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REVENUE AND TAXATION

Chapter 7A: Provide Tax Credit for Certain Persons Whose Adjusted Gross Income Does not Exceed \$19,999

CODE SECTIONS:	O.C.G.A. §§ 48-7A-1 to -3 (new), 48-8-3, -82, -110 (amended)
BILL NUMBER:	HB 1
ACT NUMBER:	7
SUMMARY:	The Act provides tax relief in the form of a tax credit to low-income residents and the working poor in Georgia. The tax credit applies to residents with adjusted gross incomes under \$19,999. The Act repeals the tax exemption for certain foods for off-premises human consumption.
EFFECTIVE DATE:	January 1, 1992

History

Before the Act passed, Georgia law provided for a partial sales tax exemption for food in certain circumstances.¹ The law was passed in 1989, and was to become effective September 1, 1990.² This law was never implemented because of a lawsuit by grocers who said the list of exempt items was too arbitrary and confusing to enforce.³ The Superior Court of Fulton County held the exemption in abeyance in August 1990.⁴ The case was appealed, but as of April 2, 1991, had not been decided.⁵ It has been reported that the State Attorney General felt that his office had a constitutional obligation to argue for the exemption, despite the loss of state revenue if the case was won by the State.⁶

1. 1990 Ga. Laws 45 (formerly found at O.C.G.A. § 48-8-3(54) (Supp. 1990)).

2. *Id.*

3. *Briefing*, ATLANTA J. & CONST., Mar. 13, 1991, at D3.

4. The case was against the state, with Judge Luther Alverson presiding. The exemption was held in abeyance due to a complaint by a conglomerate of grocers in the state who believed that the law would be too difficult to enforce. The list of foods exempted was confusing: peanuts were exempt but not peanut butter; sausage but not hot dogs; fresh lobster but not canned tuna. *See* Douglas Lavin, *If State Wins Tax Fight, It Loses Millions*, ATLANTA J. & CONST., Dec. 23, 1990, at B1.

5. *Id.*

6. Lavin, *supra* note 4.

As part of the Governor's campaign package in the fall of 1990, constituents were promised a full sales tax exemption for food.⁷ The Governor had advocated such an exemption on groceries for more than a decade.⁸ However, as early as December 1990, economists and some members of the governor-elect's own team stated that the current recession would not allow any tax cuts.⁹ The full sales tax exemption on food would have cost Georgia \$370 million in lost revenues.¹⁰ The Governor had hoped to make up the lost revenue through budget cuts.¹¹ However, the Governor lacked substantial support in the General Assembly for his legislation as late as mid-January 1991.¹² The legislators cited the recession as the main problem, and stated that they were already faced with such unpopular decisions as withholding pay raises because of the lack of revenues.¹³ On February 25, the Governor "announced that he would abandon his efforts on behalf of a full sales tax exemption for food and replace the current partial food exemption with an income tax credit for low-income persons."¹⁴ The House Ways and Means Chairman¹⁵ granted the request of the Governor's Administration Floor Leaders and called for consideration of House Bill 1, which repealed the existing partial sales tax exemption for food and allowed a tax credit to qualifying taxpayers.¹⁶

HB 1

The Act provides a tax credit to Georgia taxpayers who fall below a specific adjusted gross income level.¹⁷ The Act amends Code title 48 by adding a new Chapter 7A and by repealing Code section 48-8-3(54).¹⁸

The Act is intended to provide tax relief to the low-income and working poor taxpayers in Georgia.¹⁹ Taxpayers with adjusted gross income levels below \$19,999 will be allowed a tax credit on their state

7. Interview with Ways and Means Committee Research Analyst Monnie Sellars (Apr. 2, 1991) [hereinafter Sellars Interview].

