be available during regular business hours in the office of the county clerk and in the offices of the governing authorities of the qualified municipalities participating in the election.

(2) The resolution authorized by paragraph (1) of this subsection shall describe:

(A) The specific transportation purposes to be funded;

(B) The approximate cost of such transportation purposes, which shall also be the maximum amount of net proceeds to be raised by the tax;

(C) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed five years; and

(D) A list of the projects and purposes qualifying as transportation purposes proposed to be funded from the tax, including an expenditure of at least 30 percent of the estimated revenue from the tax on projects consistent with the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

**History.**
Code 1981, § 48-8-269.8, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, "Code Section 48-8-269.22" was substituted for "Code Section 48-8-269.995" in subsection (a).

## 48-8-269.9. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of the tax to the voters within the part of the metropolitan county special district shall have written or printed thereon the following:

"( ) YES Shall an additional ____ percent sales tax be collected in part of _____ County _____ for _____ years for the
( ) NO purpose of transportation improvements and congestion reduction?"

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the part of the metropolitan county special district are in favor of imposing the tax, then the tax shall be imposed as provided in this part.

(c) Where such question is not approved by the voters, the metropolitan county special district may resubmit such question from time to time upon compliance with the requirements of this part.

(d)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary,

and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

**History.**
Code 1981, § 48-8-269.9, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.

### 48-8-269.10. Timing for imposition of tax following approval; termination of tax; maximum combined rate of taxes.

(a)(1) If the imposition of the tax is approved at the election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the metropolitan county special district net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) At any time, no more than a single tax under this part shall be imposed within a metropolitan county special district. Any tax imposed under this part may be imposed at a rate of up to 0.75

percent. Any tax imposed under this part at a rate of less than 0.75 percent shall be in an increment of 0.05 percent.

(2) In any metropolitan county special district in which a tax is currently being levied and collected pursuant to a local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment, and such tax is levied at a percentage over 1 percent, then the combined amount of the percentage over 1 percent of such tax and the tax levied pursuant to this part shall not exceed 1 percent.

(3) In any metropolitan county special district in which a tax is in effect under this part, proceedings may be commenced, while the tax is in effect, calling for the reimposition of the tax upon the termination of the tax then in effect; and an election may be held at the next scheduled election for this purpose while the tax is in effect. Such proceedings for the reimposition of a tax under this part shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect.

(4) Following the expiration of a tax under this part, proceedings for the reimposition of a tax under this part may be initiated in the same manner as provided in this part for initial imposition of such tax.

**History.**
Code 1981, § 48-8-269.10, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 774, § 48/HB 323.

**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.91, was redesignated as Code Section 48-8-269.10.

## 48-8-269.11. Administration and collection of tax.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within the part of the metropolitan county special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the metropolitan county special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such

tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-269.11, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.92, was redesignated as Code Section 48-8-269.11.

### 48-8-269.12. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this part shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this part are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-269.12, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.93, was redesignated as Code Section 48-8-269.12.

### 48-8-269.13. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each metropolitan county special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed pursuant to the terms of an intergovernmental agreement.

**History.**
Code 1981, § 48-8-269.13, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.94, was redesignated as Code Section 48-8-269.13.

### 48-8-269.14. Allocation or balancing of state and federal funds.

(a) The proceeds of a tax under this part shall not be subject to any allocation or balancing of state and federal funds provided for by general law, and such proceeds shall not be considered or taken into account in any such allocation or balancing.

(b) The approval of the tax under this part shall not in any way diminish the percentage of state or federal funds allocated to any of the local governments under Code Section 32-5-27 within the metropolitan county special district levying the tax. The amount of state or federal funds expended in the county or any qualified municipality within the metropolitan county special district shall not be decreased or diverted due to the use of proceeds from the tax levied under this part for transportation purposes that have a high priority in the state-wide strategic transportation plan.

**History.**
Code 1981, § 48-8-269.14, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.95, was redesignated as Code Section 48-8-269.14.

### 48-8-269.15. Tax imposed.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code Section 48-8-3.5;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this part, the tax

imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

**History.**
Code 1981, § 48-8-269.15, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2018, Ex. Sess., p. ES7, § 3-8/HB 5EX.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.96, was redesignated as Code Section 48-8-269.15.

## 48-8-269.16. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the metropolitan county special district.

**History.**
Code 1981, § 48-8-269.16, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.97, was redesignated as Code Section 48-8-269.16.

## 48-8-269.17. Inapplicability of tax to property ordered and delivered outside taxing special district.

No tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier.

**History.**
Code 1981, § 48-8-269.17, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.98, was redesignated as Code Section 48-8-269.17.

### 48-8-269.18. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax.

**History.**
Code 1981, § 48-8-269.18, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.99, was redesignated as Code Section 48-8-269.18.

### 48-8-269.19. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized under this part shall be in addition to any other local sales and use tax. Except as otherwise provided in this part and except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a metropolitan county special district shall not affect the authority of a metropolitan county special district to impose the tax authorized under this part, and the imposition of the tax authorized under this part shall not affect the imposition of any otherwise authorized local sales and use tax within the metropolitan county special district.

**History.**
Code 1981, § 48-8-269.19, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.991, was redesignated as Code Section 48-8-269.19.

