

10-1-1992

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Recommended Citation

Trent B. Speckhals, *REVENUE AND TAXATION Income Taxes: Adjust the Treatment of Capital Gains, Job Tax Credits, and Gain or Loss from the Sale of Property*, 9 GA. ST. U. L. REV. (1992).

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REVENUE AND TAXATION

Income Taxes: Adjust the Treatment of Capital Gains, Job Tax Credits, and Gain or Loss from the Sale of Property

CODE SECTIONS:	O.C.G.A. §§ 48-7-27, -40, -101, -102 (amended)
BILL NUMBERS:	HB 456, HB 1399, HB 1739
ACT NUMBERS:	1400, 1149, 998
SUMMARY:	HB 456 allows Georgia taxpayers to adjust their taxable net income with respect to capital gains in the same manner as is used in computing federal adjusted gross income. HB 1399 expands tax credits for newly created jobs to more counties for certain employers. HB 1739 brings Georgia tax law into conformity with federal tax law by allowing those who sell personal residence property in Georgia to avoid paying taxes on the gain or loss of that residential property as long as the person purchases another personal residence anywhere else in the United States within two years.
EFFECTIVE DATES:	April 13, 1992, O.C.G.A. §§ 48-7-27(b)(6), -101, -102; May 4, 1992, O.C.G.A. § 48-7-27(e); January 1, 1993, O.C.G.A. § 48-7-40

History

There were several motivating factors which led to the introduction of revenue and taxation legislation during the 1992 session of the General Assembly. Georgia's taxation of capital gains did not match the federal system.¹ Because it has been anticipated that new federal tax advantages may be forthcoming, there was a desire to allow Georgia's taxpayers to have these potential federal capital gain tax advantages carry over to their state taxes.²

There was also a need to provide a job tax credit to employers who create new jobs in order to encourage companies to expand or to locate in Georgia, thus helping to stimulate the economy and provide jobs in distressed areas.³ Although tax credits were already used in Georgia,

1. Telephone Interview with Rep. William J. Dover, House District No. 11 (Apr. 9, 1992) [hereinafter Dover Interview]. Rep. Dover, Chairman of the House Ways and Means Committee, cosponsored HB 456.

2. *Id.*

3. Telephone Interview with Rep. Ray Holland, House District No. 136 (Apr. 10,

Governor Zell Miller stated that "if we don't expand the job tax credit, South Carolina, with all its tax credits, will eat our lunch."⁴ Accordingly, the Governor⁵ then sought the support of the Georgia Chamber of Commerce for legislation which would provide job tax credits.⁶

There was also concern regarding Georgia's capital gains tax law. A homeowner selling a home in Georgia, who moved to a different state and purchased a residence there, was unable to avoid Georgia capital gains taxes because the home he was purchasing was outside of Georgia.⁷ Not only was this seen as an inequity, it was also a potential deterrent to large companies and industries that might otherwise have located in Georgia, but which found such tax laws to be harsh on their employees who were frequently transferred out of state.⁸ There was a need to allow people who sell their personal residences in Georgia and then buy another out of state to receive the same tax benefits as those who buy another residence within Georgia.⁹

HB 456

The Act allows Georgia taxpayers to adjust their taxable net income for capital gains, the same way they do for federal adjusted gross income.¹⁰ Not only does this make it easier for Georgia taxpayers to

1992) [hereinafter Holland Interview]. Rep. Holland cosponsored HB 1399. He was asked to cosponsor the bill by Governor Zell Miller, due to his involvement with the Rural Facilities Economic Development Act. *Id.* Rep. Holland noted that creating jobs is a serious need when one considers the double digit unemployment that some counties, such as Worth and Turner, are experiencing. *Id.* Although he explained that a job tax credit may not help to create jobs in all counties, particularly ones that are isolated and removed from any main throughways, there are a number of Georgia cities and counties that will benefit. *Id.* For example, Dooly County buttresses a highway project and might well see an increase in jobs, as would Ashburn, Georgia, which, although it is near a highway, does not even have a McDonald's. *Id.*

4. Maria Saporta, *Tax Incentives Considered*, ATLANTA J. & CONST., Jan. 23, 1992, at B1.

5. Governor Miller, however, did not support a bill that would have required professional athletes and entertainers who were not residents of Georgia to pay Georgia income taxes on income earned within the state. He therefore vetoed HB 1377, which would have provided for such taxation. See HB 1377 (HCS), 1992 Ga. Gen. Assem.

6. Saporta, *supra* note 4. Governor Miller gave a particular example of why a job tax credit was needed: "We are in conversation with one of the major, major poultry processors in this country. One state is offering them a job tax credit, and we aren't [offering one] in the county they are looking at. But [HB 1399] would change that." *Id.*

7. Telephone Interview with Monnie Sellars, Research Analyst for the House Ways and Means Committee (Apr. 9, 1992) [hereinafter Sellars Interview].

