



# FISCAL RESEARCH CENTER

## **Georgia Tax Credits: Details of the Business and Personal Credits Allowed Against Georgia's Income Tax (Appendix B)**

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**FRC Report No. 231B  
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**ANDREW YOUNG SCHOOL**  
OF POLICY STUDIES

**GEORGIA TAX CREDITS:  
DETAILS OF THE BUSINESS AND  
PERSONAL CREDITS ALLOWED  
AGAINST GEORGIA'S INCOME TAX  
(APPENDIX B)**

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## Appendix B: Statutory Language

[The statutory language presented in this appendix is taken from the Official Code Georgia Annotated (O.C.G.A) and is intended to serve as a convenient reference for the reader.]

### 1. Employer's Job Tax Credit

#### **Statutory Language:**

*O.C.G.A. §48-7-40. 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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" 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, and services for the elderly and persons with disabilities. Such term shall not include retail businesses.
  - (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, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries. Such term shall not include retail businesses.
- (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

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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

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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 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 five or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase

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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 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. In any year in which the net employment increase falls below the number required in such tier, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below the number required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture. 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 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

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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 four years for the taxes imposed under this article shall be awarded for additional new full-time jobs created by business enterprises qualified under subsection (b), (c), or (c.1) of this Code section. Additional new full-time 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) (1) Except as provided in paragraph (2) of this subsection, 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.



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- (2) The additional credit claimed by an existing business enterprise pursuant to the provisions of paragraph (2) of subsection (e) of this Code section must be applied against taxes imposed for the taxable year in which such credit is available and may not be carried forward to any subsequent 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, 2009, 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.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40, enacted by Ga. L. 1989, p. 905, O.C.G.A. §1; Ga. L. 1992, p. 2031, O.C.G.A. §1; Ga. L. 1994, p. 928, O.C.G.A. §2; Ga. L. 1995, p. 585, O.C.G.A. §1; Ga. L. 1996, p. 220, O.C.G.A. §2; Ga. L. 1997, p. 461, O.C.G.A. §1; Ga. L. 1998, p. 1224, O.C.G.A. §2; Ga. L. 2000, p. 605, O.C.G.A. §1; Ga. L. 2001, p. 984, O.C.G.A. §7; Ga. L. 2005, p. 210, O.C.G.A. §1/HB 389; Ga. L. 2008, p. 874, O.C.G.A. §1/HB 1246; Ga. L. 2009, p. 654, O.C.G.A. §1/HB 439.

*O.C.G.A. §48-7-40.1. 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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" 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.

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- (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, and research and development industries. Such term shall not include retail businesses.
- (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 which are comprised 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 also shall be authorized to include in the designation provided for in subsection (b) of this Code section:
  - (1) Any area comprised of ten or more contiguous census tracts 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 area;
  - (2) Any area comprised 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;
  - (3) Any area comprised of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs, 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, 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, displays pervasive poverty, underdevelopment, general distress, and blight.

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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 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 average wage of the new jobs 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 job; provided, however, that nothing in this subsection shall be construed to require

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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. In any year in which the net employment increase falls below five or two, as applicable, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below five or two, as applicable, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however that Code Section 48-2-40 shall not apply to any such forfeiture. 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 four years for the taxes imposed under this article shall be awarded for additional new full-time jobs created by business enterprises qualified under subsection (b) or (c) of this Code section. Additional new full-time 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.

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- (j) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2009, 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.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.1, enacted by Ga. L. 1993, p. 1649, O.C.G.A. §2; Ga. L. 1994, p. 928, O.C.G.A. §3; Ga. L. 1996, p. 220, O.C.G.A. §§3, 4; Ga. L. 1997, p. 461, O.C.G.A. §2; Ga. L. 2000, p. 605, O.C.G.A. §2; Ga. L. 2001, p. 984, O.C.G.A. §8; Ga. L. 2004, p. 939, O.C.G.A. §1; Ga. L. 2008, p. 874, O.C.G.A. §2/HB 1246; Ga. L. 2008, p. 1152, O.C.G.A. §1/HB 1273; Ga. L. 2009, p. 654, O.C.G.A. §2/HB 439.

### **2. Quality Jobs Tax Credit**

***Statutory Language:***

*O.C.G.A. §48-7-40.17. Establishing or relocating headquarters; tax credit.*

- (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;
- (D) Pays at or above 110 percent of the average wage of the county in which it is located; and
- (E) Has no predetermined end date.
- (b) A taxpayer establishing new quality jobs in this state or relocating 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 and, within one year 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 and employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for taxes imposed under this article:

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- (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; provided, however, that where the amount of such credit 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 not to exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each new quality job when aggregated with the credit applied against taxes under this article. 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. For each new quality job created, the credit established by this subsection 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. Credit shall not be allowed during a year if the net employment increase falls below the 50 new quality jobs required. Any credit received for years prior to the year in which the net employment increase falls below the 50 new quality jobs required shall not be affected except as provided in subsection (f) of this Code section. The commissioner shall adjust the credit allowed each year for net new employment fluctuations above the 50 new quality jobs required.

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- (c) 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.
- (d) 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.
- (e) 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.
- (f) If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer shall forfeit the right to the credit claimed for such job in that year. For each year such new quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture.
- (g) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2009, 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 commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.17, enacted by Ga. L. 2000, p. 605, O.C.G.A. §6; Ga. L. 2001, p. 984, O.C.G.A. §9; Ga. L. 2003, p. 665, O.C.G.A. §7; Ga. L. 2009, p. 654, O.C.G.A. §6/HB 439.

### ***3. New Facilities Jobs Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.24. Conditions for taking job tax credit by business enterprises; calculating credit.*

- (a) As used in this Code section, the term:
  - (1) "Business enterprise" means any enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization which is registered and

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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, 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 Georgia 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; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites 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.

(4) "Full-time employee job" and "full-time job" means employment of an individual which:

(A) Is located in this state at the site or sites of a qualified project or the facility or facilities resulting there from;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and



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- (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 job tax 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.