### 48-8-269.20. Use of tax proceeds; requirements for general obligation debt.

(a)(1) The proceeds received from the tax shall be used by the county and qualified municipalities within the part of the metropolitan county special district levying the tax exclusively for the transportation purposes specified in the resolution calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of any county or qualified municipality receiving proceeds of the tax and shall not in any manner be commingled with other funds of any county or qualified municipality prior to the expenditure.

(2) The governing authority of each county and the governing authority of each qualified municipality receiving any proceeds from the tax under this part shall maintain a record of each and every purpose for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each purpose in the resolution calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost,

amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the county governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due, the county will receive from the tax net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

(c) The intergovernmental agreement, if applicable, and resolution calling for the imposition of the tax may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax, and, in that event, such proceeds shall be solely for such purpose except as otherwise provided in subsection (f) of this Code section.

(d) The intergovernmental agreement, if applicable, and resolution calling for the imposition of the tax may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. The intergovernmental agreement, if applicable, and resolution shall specifically state the other purposes for which such proceeds will be used. In such a case, no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. The intergovernmental agreement, if applicable, and resolution shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of

such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the metropolitan county special district receives from the tax net proceeds in excess of the maximum cost of the transportation projects and purposes stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects and purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection unless otherwise specified in the intergovernmental agreement, if applicable.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-269.10 by reason of denial of validation of debt, then all net proceeds received by the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of any county or qualified municipality within the metropolitan county special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of such county or qualified municipality, it being the intent that any funds so paid into the general fund of such county or qualified municipality be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-269.20, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.992, was redesignated as Code Section 48-8-269.20, and in subparagraph (f)(1)(C), "Code Section 48-8-269.10" was substituted for "Code Section 48-8-269.91".

## 48-8-269.21. Annual reporting to public.

Not later than December 31 of each year, the governing authority of the county and each qualified municipality receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such metropolitan county special district, a simple, nontechnical report which shows for each purpose in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the metropolitan county special district intends to implement with respect to each purpose which is under-

funded or behind schedule and a statement of any surplus funds which have not been expended for a purpose.

**History.**
Code 1981, § 48-8-269.21, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.993, was redesignated as Code Section 48-8-269.21.

## Part 3

## Metropolitan Municipality Special Districts

### RESEARCH REFERENCES

**Am. Jur. Proof of Facts.**
Challenge to Tax Assessment of Residential Property, 115 Am. Jur. POF 3d 203.

### 48-8-269.22. Creation of special districts; applicability to metropolitan municipality special district.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, 159 special districts are created within this state. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts created.

(b) The provisions of this part shall only be applicable to special districts in which:

(1) A tax is currently being levied and collected by a municipality that is specifically authorized to levy such tax pursuant to a local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment; and

(2) Such municipality contains within its boundaries 15 percent or more of the geographic area of a metropolitan county special district.

(c) The territory of any municipality in this state meeting the qualifications contained in subsection (b) of this Code section shall be a metropolitan municipality special district, the geographic boundary of which shall be conterminous with the geographic boundary of such municipality.

**History.**
Code 1981, § 48-8-269.22, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 774, § 48/HB 323.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code

Section 48-8-269.994, was redesignated as Code Section 48-8-269.22.

### 48-8-269.23. Authority to impose a transportation special purpose local option sales and use tax; notice; meeting; resolution.

(a) After July 1, 2016, any metropolitan municipality special district may, by following the procedures required by this part, impose for a limited period of time within such metropolitan municipality special district a transportation special purpose local option sales and use tax, the proceeds of which shall be used only for transportation purposes.

(b)(1) Prior to the issuance of the call for the referendum required by Code Section 48-8-269.24, the governing authority of the metropolitan municipality special district that desires to levy a tax under this part shall by a majority vote on a resolution offered for such purpose approve the submission of a list of transportation purposes and the question of whether the tax should be approved to the governing authority of the county in which the metropolitan municipality special district is located. In the event a metropolitan municipality special district is located in more than one county, such resolution shall be forwarded to the governing authority of the county which contains the highest percentage of the geographic area of the metropolitan municipality special district. The governing authority of the county, unless there is a vote against the resolution by a majority plus one of the members of such governing authority of the county, shall sign a resolution offered for such purpose and shall notify the county election superintendent by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax and for the proposal to be presented to the qualified voters in the metropolitan municipality special district at the next scheduled election. Such resolution, or a digest thereof, shall be available during regular business hours in the office of the county clerk and in the offices of the metropolitan municipality special district calling for the election.

(2) The resolution authorized by paragraph (1) of this subsection shall describe:

(A) The specific transportation purposes to be funded;

(B) The approximate cost of such transportation purposes, which shall also be the maximum amount of net proceeds to be raised by the tax;

(C) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed five years; and

(D) A list of the projects and purposes qualifying as transportation purposes proposed to be funded from the tax, including an expenditure of at least 30 percent of the estimated revenue from the tax on projects consistent with the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

**History.**
Code 1981, § 48-8-269.23, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.995, was redesignated as Code Section 48-8-269.23, and in paragraph (b)(1), "Code Section 48-8-269.24" was substituted for "Code Section 48-8-269.996".

## 48-8-269.24. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of the tax to the voters within the metropolitan municipality special district shall have written or printed thereon the following:

"( ) YES Shall an additional _____ percent sales tax be collected in the City of _____ for _____ years for the purpose of transportation improvements and congestion reduction?"
( ) NO

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from municipal funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the metropolitan municipality special district are in favor of imposing the tax, then the tax shall be imposed as provided in this part.

