

House Bill 265 (COMMITTEE SUBSTITUTE)

By: Representatives Efration of the 104th, Rogers of the 10th, Rhodes of the 120th, Kelley of the 16th, Stephens of the 164th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to imposition, rate, computation, and exemptions from state income tax, so as to
3 revise the provisions relating to the credit for establishing or relocating quality jobs; to
4 amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to
5 exemptions from state sales and use taxes, so as to provide a state and local sales tax
6 exemption for sales of tangible personal property used for or in the renovation or expansion
7 of certain theaters; to provide for related matters; to provide for an effective date and
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

15 "48-7-40.17.

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

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

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

21 (A) Is located in this state;

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

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

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

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

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

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

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

(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; except that if the first date on which the taxpayer, pursuant to the provisions of Code Section 48-7-101, withholds wages for employees in this state occurs in a taxable year beginning on or after January 1, 2017, the taxpayer has two years to employ at least 50 persons in new quality jobs in this state:

(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)~~ (g) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the 50 new quality jobs required.

(c) Only a taxpayer that completes the creation of a qualified project in a taxable year beginning on or after January 1, 2017, shall be eligible to begin a subsequent seven-year job creation period for the qualified project, provided that the taxpayer creates 50 or more new quality jobs, at the site or sites of a qualified project or the facility or facilities resulting therefrom, above its single previous high yearly average number of new quality jobs during any prior seven-year job creation period. A subsequent seven-year job creation period is subject to all the requirements of this Code section. A taxpayer must notify the commissioner of their intent to begin a subsequent seven-year job creation period. The commissioner shall provide by regulation the time in which such notification shall occur. New quality jobs generated under previous seven-year job creation periods shall continue to be eligible for the credit as provided by this Code section. No new quality jobs may be generated under previous periods of eligibility after a subsequent period of eligibility has begun. New quality jobs created in a subsequent seven-year job creation period shall not be counted as additional new quality jobs under a previous seven-year job creation period; instead those new quality jobs shall count toward the subsequent period. For purposes of determining the number of new quality jobs in a particular year that are attributable to each seven-year job creation period, the taxpayer shall begin with the first seven-year job creation period and then attribute the remainder to each subsequent seven-year job creation period from the oldest to the newest. Such attributions shall be made up to the single high yearly average number of new quality jobs for each seven-year job creation period. A taxpayer may create more than one subsequent seven-year job creation period.

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

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

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

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

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

138 **SECTION 2.**

139 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from
140 state sales and use taxes, is amended by deleting "or" at the end of paragraph (97), by
141 deleting the period and adding "; or" at the end of paragraph (98), and by adding a new
142 paragraph to read as follows:

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

150 (B) This exemption shall apply from July 1, 2017, until January 1, 2019, and until the
151 aggregate state sales and use tax refunded pursuant to this paragraph exceeds
152 \$750,000.00. A qualifying organization must pay sales and use tax on all purchases and
153 uses of tangible personal property and may obtain the benefit of this exemption from
154 state sales and use tax by filing a claim for refund of tax paid on qualifying items. All
155 refunds made pursuant to this paragraph shall not include interest.

156 (C) This exemption shall apply from July 1, 2017, until January 1, 2019, to any local
157 sales and use tax levied or imposed at any time in any area consisting of less than the
158 entire state, however authorized, including, but not limited to, such taxes authorized by
159 or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243),
160 as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such
161 taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

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

168 (E) Items qualifying for exemption include all tangible personal property that will
169 remain at the theater after completion of construction and all tangible personal property
170 that becomes incorporated into the real property structures of the theater. The

171 exemption excludes all items that remain tangible personal property in the possession
172 of a contractor after the completion of construction."

173 **SECTION 3.**

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

177 **SECTION 4.**

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