- (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.
- (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.

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- (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, said 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 certification may be based upon other criteria, a project that meets the minimum job creation

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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

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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) 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. In no event may a credit be claimed under this Code section for more than 3,300 new full-time employee jobs created by any one project; provided, however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions thereof.
- (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) Except as provided in subsection (g) of this Code section, 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, 48-7-40.11, 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 there from, but only

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for costs incurred more than five years after the date the facility or facilities first become operational.

- (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 will 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 herein. 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, 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

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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 will 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 herein.

- (m) A taxpayer who 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 therefore 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

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

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.24, enacted by Ga. L. 2003, p. 665, O.C.G.A. §8; Ga. L. 2004, p. 690, O.C.G.A. §20; Ga. L. 2005, p. 60, O.C.G.A. §48/HB 95; Ga. L. 2009, p. 806, O.C.G.A. §1/HB 438.

### 4. *New Manufacturing Facilities Property Credit*

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.25. Conditions for credit for business enterprises with existing manufacturing facilities; calculating credit.*

- (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.

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- (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) Is located in this state at the manufacturing facility resulting from a qualified 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.

- (5) "Investment requirement" means the requirement that a minimum of \$800 million in qualified investment property shall have been purchased or acquired for use in a qualified 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 the number of full-time employees must equal or exceed 1,800.
- (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



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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; and
- (C) 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

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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 that will be located at the manufacturing facility 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

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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 April 1, 2003. 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 March 31, 2003. 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;

(1) 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

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(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;

- (2) 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 project includes the acquisition of qualified investment property having an aggregate cost equal to or exceeding \$800 million and that the job requirement was satisfied during such year; and
- (3) 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) In no event may credits exceeding \$50 million in the aggregate be claimed under this Code section with respect to any one project.
- (g) 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, 48-7-40.11, 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 there from, but only with respect to costs incurred more than five years after the date the manufacturing facility first becomes operational.
- (h) 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 has failed to meet the job maintenance requirement, 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. No later than 90 days after notification by the

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commissioner that the taxpayer has failed to meet the job maintenance requirement, 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 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 therefore 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

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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, O.C.G.A. §48-7-40.25, enacted by Ga. L. 2003, p. 665, O.C.G.A. §8; Ga. L. 2004, p. 690, O.C.G.A. §21; Ga. L. 2005, p. 60, O.C.G.A. §48/HB 95.

### *5. Manufacturer's Investment Tax Credit*

***Statutory Language:***

*O.C.G.A. §48-7-40.2. Tax credits for existing manufacturing and telecommunications facilities in tier 1 counties; conditions and limitations.*

- (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

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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.
- (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 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. 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;

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- (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 \$50,000.00;
- (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)(1) Except as otherwise provided in paragraph (2) of this subsection, no taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1.
- (2) For taxable years beginning on or after January 1, 1995, and ending on or prior to December 31, 1998, a taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section and to claim, if



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otherwise qualified under Code Section 48-7-40, the tax credit applicable to tier 1 counties under Code Section 48-7-40, subject to the following limitations:

- (A) Not less than 250 new full-time employee jobs must be created in the first taxable year and maintained through the end of the third taxable year in which the taxpayer claims both credits as authorized under this paragraph; and
- (B) An otherwise qualified taxpayer shall not be entitled to receive the additional tax credit authorized under Code Section 36-62-5.1 in any taxable year in which that taxpayer claims both of the tax credits as authorized under this paragraph.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.2, enacted by Ga. L. 1994, p. 928, O.C.G.A. §4; Ga. L. 1995, p. 10, O.C.G.A. §48; Ga. L. 1995, p. 585, O.C.G.A. §2; Ga. L. 1996, p. 220, O.C.G.A. §5; Ga. L. 1997, p. 461, O.C.G.A. §3; Ga. L. 1998, p. 1224, O.C.G.A. §3.

*O.C.G.A. §48-7-40.3. Tax credits for existing manufacturing and telecommunications facilities in tier 2 counties; conditions and limitations.*

(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.

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- (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 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. 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;

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- (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 \$50,000.00;
- (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.

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**HISTORY:** Code 1981, O.C.G.A. §48-7-40.3, enacted by Ga. L. 1994, p. 928, O.C.G.A. §4; Ga. L. 1995, p. 585, O.C.G.A. §3; Ga. L. 1997, p. 461, O.C.G.A. O.C.G.A. §4; Ga. L. 1998, p. 1224, O.C.G.A. §4.

*O.C.G.A. §48-7-40.4. Tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 or 4 counties; conditions and limitations.*

(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

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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. 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;

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- (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 \$50,000.00;
- (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, O.C.G.A. §48-7-40.4, enacted by Ga. L. 1994, p. 928, O.C.G.A. §4; Ga. L. 1995, p. 585, O.C.G.A. §4; Ga. L. 1997, p. 461, O.C.G.A. §5; Ga. L. 1998, p. 1224, O.C.G.A. §5; Ga. L. 2000, p. 605, O.C.G.A. §3.

### ***6. Optional Investment Tax Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.7. Optional tax credits for existing manufacturing and telecommunications facilities in tier 1 counties; conditions and limitations.*

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

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- (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 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

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- (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;



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- (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, O.C.G.A. §48-7-40.7, enacted by Ga. L. 1995, p. 585, O.C.G.A. §7; Ga. L. 1997, p. 461, O.C.G.A. §6.

*O.C.G.A. §48-7-40.8. Optional tax credits for existing manufacturing and telecommunications facilities in tier 2 counties; conditions and limitations.*

- (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.

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- (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:

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- (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, O.C.G.A. §48-7-40.8, enacted by Ga. L. 1995, p. 585, O.C.G.A. §7; Ga. L. 1997, p. 461, O.C.G.A. §7.

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*O.C.G.A. §48-7-40.9. Optional tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 and 4 counties; conditions and limitations.*

- (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:

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- (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

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- (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, O.C.G.A. §48-7-40.9, enacted by Ga. L. 1995, p. 585, O.C.G.A. §7; Ga. L. 1997, p. 461, O.C.G.A. §8; Ga. L. 2000, p. 605, O.C.G.A. §4.