(c) Where such question is not approved by the voters, the metropolitan municipality special district may resubmit such question from time to time upon compliance with the requirements of this part.

(d)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the municipality; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the municipality may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the municipality; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the municipality.

**History.**
Code 1981, § 48-8-269.24, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.996, was redesignated as Code Section 48-8-269.24.

## 48-8-269.25. Timing for imposition of tax following approval; termination of tax; maximum combined rate of taxes.

(a)(1) If the imposition of the tax is approved at the election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the metropolitan municipality special district net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) At any time, no more than a single tax under this part shall be imposed within a metropolitan municipality special district. Any tax imposed under this part may be imposed at a rate of up to 0.75 percent. Any tax imposed under this part at a rate of less than 0.75 percent shall be in an increment of 0.05 percent.

(2) In any metropolitan municipality special district in which a tax is currently being levied and collected pursuant to a local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment, and such tax is levied at a percentage over 1 percent, then the combined amount of the percentage over 1 percent of such tax and the tax levied pursuant to this part shall not exceed 1 percent.

(3) In any metropolitan municipality special district in which a tax is in effect under this part, proceedings may be commenced, while the tax is in effect, calling for the reimposition of the tax upon the termination of the tax then in effect; and an election may be held at the next scheduled election for this purpose while the tax is in effect. Such proceedings for the reimposition of a tax under this part shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect.

(4) Following the expiration of a tax under this part, proceedings for the reimposition of a tax under this part may be initiated in the same manner as provided in this part for initial imposition of such tax.

**History.**
Code 1981, § 48-8-269.25, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2017, p. 774, § 48/HB 323.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.997, was redesignated as Code Section 48-8-269.25.

## 48-8-269.26. Administration and collection of tax.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the metropolitan municipal special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the metropolitan municipal special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-269.26, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.998, was redesignated as Code Section 48-8-269.26.

## 48-8-269.27. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this part shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this part are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-269.27, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.999, was redesignated as Code Section 48-8-269.27.

### 48-8-269.28. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each metropolitan municipality special district under this part shall be disbursed as soon as practicable after collection; provided, however, that 1 percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration.

**History.**
Code 1981, § 48-8-269.28, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9991, was redesignated as Code Section 48-8-269.28.

### 48-8-269.29. Allocation or balancing of state and federal funds.

(a) The proceeds of a tax under this part shall not be subject to any allocation or balancing of state and federal funds provided for by general law, and such proceeds shall not be considered or taken into account in any such allocation or balancing.

(b) The approval of the tax under this part shall not in any way diminish the percentage of state or federal funds allocated to any municipality under Code Section 32-5-27. The amount of state or federal funds expended in the metropolitan municipality special district shall not be decreased or diverted due to the use of proceeds from the tax levied under this part for transportation purposes that have a high priority in the state-wide strategic transportation plan.

**History.**
Code 1981, § 48-8-269.29, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9992, was redesignated as Code Section 48-8-269.29.

### 48-8-269.30. Tax imposed.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel as such term is defined in Code Section 48-8-2, except to the extent allowed pursuant to Code Section 48-8-3.5;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

**History.**
Code 1981, § 48-8-269.30, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369; Ga. L. 2018, Ex. Sess., p. ES7, § 3-9/HB 5EX.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9993, was redesignated as Code Section 48-8-269.30.

## 48-8-269.31. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a metropolitan municipality special district which includes the county.

**History.**
Code 1981, § 48-8-269.31, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9994, was redesignated as Code Section 48-8-269.31.

### 48-8-269.32. Inapplicability of tax to property ordered and delivered outside taxing metropolitan county special district.

No tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the metropolitan county special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier.

**History.**
Code 1981, § 48-8-269.32, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9995, was redesignated as Code Section 48-8-269.32.

### 48-8-269.33. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax.

**History.**
Code 1981, § 48-8-269.33, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9996, was redesignated as Code Section 48-8-269.33.

### 48-8-269.34. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized under this part shall be in addition to any other local sales and use tax. Except as otherwise provided in this part and except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a metropolitan municipality special district shall not affect the imposition of any otherwise authorized local sales and use tax within the metropolitan municipality special district.

**History.**
Code 1981, § 48-8-269.34, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9997, was redesignated as Code Section 48-8-269.34.

### 48-8-269.35. Use of tax proceeds; requirements for general obligation debt.

(a)(1) The proceeds received from the tax shall be used by the metropolitan municipality special district levying the tax exclusively for the transportation purposes specified in the resolution calling for

imposition of the tax. Such proceeds shall be kept in a separate account from other funds of the municipality receiving proceeds of the tax and shall not in any manner be commingled with other funds.

(2) The governing authority of any municipality receiving any proceeds from the tax under this part shall maintain a record of each and every purpose for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each purpose in the resolution calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the municipal governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due, the municipality will receive from the tax net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the municipality; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the municipality.

(c) The resolution calling for the imposition of the tax may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax, and, in that event, such proceeds shall be solely for such purpose except as otherwise provided in subsection (f) of this Code section.