8. Lavin, *supra* note 4.

9. *Id.*

10. Sellars Interview, *supra* note 7.

11. Jeanne Cummings, *Miller Programs Lack Support in House, Survey Finds*, ATLANTA J. & CONST., Jan. 13, 1991, at A1.

12. *Id.*

13. *Id.*

14. Ways and Means End of Session Report, at 1991 Ga. Gen. Assem. [hereinafter Ways and Means Report].

15. The Honorable William J. Dover, Chairman.

16. Ways and Means Report, *supra* note 14.

17. O.C.G.A. §§ 48-7A-1, -3 (Supp. 1991).

18. O.C.G.A. §§ 48-7A-1 to -3, 48-8-3 (Supp. 1991).

19. O.C.G.A. § 48-7A-1 (Supp. 1991).

income tax returns, according to a schedule based upon the particular income level.²⁰

The Act was founded upon the General Assembly's determination that since all residents of the State of Georgia pay taxes, including sales taxes on necessities such as food, and since this burden is particularly heavy for lower income citizens, a "tax relief to the low-income residents and the working poor" is appropriate.²¹ The Act best serves its purpose by providing tax relief based on the income amount of low-income residents.²² The Act underwent one House substitution that added Chapter 7A to Title 48.

New Code section 48-7A-3 sets guidelines as to who qualifies for the new tax credit.²³ The resident taxpayer must file an individual income tax return for a taxable year, and may not be claimed, or be eligible to be claimed, as a dependent of another taxpayer for that taxable year.²⁴ The term "dependent" is defined as the taxpayer, the taxpayer's spouse, and the taxpayer's natural or legally adopted child.²⁵ If a husband and wife file jointly, then only one credit may be taken for both.²⁶ If a husband and wife file separately but could have filed jointly, then they may only claim the tax credit they would have been entitled to had they filed jointly.²⁷ A resident who would otherwise qualify but has no income and files no income taxes, either federal or Georgia, may still file and receive the tax credit under paragraphs (a)(3) and (c) of this section.²⁸

The tax credit schedule in paragraph (b) of article 3 provides that adjusted gross income levels ranging from zero to \$19,999 will receive tax credits ranging from \$26 to \$5, respectively.²⁹ The tax credit is based solely upon the income level.³⁰ However, a taxpayer who qualifies for the tax credit and is sixty-five years of age or over may receive a double tax credit.³¹ The credit will be waived if a claim, or an amended claim, is not made before the end of the twelfth month following the close of the taxable year for which the credit may be claimed.³² Food

20. O.C.G.A. §§ 48-7A-1 to -3 (Supp. 1991).

21. O.C.G.A. § 48-7A-1 (Supp. 1991).

22. *Id.*

23. O.C.G.A. § 48-7A-3 (Supp. 1991).

24. *Id.*

25. O.C.G.A. § 48-7A-2 (Supp. 1991).

26. *Id.*

27. *Id.*

28. O.C.G.A. § 48-7A-3(c) (Supp. 1991). This is a refundable credit regardless of whether taxes are owed. *Id.*

29. O.C.G.A. § 48-7A-3(b) (Supp. 1991).

30. *Id.*

31. *Id.*

32. O.C.G.A. § 48-7A-3(d) (Supp. 1991).

stamp recipients are in no way eligible for a credit under this Act for the taxable year in which food stamps were allotted.³³

The Act also repeals Code section 48-8-3(54) that provided for the exemption of sales tax on specific food items offered at retail sale for off-premises human consumption.³⁴ Again, this law was enacted but never enforced because of the pending superior court case that held the exemption in abeyance in August 1990.³⁵ The exemptions from sales tax ranged from fresh eggs and milk to peanuts and baby food.³⁶ The exemption specifically did not apply to food sold in any food service establishment including restaurants and food vending machines.³⁷

The Act further amended Title 48 by striking certain language in sections 48-8-82 and 48-8-110 that referred to the newly repealed paragraph (54) of Code section 48-8-3.³⁸ The first section had allowed a joint county and municipal sales and use tax to be applied to the sale of food. The second section gave county governments the authority to impose a one percent special sales and use tax on the sale of food.³⁹

Although the new Act does serve a useful purpose for the poor in Georgia, the Governor settled for less than he promised in his campaign.

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33. O.C.G.A. § 48-7A-3(e) (Supp. 1991). This restriction applies without regard to income, since the food stamp recipient is already receiving aid from the government. Sellars Interview, *supra* note 7.

34. O.C.G.A. § 48-8-3(54) (Supp. 1991).

35. Sellars Interview, *supra* note 7.

36. O.C.G.A. § 48-8-3(54) (Supp. 1991).

37. *Id.*

38. O.C.G.A. §§ 48-8-82, -110 (Supp. 1991).

39. Both Code sections applied to food only to the extent provided for in paragraph (54) of Code section 48-8-3.