### ***7. Investor's Credit***

***Statutory Language:***

*O.C.G.A. §48-7-40.30. (Effective January 1, 2011) Income tax credit for certain qualified investments for limited period of time.*

- (a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of the 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 the 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

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- (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 subparagraph (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 benefitted 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;

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(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, research and development, or 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 as one of its primary purposes such activity.

(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.



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- (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, or 2013 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, or 2013 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 is not 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

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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;
- (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; and
- (6) To be eligible for the credit provided in this Code section, the qualified investor must file an application for the credit with the commissioner on or before June 30 of the year following the calendar year in which the qualified investment was made.
- (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

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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

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- (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 must 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; and
  - (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.
- (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.

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- (j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.30, enacted by Ga. L. 2010, p. 1163, O.C.G.A. §2/HB 1069.

### **8. Port Activity Tax Credit**

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.15. Alternative tax credits for base year port traffic increases; conditions and limitations.*

- (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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, 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,

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processing, telecommunications, broadcasting, tourism, and research and development industries but shall not include retail businesses.

- (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 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, 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.

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- (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 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

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- (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 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 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, O.C.G.A. §48-7-40.15, enacted by Ga. L. 1998, p. 744, O.C.G.A. §1; Ga. L. 1998, p. 1224, O.C.G.A. §7; Ga. L. 2000, p. 605, O.C.G.A. §5; Ga. L. 2001, p. 855, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48; Ga. L. 2005, p. 159, O.C.G.A. §16/HB 488; Ga. L. 2008, p. 874, O.C.G.A. §4/HB 1246; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46; Ga. L. 2009, p. 654, O.C.G.A. §5/HB 439.



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### *9. Alternative Port Activity Tax Credit*

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.15A. Additional job tax credit based on increase in port traffic; conditions and limitations.*

- (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 two or tier three 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 8 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.

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- (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 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.
- (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.

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- (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, O.C.G.A. §48-7-40.15A, enacted by Ga. L. 2009, p. 816, O.C.G.A. §7/HB 485.

### *10. Film Tax Credit*

***Statutory Language:***

*O.C.G.A. §48-7-40.26. Tax credit for film, video, or digital production in state.*

- (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 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 as production expenditures incurred in this state that are directly used in a state certified production or productions.
  - (3) "Multimarket commercial distribution" means commercial distribution which extends to markets outside the State of Georgia.
  - (4) "Production company" means a 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,

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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.

- (5) "Production expenditures" means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, 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, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for marketing and distribution.
- (6) "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 an approximately five-second long animated logo that promotes Georgia within its presentation and all promotional trailers worldwide for the life of the project;
  - (B) Qualified TV production which includes an imbedded five-second long Georgia promotion during each broadcast half hour worldwide for the life of the project;
  - (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 imbedded in online promotions.
- (7) "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, such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series pilots, or movies for television. 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

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theaters, licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition. Such term shall not include the production of television coverage of news and athletic events.

- (8) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.
- (9) "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.
- (10) "Total aggregate payroll" means the total sum expended by a 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 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 and shall be calculated as follows:
  - (1) The production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and
  - (2) The 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.
- (d) For any 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

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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, the production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and
  - (2) The 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.
- (e) (1) Where the amount of such credit or credits exceeds the production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such 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.
- (2) If a production company, or a 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, or the 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, or the 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.
- (f) Any tax credits with respect to a state certified production earned by a production company and previously claimed but not used by such production company against its income tax may be transferred or sold in whole or in part by such production company to another Georgia taxpayer, subject to the following conditions:
- (1) Such 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;

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- (2) Such 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 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 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 tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;
- (5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (e) of this Code section. To the extent that such 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. The transferee's recourse is against such 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.
- (g) 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 production company has met the investment requirement. For each year in which such production company either claims or transfers the 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) 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;

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- (D) 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;
  - (E) The amount of tax credit carried over from prior years;
  - (F) The amount of tax credit utilized by the 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 claims the credit granted in this Code section, the 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; 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 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 against prior years' tax liability.
- (h) 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.
- (i) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.
- (j) Any 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.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.26, enacted by Ga. L. 2005, p. 1125, O.C.G.A. §2/HB 539; Ga. L. 2006, p. 242, O.C.G.A. §2/HB 194; Ga. L. 2008, p. 317, O.C.G.A. §1/HB 1100.

### ***11. Research Tax Credit***

#### ***Statutory Language***

*O.C.G.A. §48-7-40.12. Tax credit for qualified research expenses.*



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- (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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" 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.
  - (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) In the first five years of a newly formed business enterprise's operations in this state, where the amount of a credit claimed under this Code section exceeds 50

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percent of 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. 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.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.12, enacted by Ga. L. 1997, p. 461, O.C.G.A. §9; Ga. L. 1998, p. 128, O.C.G.A. §48; Ga. L. 2008, p. 874, O.C.G.A. §3/HB 1246; Ga. L. 2009, p. 654, O.C.G.A. §4/HB 439.

### **12. *Seed Capital Fund***

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.27. Tax credit for qualified investments.*

- (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;

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- (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, O.C.G.A. §48-7-40.27, enacted by Ga. L. 2008, p. 938, O.C.G.A. §1/HB 1196.

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*O.C.G.A. §48-7-40.28. Limitation on credit for qualified investment tax credit.*

- (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

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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, O.C.G.A. §48-7-40.28, enacted by Ga. L. 2008, p. 938, O.C.G.A. §1/HB 1196.

### *13. Tax Credit for Existing Business Enterprises Undergoing Qualified Business Expansion*

***Statutory Language:***

*O.C.G.A. §48-7-40.21. Tax credits for existing business enterprises undergoing qualified business expansion; recapture; application of credit.*

- (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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, 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.

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- (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.