(d) The resolution calling for the imposition of the tax may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. The resolution shall specifically state the other purposes for which such proceeds will be used. In such a case, no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution calling for the imposition of the tax may specify

that no general obligation debt is to be issued in conjunction with the imposition of the tax. The resolution shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the metropolitan municipality special district receives from the tax net proceeds in excess of the maximum cost of the transportation projects and purposes stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects and purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-269.25 by reason of denial of validation of debt, then all net proceeds received by the metropolitan municipality special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the metropolitan municipality special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of such municipality, it being the intent that any funds so paid into the general fund of such municipality be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-269.35, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9998, was redesignated as Code Section 48-8-269.35, and in subparagraph (f)(1)(C), "Code Section 48-8-269.25" was substituted for "Code Section 48-8-269.997".

## 48-8-269.36. Annual reporting to public.

Not later than December 31 of each year, the governing authority of the municipality receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such municipality, a simple, nontechnical report which shows for each purpose in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the

original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the municipality intends to implement with respect to each purpose which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose.

**History.**
Code 1981, § 48-8-269.36, enacted by Ga. L. 2016, p. 105, § 2-1/SB 369.
**Code Commission notes.**
Pursuant to Code Section 28-9-5, in 2016, this Code section, enacted as Code Section 48-8-269.9999, was redesignated as Code Section 48-8-269.36.

## ARTICLE 5B

## SPECIAL DISTRICTS FOR TRANSIT PURPOSES SALES AND USE TAX (TRANSIT SPLOST)

**Editor's notes.**
Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides, in part, that: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

### Part 1

### General Provisions

### 48-8-269.40. Definitions.

As used in this article, the term:

(1) "Authority" means the Atlanta-region Transit Link "ATL" Authority created pursuant to Chapter 39 of Title 50.

(2) "County" means any county created under the Constitution or laws of this state.

(3) "Dealer" shall have the same meaning as provided for in paragraph (8) of Code Section 48-8-2.

(4) "Intergovernmental agreement" means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution.

(5) "Nonattainment area" means those counties currently having or previously designated as having excess levels of ozone, carbon monoxide, or particulate matter in violation of the standards in the federal Clean Air Act, as amended in 1990 and codified at 42 U.S.C.A. Sections 7401 to 7671q and which fall under the jurisdiction exercised by the Atlanta-region Transit Link "ATL" Authority or any

predecessor authority as described in Article 2 of Chapter 39 of Title 50.

(6) "Qualified municipality" means a qualified municipality as defined in paragraph (4) of Code Section 48-8-110 and which is located wholly or partly within a special district.

(7) "Regional transit plan" means the official multiyear plan for transit services and facilities adopted pursuant to Code Section 50-39-12.

(8) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by a public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a public agency or authority, a county or municipality, a community improvement district, or any other similar public entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services, school bus services, courtesy shuttle and intra-facility or terminal services, limousine carriers, and ride share network services, transportation referral services, and taxi services not paid for by a public entity.

(9) "Transit projects" means and includes purposes to establish, enhance, operate, and maintain, or improve access to transit, including general obligation debt and other multiyear obligations issued to finance such projects, the operations and maintenance of such projects once constructed, and the contracted purchase of transit services from providers without direct capital investment.

**History.**
Code 1981, § 48-8-269.40, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.41. Creation of special districts; authority to impose a transit special purpose local option sales and use tax.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, 159 special districts are created within this state. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts created.

(b)(1) Any two or more neighboring counties which are not located within a nonattainment area may, by following the procedures required by Part 2 of this article, impose within their respective

special districts a transit special purpose local option sales and use tax, the proceeds of which shall be used only for transit projects.

(2) Any county located in a nonattainment area may, by following the procedures required by Part 3 of this article, impose within the special district a transit special purpose local option sales and use tax, the proceeds of which shall be used only for transit projects.

**History.**
Code 1981, § 48-8-269.41, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.42. Prerequisite for authority to impose tax.

Prior to the issuance of any call for the referendum by any county that desires to levy a tax for transit projects authorized under this article, the county shall determine whether the region has proposed a referendum on a tax under Article 5 of this chapter. This determination shall be based on whether, pursuant to paragraphs (2) and (3) of subsection (c) of Code Section 48-8-245, a majority of the governing authorities of counties within the region containing the county proposing the tax have passed resolutions calling for the levy of a tax under Article 5 of this chapter. If a majority of the governing authorities of the counties in the region have passed such a resolution, the county proposing a tax under this article shall postpone the referendum under this part until the regional referendum has been decided. No ballot shall propose a tax under this article and under Article 5 of this chapter at the same election.

**History.**
Code 1981, § 48-8-269.42, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## Part 2

## Neighboring Counties and Special Districts Outside Nonattainment Areas

### 48-8-269.43. Notice; meeting; intergovernmental agreement.

(a) Any two or more neighboring counties qualified to levy a tax pursuant to paragraph (1) of subsection (b) of Code Section 48-8-269.41 shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within its respective special district prior to the issuance of the call for the referendum. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the counties and of each qualified municipality therein are to meet to discuss possible transit projects for inclusion in the referendum and the rate of tax. The notice shall be delivered or mailed at least ten days prior to the date of the meeting.

The meeting shall be held at least 60 days prior to any issuance of the call for the referendum.