8. Dover Interview, *supra* note 1.

9. *Id.*

10. O.C.G.A. § 48-7-27(e) provides: "Notwithstanding any other provision of this

prepare their taxes, since there is now conformity between adjustments with respect to capital gains between the Georgia tax code and the Internal Revenue Code, but this change will allow Georgians to utilize capital gains advantages which are anticipated to return to the Internal Revenue Code.¹¹ Some feel that this section was unnecessary, however, because Georgia is currently tied into the federal scheme for computing adjusted gross income.¹² The Act applies to tax years that begin on or after January 1, 1992.¹³

HB 1399

The intent of the Act was to increase the number of jobs in economically distressed rural counties.¹⁴ Prior to the passage of the Act, tax credits were available in the forty poorest counties.¹⁵ The Act expands the original job tax credit from forty counties to eighty counties, increases the job tax credit from \$1000 to \$2000 for employers creating new jobs in the original forty "first tier" counties,¹⁶ provides a new \$1000 tax credit for the "second tier" group of newly added counties, and enlarges the types of businesses that qualify for the tax credit.¹⁷

As originally introduced, the bill eliminated the restrictive list of businesses that previously qualified for the business tax credit.¹⁸ Instead of a business being required to engage in the "manufacturing, warehousing and distribution, processing, and research and development" industries to qualify for the job tax credit, with retailers

chapter to the contrary, Georgia taxable net income shall, if the taxpayer so elects, be adjusted in an amount equal to the amount of any full or partial deduction or exclusion from federal adjusted gross income with respect to capital gains." O.C.G.A. § 48-7-27(e) (Supp. 1992).

11. Dover Interview, *supra* note 1. The Internal Revenue Code on capital gains is found at 26 U.S.C. §§ 1201-1297 (1988).

12. Sellars Interview, *supra* note 7. This was not always the case. From 1980 to 1985, Georgia untied itself from the Internal Revenue Code and provided for a number of adjustments not found in the federal code, mainly because the State could not afford to allow depreciation in the same way as the federal government did. *Id.* However, in 1987, after the Federal Tax Reform Act of 1986, Georgia returned to the federal system. *Id.*

13. O.C.G.A. § 48-7-27 (Supp. 1992).

14. Holland Interview, *supra* note 3.

15. *Id.* Prior law gave tax credits to 25% of Georgia's 159 counties. See 1989 Ga. Laws 905 (formerly found at O.C.G.A. § 48-7-4(b) (Supp. 1991)).

16. Holland Interview, *supra* note 3. The tax credit was increased for the forty first tier counties because it was important to ensure that these poorest counties did not have their competitive edge taken away when the forty second tier counties were added. *Id.*

17. O.C.G.A. § 48-7-40 (Supp. 1992); Holland Interview, *supra* note 3.

18. HB 1399, as introduced, 1992 Ga. Gen. Assem.

being excluded,¹⁹ HB 1399 as introduced would have opened up the job tax credit program to all businesses.²⁰ The expansion of those businesses qualifying for the credit was later narrowed to apply to only first tier counties for a limited time period.²¹

To provide for the designation of second tier counties, the House Ways and Means Committee's substitute bill²² allows the Commissioner of Community Affairs to designate as a second tier county any county which, in the Commissioner's opinion, has undergone a severe and sudden economic downturn due to the closing of one or more businesses in the county.²³

A strong point of contention was the fact that the seventy-nine counties not included in the job tax credit program, particularly counties 81 through 120, felt they would be hurt because they had to compete with counties 41 through 80, which were getting job tax credits.²⁴ Additionally, the seventy-nine counties which had not been included in the job tax credit program were worried about being able to compete with states such as South Carolina, which give extensive job tax credits.²⁵ A Senate floor amendment sought to designate Georgia's remaining seventy-nine counties as "third tier" counties, and to provide them with \$500 job tax credits.²⁶ However, although the amendment was supported by the Governor and one of the sponsors of the bill, it did not become part of the final Act.²⁷

A House floor substitute to HB 1399 limited the job tax credit in second tier counties to manufacturing businesses.²⁸ A compromise to

19. See 1989 Ga. Laws 905 (formerly found at O.C.G.A. § 48-7-40(a) (Supp. 1991)).

20. HB 1399, as introduced, 1992 Ga. Gen. Assem.; Holland Interview, *supra* note 3. Rep. Holland explained that he recommended expanding the job tax credit program beyond manufacturing enterprises because other commercial and service businesses, if included, had the potential to create numerous jobs in economically distressed Georgia counties. Holland Interview, *supra* note 3.

21. O.C.G.A. § 48-7-40(i) (Supp. 1992).

22. HB 1399 (HCS), 1992 Ga. Gen. Assem.

23. O.C.G.A. § 48-7-40(b) (Supp. 1992). As introduced, HB 1399 would have allowed the Commissioner to designate a county that had undergone a sudden and severe economic downturn because of the closing of one or more businesses as either a first tier or second tier county. HB 1399, as introduced, 1992 Ga. Gen. Assem.