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**HISTORY:** Code 1981, O.C.G.A. §48-7-40.21, enacted by Ga. L. 2001, p. 105, O.C.G.A. §2; Ga. L. 2002, p. 415, O.C.G.A. §48; Ga. L. 2004, p. 690, O.C.G.A. §19; Ga. L. 2008, p. 874, O.C.G.A. §5/HB 1246.

### *14. Qualified Health Insurance Expense Credit*

***Statutory Language:***

*O.C.G.A. §48-7-29.13. Tax credit 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, O.C.G.A. §48-7-29.13, enacted by Ga. L. 2008, p. 292, O.C.G.A. §5/HB 977; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46; Ga. L. 2009, p. 652, O.C.G.A. §5/HB 410.

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### **15. Teleworking Tax Credit**

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.11. Income tax credits for teleworking; definitions; powers and duties.*

- (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



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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;

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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

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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, O.C.G.A. §48-7-29.11, enacted by Ga. L. 2006, p. 242, O.C.G.A. §1/HB 194; Ga. L. 2007, p. 47, O.C.G.A. §48/SB 103; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46; Ga. L. 2009, p. 999, O.C.G.A. §§1, 2, 3/HB 186.

### ***16. Qualified Transportation Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.3. Tax credit for federal qualified transportation fringe benefits.*

- (a) As used in this Code section, the term "federal qualified transportation fringe benefit" means only the following transportation benefits provided by an employer to any employee as provided in Section 132(f) of the Internal Revenue Code of 1986, as amended:
  - (1) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment;
  - (2) Any transit pass;
  - (3) Qualified parking on or near a location from which the employee commutes to work by transportation described in paragraph (1) of this subsection, in a commuter highway vehicle, or by carpool. Qualified parking shall not include parking provided to an employee on or near the business premises of the

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employer and shall not include any parking on or near property used by the employee for residential purposes.

- (b) A taxpayer shall be allowed a state income tax credit against the tax imposed by this chapter for any federal qualified transportation fringe benefit provided by the taxpayer to an employee which benefit is in addition to and not in lieu of compensation otherwise payable to the employee, in an amount equal to \$25.00 per employee receiving such benefit; provided, however, that in no event shall the total amount of such tax credit exceed the annual amount expended by such employer in providing such federal qualified transportation fringe benefits to such employees.
- (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 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. Such rules and regulations shall include, but not be limited to, a minimum required usage of ten workdays per month of the federal qualified transportation fringe benefit provided to the employee in order to obtain the credit authorized under this Code section.

**HISTORY:** Code 1981, O.C.G.A. §48-7-29.3, enacted by Ga. L. 1999, p. 651, O.C.G.A. §1; Ga. L. 2000, p. 1294, O.C.G.A. §1.

### *17. Business Enterprise Vehicle Credit*

***Statutory Language:***

*O.C.G.A. §48-7-40.22. Credit to business enterprises for leased motor vehicles; daily ridership; implementation.*

- (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 Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

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- (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

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- (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, O.C.G.A. §48-7-40.22, enacted by Ga. L. 2001, p. 105, O.C.G.A. §3; Ga. L. 2002, p. 372, O.C.G.A. §6; Ga. L. 2008, p. 874, O.C.G.A. §6/HB 1246.

### *18. Employer's Credit for Purchasing Child Care Property/Employer Sponsored Child Care*

**Statutory Language:**

*O.C.G.A. §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.

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- (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;

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(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%



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| 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;

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- (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

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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, O.C.G.A. §48-7-40.6, enacted by Ga. L. 1994, p. 928, O.C.G.A. §4; Ga. L. 1995, p. 10, O.C.G.A. §48; Ga. L. 1995, p. 585, O.C.G.A. §6; Ga. L. 1999, p. 13, O.C.G.A. §3; Ga. L. 2004, p. 645, O.C.G.A. §6.

### ***19. Low Income Housing Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.6. Tax credit for qualified low-income building.*

(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

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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, O.C.G.A. §48-7-29.6, enacted by Ga. L. 2000, p. 845, O.C.G.A. §1; Ga. L. 2001, p. 1098, O.C.G.A. §2; Ga. L. 2001, p. 1181, O.C.G.A. §1.

### **20. *Historic Rehabilitation Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.8. Tax credits for the rehabilitation of historic structures; conditions and limitations.*

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- (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 Natural Resources 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 Natural Resources.
  - (2) "Certified structure" means a historic building or structure that is individually listed in the Georgia Register of Historic Places or is certified by the Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District.
  - (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 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.

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- (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter for the taxable year in which the certified rehabilitation is completed:
  - (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.
- (c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month period.
- (2) In no event shall credits for a certified structure exceed \$300,000.00 in any 120 month period.
- (d) 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 certification of the Department of Natural Resources verifying that the improvements to the certified structure are consistent with the Department of Natural Resources Standards for Rehabilitation.
- (e)(1) If the credit allowed under 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) 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 rehabilitation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would

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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 Natural Resources as provided in subsection (d) 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) 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 any other tax credit with respect to the project.
- (j) The Department of Natural Resources and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.
- (k) The Department of Natural Resources 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.

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**HISTORY:** Code 1981, O.C.G.A. §48-7-29.8, enacted by Ga. L. 2002, p. 954, O.C.G.A. §1; Ga. L. 2008, p. 1179, O.C.G.A. §§1, 2/HB 851.

### *21. Diesel Particulate Emission Reduction Technology Equipment*

***Statutory Language:***

*O.C.G.A. §48-7-40.19. Diesel particulate emission reduction technology equipment; tax credit.*

- (a) As used in this Code section, the term:
  - (1) "Commercial motor vehicle" means a motor vehicle designed or used to transport property and having a gross vehicle weight rating of 26,001 or more pounds.
  - (2) "Diesel particulate emission reduction technology equipment" means any equipment which meets standards adopted by the Georgia Regional Transportation Authority and which provides for heat, air conditioning, light, and communications for the driver's compartment of a commercial motor vehicle which is parked at a truck stop, depot, or other facility the use of which results in the engine being turned off with a corresponding reduction of particulate emissions from such vehicle's diesel engine.
- (b) A tax credit against the tax imposed under this article shall be granted to any person who installs diesel particulate emission reduction technology equipment at any truck stop, depot, or other facility. The amount of the tax credit shall be equal to 10 percent of the total of the cost of the diesel particulate emission reduction technology equipment and the cost of installation of such equipment. The tax credit provided under this Code section shall be allowed for the taxable year in which the taxpayer first places the equipment in use. Any credit which is not used in the year in which the equipment is first placed in use shall not be carried forward to any future year.
- (c) For every year for which the taxpayer claims the credit authorized by this Code section, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return setting forth the following information:
  - (1) A description of the diesel particulate emission reduction technology equipment installed;
  - (2) The location at which such equipment was installed; and
  - (3) The cost of the equipment and the cost of installation of the equipment.
- (d) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.