(b) At the meeting required by subsection (a) of this Code section, the two or more neighboring counties and all qualified municipalities therein may select transit projects to be funded by the proceeds of the tax authorized by this article. Each county planning to participate in the selected transit project or projects shall enter into intergovernmental agreements which shall include, at a minimum:

(1) A list of the transit projects proposed to be funded from the tax;

(2) An agreement identifying the operator of any transit projects proposed if such project or projects are services which require an operator;

(3) The estimated or projected dollar amounts allocated for each transit project from proceeds from the tax;

(4) The procedures for distributing proceeds from the tax to each county;

(5) A schedule for distributing proceeds from the tax to each county, which shall include the priority or order in which transit projects will be fully or partially funded;

(6) A provision that all transit projects included in the agreement shall be funded from proceeds from the tax except as otherwise agreed;

(7) A provision that proceeds from the tax shall be maintained in separate accounts and utilized exclusively for the specified purposes;

(8) Record-keeping and audit procedures necessary to carry out the purposes of this part; and

(9) Such other provisions as the counties choose to address.

(c)(1) As soon as practicable after the meeting required in subsection (a) of this Code section and the execution of an intergovernmental agreement, the governing authority of each county calling for a referendum shall, by a majority vote on a resolution offered for such purpose, submit the list of transit projects and the question of whether the tax should be approved to electors of the special district in the next scheduled election and shall notify the county election superintendent within the special district by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax. Such list, or a digest thereof, shall be available during regular business hours in the office of the county clerk.

(2) The resolution authorized by paragraph (1) of this subsection shall describe or identify:

(A) The specific transit projects to be funded;

(B) The approximate cost of such transit projects;

(C) The operator selected for any transit project or projects proposed if such project or projects are services which require an operator; and

(D) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed 30 years.

(d) Unless the referendum required in Code Section 48-8-269.44 is approved in each of the participating counties, the tax shall not be imposed.

**History.**
Code 1981, § 48-8-269.43, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## 48-8-269.44. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of a tax for transit projects to the voters within the special district shall have written or printed thereon the following:

"( ) YES
( ) NO

Shall a special _____ percent sales and use tax be imposed in the special district consisting of _____ County for a period of time not to exceed _____ and for the raising of funds for transit projects?"

(2) The ballot shall have written and printed thereon the following:

"NOTICE TO ELECTORS: Unless the tax is approved in (list each county that has selected the project)for the transit projects, the tax shall not become effective."

(3) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. Each such election

shall be governed, held, and conducted in accordance with the provisions of law from time to time governing the holding of special elections as provided in Code Section 21-2-540. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the entire special district are in favor of imposing the tax in each of the special districts that have elected to hold the referendum, then the tax shall be imposed as provided in this article.

(c) Where such question is not approved by the voters, the county may resubmit such question from time to time upon compliance with the requirements of this article.

(d)(1) If the intergovernmental agreement and proposal include the authority to issue general obligation debt and if more than one-half of the votes cast throughout the entire special district and in each of the special districts that have elected to hold the referendum are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county or qualified municipality; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters as required in this subsection, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

**History.**
Code 1981, § 48-8-269.44, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## Part 3

## Special Districts Within Nonattainment Areas

### 48-8-269.45. Notice; meeting; resolution authorizing referendum.

(a)(1) Any county qualified to levy a tax pursuant to paragraph (2) of subsection (b) of Code Section 48-8-269.41 shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district prior to the issuance of the call for the referendum. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss possible transit projects from the regional transit plan for inclusion in the referendum and the rate of tax. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 60 days prior to any issuance of the call for the referendum.

(2) At the meeting the county and all qualified municipalities may select transit projects for the county from the regional transit plan to be funded by the proceeds of the tax authorized by this article.

(b) Following the meeting required by subsection (a) of this Code section, the county shall deliver or mail a written notice to the authority of the intent to call for a referendum to impose the tax authorized by this article. Such notice shall include a list of transit projects located within such county chosen from the regional transit plan which the county intends to fund with proceeds from the tax authorized under this article and the proposed operator of any such transit projects if such project or projects are services which require an operator.

(c) Upon receipt of such notice from a county, the authority shall approve or deny any or all projects within a submitted transit project list and the proposed operator of any transit projects if such project or projects are services which require an operator. In making a determination upon whether to approve transit projects, the authority shall take into consideration any other transit projects the authority has approved for any neighboring counties, any transit projects in progress in any neighboring counties, and any additional federal or state funding that may be available for any projects. The authority shall make a determination and send notification to a county approving or denying the submitted transit projects and operators, if applicable, no later than 20 days from the receipt of such list.

(d)(1) As soon as practicable after receipt of notice from the authority, the governing authority of the county desiring to call for a referendum shall, by a majority vote on a resolution offered for such purpose, submit the list of transit projects and the question of whether the tax should be approved to electors of the special district in the next scheduled election and shall notify the county election superintendent within the special district by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax. Such list, or a digest thereof, shall be available during regular business hours in the office of the county clerk.

(2) The resolution authorized by paragraph (1) of this subsection shall describe or identify:

(A) The specific transit projects to be funded which shall have been selected from the regional transit plan and approved by the authority;

(B) The approximate cost of such transit projects;

(C) The operator selected for any transit project or projects proposed if such project or projects are services which require an operator; and

(D) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed 30 years.