24. Holland Interview, *supra* note 3.

25. *Id.*; see also Saporta, *supra* note 4 (Governor Miller's comments about the need to have job tax credits that are competitive with South Carolina's).

26. HB 1399 (SFA), 1992 Ga. Gen. Assem.

27. See O.C.G.A. § 48-7-40 (Supp. 1992). Although many favored making the top 79 counties more competitive with South Carolina, there were differing views on this matter, and not even a compromise "fourth tier" system was able to expand the job tax credit to the upper 79 counties. Holland interview, *supra* note 3.

28. HB 1399 (HFSFA), 1992 Ga. Gen. Assem. It was precisely this limited business enterprise definition, which applied only to manufacturers, that had been deleted and replaced with the expansion of the job tax credit to all businesses in HB 1399 as

this House substitute was reached that added tourism to the list of businesses that qualified for job tax credits in second tier counties.²⁹ This still does not provide the second tier counties with as broad a range of businesses that can qualify for job tax credits as the first tier counties, however, since all businesses qualify for job tax credits in first tier counties.³⁰ This expansion to all businesses for first tier counties applies to businesses which create jobs between January 1, 1993 through December 31, 1997.³¹

It is unclear what effect the Act will have on revenues in Georgia, since the number of new jobs that will be created and qualified for the credit cannot be predicted.³² However, South Carolina is apparently experiencing a significant return on revenues because of its job tax credit program.³³

HB 1739

The Act is an economic development tool that allows individuals who sell their personal residence in Georgia to avoid paying State capital gains taxes on the proceeds from the sale if the proceeds are used to purchase another personal residence in the United States within two years, the time allowed by the Internal Revenue Code of 1986.³⁴ Previously, this "nonrecognition" was only allowed for Georgia taxpayers if the taxpayer who had sold his personal residence in Georgia purchased another residence within the State of Georgia.³⁵

originally introduced. Holland Interview, *supra* note 3. Compare HB 1399, as introduced, 1992 Ga. Gen. Assem. with HB 1399 (HFS), 1992 Ga. Gen. Assem.

29. O.C.G.A. § 48-7-40(a) (Supp. 1992); Holland Interview, *supra* note 3; see HB 1399 (SFA), 1992 Ga. Gen. Assem. The addition of tourism was an important expansion, and was a compromise between the more restrictive list of only "manufacturing, warehousing and distribution, processing, and research and development" in the earlier code, and the definition that included all businesses. Holland Interview, *supra* note 3. If the list of counties that qualified for the job tax credit had been expanded to include the upper 79 counties, there was some concern as to what the term "tourism" would have meant. For example, Rep. Holland noted that if the upper 79 counties had been included, it is possible that one could build a Marriott Marquis in Fulton County for the 1996 Olympics and receive a job tax credit. *Id.* To avoid this, Rep. Holland wanted tourism to be defined as businesses that enhance tourism, as opposed to ones that merely take advantage of and profit from tourism but which came into the county for another reason. *Id.* However, since the upper 79 counties were not included in the job tax credit program, the definition of tourism was not as problematic, and the General Assembly did not define the term. *Id.*

30. O.C.G.A. § 48-7-40(i) (Supp. 1992); Holland Interview, *supra* note 3.

31. O.C.G.A. § 48-7-40(i) (Supp. 1992).

32. Telephone Interview with G.W. Hogan, State Auditor (Apr. 8, 1992).

33. Holland Interview, *supra* note 3.

34. Dover Interview, *supra* note 1; see 26 U.S.C. § 1034(a) (1988).

35. 1979 Ga. Laws 5, 57 (formerly found at O.C.G.A. § 48-7-27(b)(6) (1982)).

It has been alleged that this Act will cause a shortfall to Georgia of twenty-eight to forty million dollars because the State will collect taxes on fewer personal residence sales as it used to.³⁶ However, others feel that this is an inflated figure since the success rate of collecting taxes from people who move outside of Georgia has always been low.³⁷

The Act also provides for the withholding of taxes on pensions, annuities, taxable fringe benefits, interest, and dividends in the same manner as provided for by the Internal Revenue Code of 1986.³⁸ Finally, if an employee fails to provide a correct withholding certificate, or provides none at all, the Act requires an employer to withhold taxes from that employee as if the employee's exemption status was one or zero, and to continue to do so until the employee furnishes a correct or completed certificate.³⁹ The Act is applicable to all tax years beginning on or after January 1, 1992.⁴⁰

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36. Sellars Interview, *supra* note 7.

37. *Id.*

38. O.C.G.A. § 48-7-101(h) (Supp. 1992). The Internal Revenue Code is found at title 26 of the United States Code.

39. O.C.G.A. § 48-7-102(c)(1) (Supp. 1992). Sections 48-7-102(c)(1) and 48-7-101(h) were added as germane riders to HB 1739 on the floor of the House because all general revenue bills must be introduced within the first twenty days of the General Assembly session. Dover Interview, *supra* note 1; see HB 1739 (HFS), 1992 Ga. Gen. Assem.

40. O.C.G.A. § 48-7-27 (Supp. 1992).