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**HISTORY:** Code 1981, O.C.G.A. §48-7-40.19, enacted by Ga. L. 2000, p. 1090, O.C.G.A. §2.

### **22. *Low and Zero Emission Vehicle Credit/Electric Vehicle Charger Credit***

***Statutory Language:***

*O.C.G.A. §48-7-40.16. Income tax credits for low-emission vehicles.*

(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

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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) 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 zero emission vehicle that is registered in the State of Georgia. The amount of the credit shall be:
  - (1) For any new low-emission vehicle, 10 percent of the cost of such vehicle or \$2,500.00, whichever is less; and
  - (2) For any new zero emission vehicle, 20 percent of the cost of such vehicle or \$5,000.00, whichever is less.
- (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

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- (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

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- (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, O.C.G.A. §48-7-40.16, enacted by Ga. L. 1998, p. 1576, O.C.G.A. §1; Ga. L. 2000, p. 1090, O.C.G.A. §1; Ga. L. 2001, p. 109, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48; Ga. L. 2002, p. 506, O.C.G.A. §1; Ga. L. 2002, p. 512, O.C.G.A. §§14, 15; Ga. L. 2003, p. 665, O.C.G.A. §6; Ga. L. 2005, p. 334, O.C.G.A. §29-5/HB 501.

### *23. Land Conservation Credit*

***Statutory Language:***

*O.C.G.A. §48-7-29.12. Tax credit for donation of real property; carryover of credit; appraisals; penalty.*

- (a) As used in this Code section, the term:
  - (1) "Fair market value" means the value of the donated property established by a property appraisal or appraisals meeting the requirements of Section 170 of Title 26 of the United States Code, to be submitted in such manner as the commissioner may by regulation require.
  - (2) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of 100 percent of all right, title, and interest in the entire parcel of donated real property, which donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of an interest in real property which qualifies as a conservation easement under paragraph (4) of Code Section 12-6A-2. 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.
  - (3) "Eligible donor" means any person who owns an interest in a qualified donation.
  - (4) "Related person" has the meaning provided by Code Section 48-7-28.3.
  - (5) "Substantial valuation misstatement" means a valuation such that the value of any property claimed on any return of tax imposed under this chapter, or on any claim

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for refund of such tax, is 150 percent or more of the amount determined to be the correct amount of such valuation.

- (b) (1) A taxpayer 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 each qualified donation of real property for conservation purposes.
- (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 \$1 million, 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 a certification by the Department of Natural Resources that the donated property is suitable for conservation purposes. The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer this subsection, including, but not limited to, policies to guide the determination of whether or not donated property is suitable for conservation purposes. A final determination by the Department of Natural Resources with respect to the suitability of donated property for conservation purposes 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

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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 year 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.
- (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 a return or claim for refund which is based on such appraisal 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 subparagraph (e)(1)(B) of this Code section; or
    - (ii) One thousand dollars; or
  - (B) One hundred twenty-five percent of the gross income received by the person described in subparagraph (e)(1)(A) of this Code section 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

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

**HISTORY:** Code 1981, O.C.G.A. §48-7-29.12, enacted by Ga. L. 2006, p. 351, O.C.G.A. §1/HB 1107; Ga. L. 2008, p. 101, O.C.G.A. §1/HB 1274.

### *24. Clean Energy Property Credit/Wood Residuals Credit*

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.14 Income tax credit 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

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- (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, 2012; provided, however, this credit shall be further subject to the following conditions and limitations:



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- (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;
- (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 Georgia 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 Georgia 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;

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- (C) For calendar year 2010, \$2.5 million;
  - (D) For calendar year 2011, \$2.5 million; and
  - (E) For calendar year 2012, \$2.5 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 to which such taxpayer would be authorized to receive because the limitations specified in paragraph (3) of this subsection have reached, such taxpayer may reapply in the following taxable year for a tax credit for those same eligible costs, and in such event, that taxpayer shall have priority over other taxpayers for credit allocation in the year of such reapplication;
- (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;

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- (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

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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, O.C.G.A. §48-7-29.14, enacted by Ga. L. 2008, p. 841, O.C.G.A. §1/HB 670; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46; Ga. L. 2010, p. 949, O.C.G.A. §1/HB 244; Ga. L. 2010, p. 1163, O.C.G.A. §3/HB 1069.

### **25. *Energy or Water Efficient Equipment Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.29. (For effective date, see note.) Income 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

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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:

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- (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.

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**HISTORY:** Code 1981, O.C.G.A. §48-7-40.29, enacted by Ga. L. 2010, p. 1163, O.C.G.A. §1/HB 1069.

### **26. *Tax Credit for Ground Water Usage***

***Statutory Language:***

O.C.G.A. §48-7-40.11. *Tax credit for shift from ground-water usage.*

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

(1) "Qualified water conservation facility" means any facility including buildings, machinery, and equipment used in the water conservation process provided:

(A) The use of the facility results in reduced ground-water usage or utilizes a surface-water source; and

(B) The use of the facility has been certified 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.

(2) "Shift from ground-water usage" means a minimum 10 percent transfer of annual permitted ground-water usage from ground-water sources due to the purchase of water from a qualified water conservation facility.