**History.**
Code 1981, § 48-8-269.45, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## 48-8-269.46. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of a tax for transit projects to the voters within the special district shall have written or printed thereon the following:

| | |
|---|---|
| "( ) YES | Shall a special _____ percent sales and use tax be imposed in the special district consisting of _____ County for a period of time not to exceed _ and for the raising of funds for transit projects?" |
| ( ) NO | |

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. Each such election shall be governed, held, and conducted in accordance with the provisions of law from time to time governing the holding of special elections as provided in Code Section 21-2-540. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the entire special district are in favor of imposing the tax, then the tax shall be imposed as provided in this article.

(c) Where such question is not approved by the voters, the county may resubmit such question from time to time upon compliance with the requirements of this article.

(d)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast throughout the entire special district are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the

county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

**History.**
Code 1981, § 48-8-269.46, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## Part 4

## Procedures for Levy of a Tax for Transit Projects

### 48-8-269.47. Tax rate; timing for imposition of tax following approval; termination of tax; timing for reimposition of tax.

(a) Any tax approved under this article shall be at a rate of up to 1 percent and may be in increments of 0.05 percent.

(b)(1) If the imposition of a tax under this article is approved at the election as provided for pursuant to this article, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(c) The tax shall cease to be imposed on the final day of the maximum period of time specified for the imposition of the tax.

(d) At any point in time within two years of the expiration date of a tax under this article, proceedings for the reimposition of a tax under this article may be initiated in the same manner as provided in this article for initial imposition of such tax.

**History.**
Code 1981, § 48-8-269.47, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.48. Administration and collection of tax.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner to be used within the special district or special districts imposing the tax for the transit projects specified in the resolution calling for the imposition of the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected

from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

**History.**
Code 1981, § 48-8-269.48, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.49. Remittance of taxes collected.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each transaction at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each such location for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

**History.**
Code 1981, § 48-8-269.49, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.50. Disbursement of proceeds.

(a) The proceeds of the tax collected by the commissioner in each special district qualified to levy the tax under Part 2 of this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed pursuant to the terms of the intergovernmental agreement.

(b) The proceeds of the tax collected by the commissioner in each special district qualified to levy the tax under Part 3 of this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the

general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the special district for the transit projects specified in the resolution calling for the imposition of the tax.

**History.**
Code 1981, § 48-8-269.50, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.51. Allocation or balancing of state and federal funds.

(a) The proceeds of a tax under this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, and such proceeds shall not be considered or taken into account in any such allocation or balancing.

(b) The approval of the tax under this article shall not in any way diminish the percentage of state or federal funds allocated to any of the local governments under Code Section 32-5-27 or Chapter 39 of Title 50 within the special district levying the tax.

**History.**
Code 1981, § 48-8-269.51, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.52. Exemption from taxation.

(a) Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale, as such sale or use is described in Code Section 48-8-3.2;

(5) The sale or use of motor fuel, as defined under paragraph (9) of Code Section 48-9-2, for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this article, the tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

**History.**
Code 1981, § 48-8-269.52, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## 48-8-269.53. Credit for tax paid in another jurisdiction.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county.

**History.**
Code 1981, § 48-8-269.53, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## 48-8-269.54. Inapplicability of tax to property ordered and delivered outside taxing special district.

No tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier.

**History.**
Code 1981, § 48-8-269.54, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.55. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax.

**History.**
Code 1981, § 48-8-269.55, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.56. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized under this part shall be in addition to any other local sales and use tax. Except as otherwise provided in this article and except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of a county to impose the tax authorized under this article, and the imposition of the tax authorized under this article shall not affect the imposition of any otherwise authorized local sales and use tax within the special district.

**History.**
Code 1981, § 48-8-269.56, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.57. Use of tax proceeds; requirements for general obligation debt.

(a)(1) The proceeds received from the tax shall be used by the special district or special districts exclusively for the transit projects specified in the resolution calling for imposition of the tax. When the proceeds are received by a special district authorized to levy the tax pursuant to Part 2 of this article, such proceeds shall be kept in a separate account from other funds of any county receiving proceeds of the tax and shall not in any manner be commingled with other funds of any county prior to the expenditure.

(2) The governing authority of each county receiving any proceeds from the tax under this article shall maintain a record of each and every purpose for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each purpose in the resolution calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or

disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the county governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due, the county will receive from the tax net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

(c) The resolution calling for the imposition of the tax may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax, and, in that event, such proceeds shall be solely for such purpose except as otherwise provided in subsection (f) of this Code section.

(d) The resolution calling for the imposition of the tax may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. The resolution shall specifically state the other purposes for which such proceeds will be used. In such a case, no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. The resolution shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A)(i) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax authorized to be levied pursuant to Part 2 of this article, then any net proceeds of the tax in excess of the amount required for final payment of such debt may be used for additional transit projects, provided that a subsequent intergovernmental agreement meeting the requirements set forth in subsection (b) of Code Section 48-8-269.43 has been entered into. If a subsequent intergovernmental agreement required by this division is not