(b) In the case of a taxpayer which first shifts from ground-water usage during a taxable year, there shall be allowed an annual credit against the tax imposed under this article starting in the fourth taxable year following the taxable year in which the shift from ground-water usage occurs. The amount of the credit shall be computed as follows:

(1) The amount of the credit allowed under this Code section shall be \$.0001 per gallon of the total gallons of relinquished and transferred annual ground-water permit issued after July 1, 1996; and

(2) The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to other credits.

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

(1) For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

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- (A) The ground-water usage permitted the taxpayer in the first permit issued after July 1, 1996;
  - (B) The ground-water usage permitted the taxpayer in the tax year four years earlier than the current tax year;
  - (C) The ground-water usage permitted the taxpayer in the current year; and
  - (D) The credit utilized by the taxpayer in the current year;
- (2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include a copy of the certification by the Department of Natural Resources under subparagraph (a)(1)(B) of this Code section; and
- (3) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, eligibility to use such credits shall expire immediately.

**HISTORY:** Code 1981, O.C.G.A. §48-7-40.11, enacted by Ga. L. 1996, p. 1025, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48; Ga. L. 2005, p. 60, O.C.G.A. §48/HB 95.

### *27. Tax Credit for Water Conservation Facilities and Qualified Water Conservation Investment Property*

***Statutory Language:***

*O.C.G.A. §48-7-40.10. Tax credit for water conservation facilities and qualified water conservation investment property.*

- (a) As used in this Code section, the term:
- (1) "Machinery and equipment" means all tangible personal property used directly in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources.
  - (2) "Qualified water conservation investment" means all spending by a taxpayer for use in this state for the modification of existing manufacturing processes, for the construction of a new water conservation facility, or for the expansion of an existing water conservation facility provided that such modification, construction, or expansion results in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources and has 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



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accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

- (3) "Water conservation" means a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources due to increased efficiencies or recycling of 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.
- (4) "Water conservation facility" means any facility, buildings, and 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 ground-water sources, provided that up to 10 percent of any building that is a component of a water conservation facility may be used for office space to house support staff for the operation.
- (b) Any taxpayer who financially participates in qualified water conservation investment in this state shall be allowed a credit against the tax imposed under this article in the taxable year following that in which the modified manufacturing process or the new or expanded water conservation facility has been placed in service and in which the taxpayer has initiated a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. This credit shall have a maximum carry forward of ten years, provided that such property remains in service, that the reduction in permit is maintained, and that the property continues to be used by the taxpayer. The amount of the credit allowed under this Code section shall be a percentage of the taxpayer's qualified water conservation investment. For projects of \$50,000.00 to \$499,999.00, the credit for such taxpayer shall be 10 percent; for projects of \$500,000.00 to \$799,999.00, the credit shall be 8 percent; for projects of \$800,000.00 to \$999,999.00, the credit shall be 6 percent; and for projects of \$1 million or more, the credit shall be 5 percent. The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to any other credits.
- (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 modified manufacturing process or the new or expanded water conservation facility must not be placed in service before January 1, 1997. The credit may be only taken with respect to qualified water conservation investment in a project costing \$50,000.00 or more. For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

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- (A) The amounts, dates, and nature of the qualified water conservation investments which have allowed a modified manufacturing process or a new or expanded water conservation facility to be placed in service in the prior taxable year;
  - (B) The amount and date of reduction in permitted ground-water usage occurring as a result of this investment;
  - (C) The amount of tax credit claimed for these investments for the current taxable year;
  - (D) The amounts of qualified water conservation investment reported for tax years preceding the prior taxable year;
  - (E) The amounts of tax credit which have been utilized in prior taxable years;
  - (F) The amounts of tax credit which has been carried over from prior years;
  - (G) The amounts of tax credit allowed under this Code section being utilized by the taxpayer in the current taxable year; and
  - (H) The amounts of tax credit to be carried over to subsequent 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 completed with the qualified water conservation investment had an aggregate cost of \$50,000.00 or more. The taxpayer shall also include a copy of the certification by the Department of Natural Resources under paragraph (2) of subsection (a) of this Code section;
- (3) Any lease for a period of five years or longer of any real or personal property resulting from qualified water conservation investment shall be treated as qualified water conservation investment by the lessee. The taxpayer may treat the full value of the leased property as qualified water conservation investment 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;
- (4) The utilization of the credit granted in this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on 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; and
- (5) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, any unused credits will expire immediately.

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**HISTORY:** Code 1981, O.C.G.A. §48-7-40.10, enacted by Ga. L. 1996, p. 1025, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48.

### **28. *Employer's Credit for Basic Skills Education***

***Statutory Language:***

*O.C.G.A. §48-7-41. Basic skills education program credits.*

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

(1) "Approved basic skills education" means employer provided or employer sponsored education that meets the following conditions:

(A) It enhances reading, writing, or mathematical skills up to and including the twelfth-grade level for employees who are otherwise unable to function effectively on the job due to deficiencies in those areas or who would otherwise be displaced because such skill deficiencies would inhibit their training for new technology;

(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 education, either directly or indirectly through use of forfeiture of leave time, vacation time, or other compensable time.

(2) "Cost of education" 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 24 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 basic skills education 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 basic skills education that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors an approved basic skills education program. The amount of the tax credit shall be

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equal to one-third of the costs of education per full-time equivalent student, or \$150.00 per full-time equivalent student, whichever is less, for each employee who has successfully completed an approved basic skills education program. No employer may receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of education.

- (c) The tax credit granted to any employer pursuant to this Code section shall not exceed the amount of the taxpayer's income tax liability for the taxable year as computed without regard to this Code section.
- (d) To be eligible to claim the credit granted under this Code section, the employer must certify to the department the name of the employee, the course work successfully completed by such employee, the name of the approved basic skills education provider, 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 basic skills education pursuant to this Code section and that such credits are only granted to employers with respect to employees who successfully complete such approved basic skills education. 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 basic skills education 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, and progressive levels of instruction and standardized measures of employee evaluation to determine successful completion of a course of study.

**HISTORY:** Code 1981, O.C.G.A. §48-7-41, enacted by Ga. L. 1991, p. 1709, O.C.G.A. §1; Ga. L. 1995, p. 10, O.C.G.A. §48; Ga. L. 2008, p. 335, O.C.G.A. §9/SB 435.

### **29. *Employer's Credit for Approved Employee Retraining***

#### ***Statutory Language:***

*O.C.G.A. §48-7-40.5. 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:

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- (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, e-mail, 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.

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- (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 course work 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, O.C.G.A. §48-7-40.5, enacted by Ga. L. 1994, p. 928, O.C.G.A. §4; Ga. L. 1995, p. 585, O.C.G.A. §5; Ga. L. 1996, p. 220, O.C.G.A. §6; Ga. L. 1998, p. 1224, O.C.G.A. §6; Ga. L. 2008, p. 335, O.C.G.A. §9/SB 435; Ga. L. 2009, p. 654, O.C.G.A. §3/HB 439.

### ***30. Qualified Education Expense Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.16. Qualified education tax credit.*

- (a) As used in this Code section, the term:
  - (1) "Qualified education expense" means the expenditure of funds by the taxpayer 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.

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- (2) "Qualified school or program" shall have the same meaning as in paragraph (2) of Code Section 20-2A-1.
- (3) "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 \$1,000.00 per tax year, whichever is less; or
  - (2) In the case of a married couple filing a joint return, the actual amount expended or \$2,500.00 per tax year, whichever is less.
  - (c) A corporation 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.
  - (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education expense for the direct benefit of any dependent of the taxpayer.
  - (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 \$50 million per tax 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 shall notify the department of the total amount of contributions that the taxpayer intends to make to the student scholarship organization. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the student scholarship organization within 30 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 limit prescribed in paragraph (1) of this subsection.

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- (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.
- (g) 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.
- (h) (1) 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.  
  
(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, O.C.G.A. §48-7-29.16, enacted by Ga. L. 2008, p. 1108, O.C.G.A. §2/HB 1133; Ga. L. 2009, p. 816, O.C.G.A. §6/HB 485.

### ***31. Rural Physician Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29. 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 65 persons per square mile or fewer according to the United States decennial census of 1990 or any future such census.
  - (2) "Rural hospital" means an acute-care hospital located in a rural county that contains fewer than 100 beds.



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- (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 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.

**HISTORY:** Code 1981, O.C.G.A. §48-7-29, enacted by Ga. L. 1995, p. 960, O.C.G.A. §1; Ga. L. 2002, p. 1478, O.C.G.A. §1.

### ***32. Disabled Person Home Purchase or Retrofit Credit***

#### ***Statutory Language:***

*O.C.G.A. §48-7-29.1. 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 installation of grab bars around the toilet, tub, and shower, where such facilities are provided; and
    - (D) Light switches and outlets placed in accessible locations.

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- (2) "Taxpayer" means a permanently disabled person who has been issued a permanent permit under subsection (c) of Code Section 40-6-222 or a person who has been issued a special permanent permit under subsection (e) of Code Section 40-6-222.
- (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, O.C.G.A. §48-7-29.1, enacted by Ga. L. 1998, p. 599, O.C.G.A. §1.

### **33. *Qualified Caregiving Expense Credit***

***Statutory Language:***

*O.C.G.A. §48-7-29.2. Tax credit 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 health care 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

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- (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, O.C.G.A. §48-7-29.2, enacted by Ga. L. 1998, p. 927, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48.

### **34. Child and Dependent Care Credit**

***Statutory Language:***

*O.C.G.A. § 48-7-29.10. Credit for qualified child and dependent care expenses; carryover of credit prohibited.*

- (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) 10 percent for all taxable years beginning on or after January 1, 2006, and prior to January 1, 2007;

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- (2) 20 percent for all taxable years beginning on or after January 1, 2007, and prior to January 1, 2008; and
- (3) 30 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, O.C.G.A. § 48-7-29.10, enacted by Ga. L. 2006, p. 64, O.C.G.A. § 1/HB 1080.

### *35. Adoption of Foster Child Credit*

***Statutory Language:***

*O.C.G.A. §48-7-29.15. Tax credit for adoption of foster child.*

- (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 \$2,000.00 per qualified foster child per taxable year commencing with the year in which the adoption becomes final and ending 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 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, O.C.G.A. §48-7-29.15, enacted by Ga. L. 2008, p. 942, O.C.G.A. §1/HB 1159; Ga. L. 2009, p. 453, O.C.G.A. §2-2/HB 228.

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### 36. *Low-Income Support Credit*

#### ***Statutory Language:***

*O.C.G.A. §48-7A-3. Persons entitled to claim tax credit; tax credits schedule; tax credit claimed against tax liability; period for filing claims for credit; applicability to food stamp recipients; authority of commissioner.*

- (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

- (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.

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- (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, O.C.G.A. §48-7A-3, enacted by Ga. L. 1991, p. 87, O.C.G.A. §1; Ga. L. 1995, p. 10, O.C.G.A. §48; Ga. L. 2004, p. 410, O.C.G.A. §7; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46; Ga. L. 2010, p. 1163, O.C.G.A. §5/HB 1069.

### **37. Credit for taxes paid to another state**

***Statutory Language:***

*O.C.G.A. §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, O.C.G.A. §13; Code 1933, O.C.G.A. §92-3111; Ga. L. 1957, p. 397, O.C.G.A. §4; Ga. L. 1962, p. 703, O.C.G.A. §2; Ga. L. 1963, p. 16, O.C.G.A. §1; Code 1933, O.C.G.A. §91A-3608, enacted by Ga. L. 1978, p. 309, O.C.G.A. §2; Ga. L. 1987, p. 191, O.C.G.A. §2.

### **38. Disaster Assistance Credit**

***Statutory Language:***

*O.C.G.A. §48-7-29.4. Tax credit for disaster assistance funds received; rules and regulations.*

- (a) A taxpayer who receives disaster assistance during a taxable year from the Georgia Emergency Management 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.