entered into, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(ii) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax authorized to be levied pursuant to Part 3 of this article, then any net proceeds of the tax in excess of the amount required for final payment of such debt may be used for additional transit projects, provided that such projects are selected from the regional transit plan and approved by the authority. If approval from the authority regarding additional transit projects to be funded with any excess net proceeds is not obtained, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(B)(i) If the special district receives from the tax net proceeds in excess of the maximum cost of the transit projects stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects when the tax was authorized to be levied pursuant to Part 2 of this article, then such excess proceeds may be used for additional transit projects, provided that a subsequent intergovernmental agreement meeting the requirements set forth in subsection (b) of Code Section 48-8-269.43 has been entered into. If a subsequent intergovernmental agreement required by this division is not entered into, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(ii) If the special district receives from the tax net proceeds in excess of the maximum cost of the transit projects stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects when the tax was authorized to be levied pursuant to Part 3 of this article, then such excess proceeds may be used for additional transit projects, provided that such projects are selected from the regional transit plan and approved by the authority. If approval from the authority regarding additional transit projects to be funded with any excess net proceeds is not obtained, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(2) Except as provided in paragraph (1) of this subsection, excess proceeds shall be used solely for the purpose of reducing any indebtedness of any county within the special district other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid

into the general fund of such county, it being the intent that any funds so paid into the general fund of such county be used for the purpose of reducing ad valorem taxes.

**History.**
Code 1981, § 48-8-269.57, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

### 48-8-269.58. Annual reporting to public.

Not later than December 31 of each year, the governing authority of the county receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such county, a simple, nontechnical report which shows for each transit project in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the county intends to implement with respect to each project which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose.

**History.**
Code 1981, § 48-8-269.58, enacted by Ga. L. 2018, p. 377, § 1-3/HB 930.

## ARTICLE 6

## GEORGIA TOURISM DEVELOPMENT

**Editor's notes.**
Ga. L. 2011, p. 302, § 3/HB 234, not codified by the General Assembly, provides for severability.

**Administrative rules and regulations.**
Georgia Tourism Development Act Program, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Rule 110-32-1-.01 et seq.

### 48-8-270. Short title.

This article shall be known and may be cited as the "Georgia Tourism Development Act."

**History.**
Code 1981, § 48-8-270, enacted by Ga. L. 2011, p. 302, § 2/HB 234.

### 48-8-271. Definitions.

As used in this article, the term:

(1) "Agreement" means an agreement for a tourism attraction

project between the Department of Community Affairs and an approved company pursuant to Code Section 48-8-275.

(2) "Annual sales and use tax" means those state and local sales and use taxes generated by sales to the general public at the approved tourism attraction during the calendar year immediately preceding the date of filing the sales and use tax refund claim.

(3) "Approved company" means the entity that has submitted an application to undertake a tourism attraction project, which has been approved pursuant to Code Section 48-8-274. For each tourism attraction project, only one company may be approved under this article.

(4) "Approved costs" means:

(A) For new tourism attractions:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a new tourism attraction project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) All costs for construction materials and equipment installed at the new tourism attraction project;

(iv) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a new tourism attraction project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided;

(v) All costs of architectural and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vi) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vii) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company; and

(viii) All other costs comparable with those described in this subparagraph; or

(B) For existing tourism attractions, any approved costs otherwise specified in subparagraph (A) of this paragraph; provided, however, that such costs are limited to the expansion only of an existing tourism attraction and not the renovation of an existing tourism attraction.

(5) "Approved tourism attraction" means a project that was approved pursuant to Code Section 48-8-274 and that has since opened to the public and become operational as a tourism attraction.

(6) "Expansion" means the addition of equipment, facilities, or real estate to an existing tourism attraction for the purpose of increasing its size, scope, or visitor capacity.

(7) "Incremental sales and use tax" means state and local sales and use taxes generated by sales to the general public at the approved tourism attraction from the date on which construction of the expansion project is completed through the end of the calendar year immediately preceding the date of filing the incremental sales and use tax refund claim, less the state and local sales and use taxes that were generated by sales to the general public at the approved tourism attraction during the 12 month period immediately preceding the commencement of construction of the expansion project.

(8) "Incremental sales and use tax refund" means the amount equal to the lesser of the incremental sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January 1 of the year during which the claim for the incremental sales and use tax refund is filed.

(9) "Local sales and use tax" means any sales and use tax, excluding the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution, that is levied and imposed in an area consisting of less than the entire state, however authorized.

(10) "Renovation" means the restoration, rebuilding, redesign, repair, or replacement of worn elements so that the functionality, quality, or attractiveness of buildings or structures is equivalent to a former state.

(11) "Sales and use tax refund" means the amount equal to the lesser of the annual sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January 1 of the year during which the claim for the sales and use tax refund is filed.

(12) "Tourism attraction" means a cultural or historical site; a recreation or entertainment facility; a convention hotel and confer-

ence center; an automobile race track, including, but not limited to, Atlanta Motor Speedway, with other tourism amenities; a golf course facility with other tourism amenities; marinas and water parks with lodging and restaurant facilities designed to attract tourists to the State of Georgia; or a Georgia crafts and products center. A tourism attraction shall not be primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters.

(13) "Tourism attraction project" or "project" includes the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to, surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company. Such term shall not include the renovation of an existing tourism attraction.

**History.**
Code 1981, § 48-8-271, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 7/HB 318.

## 48-8-272. Purpose; legislative findings.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of this state depend in large measure upon the development of tourism in the state; that it is in the best interest of this state to induce the creation of tourism attractions or expansion of existing tourism attractions within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the sales and use tax refund offered by the State of Georgia to approved companies and preserving and creating sources of tax revenues for the support of public services provided by the state; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation of tourism attraction projects is of paramount importance to the economy of the state, mandating that the provisions of this article are to be liberally construed and applied in order to advance public purposes.