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- (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, O.C.G.A. §48-7-29.4, enacted by Ga. L. 2000, p. 410, O.C.G.A. §1.

### 39. *Tax credit for life insurance payments for Georgia National Guard and Air National Guard*

***Statutory Language:***

*O.C.G.A. §48-7-29.9. Tax credit for qualified life insurance premiums for 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



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- (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, O.C.G.A. §48-7-29.9, enacted by Ga. L. 2005, p. 220, O.C.G.A. §2/HB 538; Ga. L. 2009, p. 8, O.C.G.A. §48/SB 46.

### ***40. Driver Education Credit***

***Statutory Language:***

*O.C.G.A. §48-7-29.5. Tax credit for private driver education courses of minors; required documentation; rules and regulations.*

- (a) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 with respect to the amount expended by such taxpayer for a completed course of driver education for a dependent minor child of such taxpayer at a private driver training school licensed by the Department of Driver Services under Chapter 13 of Title 43, "The Driver Training School License Act," except as otherwise provided by this Code section. The amount of such tax credit per dependent minor child of a taxpayer shall be the actual amount expended for such course, or \$150.00, whichever is less.
- (b)(1) The tax credit provided by this Code section shall be allowed not more than once for each dependent minor child of a taxpayer.
- (2) In no event shall the aggregate amount of the tax credit provided by this Code section exceed the taxpayer's income tax liability.
- (c) No credit shall be allowed under this Code section with respect to any driver education expenses either deducted or subtracted by the taxpayer in arriving at Georgia taxable net income or with respect to any driver education expenses for which amounts were excluded from Georgia net taxable income.
- (d) No credit shall be allowed under this Code section unless the taxpayer has obtained written proof of the successful completion of the course of driver education by the dependent minor child and the amount expended by the taxpayer for such course.
- (e) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.



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**HISTORY:** Code 1981, O.C.G.A. §48-7-29.5, enacted by Ga. L. 2000, p. 451, O.C.G.A. §1; Ga. L. 2002, p. 415, O.C.G.A. §48; Ga. L. 2005, p. 334, O.C.G.A. §29-4/HB 501; Ga. L. 2008, p. 898, O.C.G.A. §8/HB 1151.

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The Fiscal Research Center provides nonpartisan research, technical assistance, and education in the evaluation and design of state and local fiscal and economic policy, including both tax and expenditure issues. The Center's mission is to promote development of sound policy and public understanding of issues of concern to state and local governments.

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***The Atlanta Empowerment Zone: Description, Impact, and Lessons for Evaluation (Rachana Bhatt and Andrew Hanson).*** This report analyzes the impact of the Atlanta Empowerment Zone on resident outcomes. FRC Report 230 (March 2011)

***Estimated Change in Tax Liability of Tax Reform Council's Proposals (David L. Sjoquist, Sally Wallace, Laura Wheeler, Ken Heaghney, Peter Bluestone and Andrew V. Stephenson).*** This policy brief provides estimates of the change in the tax burden for the several recommendations of the 2010 Special Council on Tax Reform and Fairness for Georgians. FRC Brief 229 (March 2011)

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***Creating a Better Business Tax Credit (David L. Sjoquist and Laura Wheeler).*** This brief discusses criteria and factors to be considered in deciding on business tax credits. FRC Brief 226 (February 2011)

***Recent Changes in Occupations Among Georgia's Labor Force (Glenwood Ross and Nevbahar Ertas).*** This report explores changes in the number and salary of jobs by occupational categories. FRC Report 225 (February 2011)

***Criteria for Expanding the Sales Tax Base: Services and Exemption (David L. Sjoquist, Peter Bluestone, and Carolyn Bourdeaux).*** This brief discusses the criteria and factors that should be considered in deciding which services to add to the sales tax base and which sales tax exemptions to eliminate or add. FRC Brief 224 (January 2011)

## **Georgia Tax Credits: Details of the Business and Personal Credits Allowed Against Georgia's Income Tax (Appendix B)**

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***Estimating the Revenue Loss from Food-for-Home Consumption (David L. Sjoquist and Laura Wheeler).*** This policy brief discusses the estimation of the revenue effect from eliminating the state sales tax exemption from food-for-home consumption. FRC Brief 223 (January 2011)

***Comparing Georgia's Revenue Portfolio to Regional and National Peers (Carolyn Bourdeaux and Sungman Jun).*** This report updates Buschman's "Comparing Georgia's Fiscal Policies to Regional and National Peers (FRC Report 201)" with 2008-2010 data. FRC Report 222 (January 2011)

***Georgia's Taxes: A Summary of Major State and Local Government Taxes, 17th Edition (Jack Morton, Richard Hawkins, and David L. Sjoquist).*** A handbook on taxation that provides a quick overview of all state and local taxes in Georgia. FRC Annual Publication A(17) (January 2011)

***Some Issues Associated with Increasing Georgia's Cigarette Tax (David L. Sjoquist).*** This policy brief provides revenue estimates for an increase in tobacco taxes, discusses social cost of smoking, and explores the effect on convenience store employment from increases in tobacco taxes. FRC Brief 221 (December 2010)

***Georgia's Fuel Tax (David L. Sjoquist).*** This policy brief presents revenue estimates from an increase of fuel taxes. FRC Brief 220 (December 2010)

***Latino Immigration and the Low-Skill Urban Labor Market in Atlanta (Cathy Yang Liu).*** This report examines the dynamic competition between Latino immigrants and black workers in Atlanta's low-skilled urban labor market from 1990 to 2008. FRC Report 219 (December 2010)

***Georgia's Individual Income Tax: Options for Reform (Sally Wallace and Andrew Stephenson).*** This report analyzes the current structure of Georgia's individual income tax and provides analysis of a variety of reform options. FRC Report 218 (December 2010)

***A Review of State Revenue Actions, 1999-2010 (Robert Buschman).*** This report examines tax and other revenue changes enacted by the states since 1999 with particular focus on Georgia's Southeast and AAA-rated peers, and how states have dealt with budget gaps in two post-recession periods. FRC Report 217 (November 2010)

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