**History.**
Code 1981, § 48-8-272, enacted by Ga. L. 2011, p. 302, § 2/HB 234.

## 48-8-273. Tourism attractions agreements; execution; 10-year term; sales and use tax refund; administrative regulations.

(a) In the discretion of the commissioner of economic development and the commissioner of community affairs, in consideration of the execution of the agreement and subject to the approved company's compliance with the terms of the agreement, an approved company shall be granted a sales and use tax refund for new projects or an incremental sales and use tax refund for expansions of existing tourism attractions.

(b) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected.

(c) The term of the agreement granting a refund under this article shall be ten years, commencing on the date the tourism attraction opens for business and begins to collect sales and use taxes or, for an expansion, the date construction is complete.

(d) For each calendar year or partial calendar year occurring during the term of the agreement, an approved company shall file with the Department of Revenue a claim for a refund under this article by March 31 of the following year.

(e) The Department of Revenue, in consultation with the Department of Community Affairs and other appropriate state agencies, shall promulgate administrative regulations and require the filing of a refund form designed by the Department of Revenue to reflect the intent of this article.

(f) No sales and use tax refund shall be granted to an approved company that is during a tax year simultaneously receiving any other state tax incentive associated with any one tourism attraction project.

(g) Any sales and use tax refund shall be first applied to any outstanding tax obligation of the approved company that is due and payable to the state.

(h) By resolution and at the discretion of the county and city, if any, where the tourism attraction project is to be located, the local sales and use tax may be refunded under the same terms and conditions as any refund of state sales and use taxes.

(i) Refunds under this article shall be made without interest.

**History.** Code 1981, § 48-8-273, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 8/HB 318.

**48-8-274. Standards for filing tourism attraction project applications; analysis of projects by independent consultants; conditions of eligibility and approval.**

(a) The commissioner of community affairs, in consultation with other appropriate state agencies, shall establish standards for the filing of an application for tourism attraction projects by the promulgation of administrative regulations.

(b) In addition to any standards set forth pursuant to subsection (a) of this Code section, an application for a tourism attraction project filed with the Department of Community Affairs shall include:

(1) Marketing plans for the tourism attraction that target individuals who are not residents of this state;

(2) A description and location of the tourism attraction project;

(3) Capital and other specific expenditures for the tourism attraction project and the anticipated sources of funding for such project;

(4) The anticipated employment and wages to be paid at the tourism attraction;

(5) Business plans that indicate the average number of days in a year in which the tourism attraction will be in operation and open to the public;

(6) The anticipated revenues to be generated by the tourism attraction; and

(7) Resolutions from the governing authority of the county or the city, if any, in which the tourism attraction will be located endorsing the tourism attraction project and, where applicable, including appropriate affirmative clauses regarding permitting, land use, local incentives, and the provision of local public infrastructure.

(c) Following the filing of the application, the Department of Community Affairs shall submit the application to an independent consultant who shall perform an in depth analysis of the proposed project. All costs associated with such application and analysis shall be paid for by the approved company.

(d) The commissioner of economic development and the commissioner of community affairs may grant approval to the tourism attraction project if the project shall:

(1) Have approved costs in excess of $1 million and such project is to be a tourism attraction;

(2) Have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism

attraction project will compete directly with tourism attractions in this state;

(3) Produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year, including the first year of operation;

(4) Not adversely affect existing employment in this state; and

(5) For each year following the third year of operation, attract a minimum of 25 percent of its visitors from nonresidents of this state.

**History.** Code 1981, § 48-8-274, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 9/HB 318.

### 48-8-275. Authority of Department of Community Affairs to enter into agreements with approved companies; required terms and provisions of agreements.

Following approval of a project, the Department of Community Affairs shall enter into an agreement with any approved company. The agreement may include as a partner any local development authority. The terms and provisions of each agreement shall include, but not be limited to:

(1) The projected amount of approved costs;

(2) A date certain by which the approved company shall have completed the tourism attraction project and begun operations. Upon request from any approved company that has received final approval, the Department of Community Affairs shall grant an extension or change, which in no event shall exceed 18 months from the date of final approval, to the completion date as specified in the agreement with an approved company; and

(3) A statement specifying the term of the agreement in accordance with subsection (c) of Code Section 48-8-273.

**History.** Code 1981, § 48-8-275, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 10/HB 318.

### 48-8-276. Compliance subject to review by Department of Community Affairs; failure to abide by terms of agreement.

(a) Compliance with the agreement is subject to review by the Department of Community Affairs.

(b) In the event an approved company fails to abide by the terms of the agreement, then such agreement shall be void and all sales and use tax proceeds that were refunded shall become immediately due and payable back to the state.

**History.**
Code 1981, § 48-8-276, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 11/HB 318.

### 48-8-277. Transfer of rights, duties, and obligations to successor company.

An approved company may, in the discretion of the Governor, transfer its rights, duties, and obligations under the agreement to a successor company if the successor company meets the qualifications of an approved company and, upon such approval by the Governor, such successor approved company shall be authorized to receive the sales and use tax refunds for the remaining duration of the agreement if it abides by the terms of the agreement.

**History.**
Code 1981, § 48-8-277, enacted by Ga. L. 2011, p. 302, § 2/HB 234.