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REVENUE AND TAXATION Income Taxes: Provide for Business Tax Credits

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REVENUE AND TAXATION

Income Taxes: Provide for Business Tax Credits

CODE SECTIONS:	O.C.G.A. §§ 36-62-5.1, 48-7-40 to -40.1 (amended), -40.2 to -40.6 (new), 48-8-2 to -3 (amended)
BILL NUMBER:	HB 1527
ACT NUMBER:	1109
SUMMARY:	The Act, called the "Georgia Business Expansion Support Act of 1994," broadens the 1992 version of the same Act, by providing tax credits for businesses that create new jobs, make certain investments, and provide job retraining and child care for employees. The credits are available to qualified businesses in incremental amounts depending on the wealth of the area in which the business is conducted.
EFFECTIVE DATE:	July 1, 1994

History

Code section 48-7-40 originally required the Commissioner of Community Affairs (the Commissioner) to designate the eighty least developed Georgia counties based on census data and various economic indicators.[1] The first forty least developed counties were classified as "tier 1," and the remaining counties classified as "tier 2."[2] Provided businesses in these counties created ten new full-time jobs in one year, tier 1 businesses were entitled to a job tax credit of $2000 annually for five years for each job created, and tier 2 businesses were entitled to a credit of $1000 annually for five years for each job created.[3]

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The Act is a comprehensive approach to economic development because it implements job tax credits, investment tax credits, and sales and use tax exemptions in one legislative thrust.[4] The purpose of the

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1. 1992 Ga. Laws 2031 (formerly found at O.C.G.A. § 48-7-40(b) (Supp. 1993)). For a discussion of the 1992 Act, see *Legislative Review,* 9 GA. ST. U. L. REV. 338 (1992).
2. 1992 Ga. Laws 2031.
3. *Id.*
4. Telephone Interview with Lynda A. Penton, Senior Research Manager, Governor's Development Council (Sept. 26, 1994) [hereinafter Penton Interview]. In contrast to Georgia, other states have used a more piecemeal approach in their

Act was to stimulate economic development on a statewide basis, rather than in only the least developed areas of the state.[5] While the rationale was to get business in all areas of the state involved in the development, the Act emphasizes business development in the lesser developed regions.[6]

The Act amends Code section 48-7-40(b) by requiring the Commissioner to classify all 159 Georgia counties into three tiers based on the level of economic development.[7] Each tier is comprised of one-third of the counties.[8] The creation of at least ten new jobs qualifies a tier 1 business for an income tax credit of $2500 per new job.[9] A tier 2 business must create at least twenty-five new jobs to qualify for an income tax credit of $1500 per new job.[10] A tier 3 business must create at least fifty new jobs to qualify for an income tax credit of $500 per new job.[11] A similar structure was proposed in a Senate floor amendment to a 1992 version of the Business Expansion Support Act, but it was not adopted as part of the final Act.[12] Some tier 2 counties classified under the former Act were also classified as tier 2 counties under the new Act.[13] For businesses in these counties classified under both Acts as tier 2, the qualifications for job tax credits changed.[14] The original version of the bill did not indicate which tax credit would apply.[15] A Senate floor amendment addressed this problem by inserting a provision allowing affected businesses to elect which tax credits to apply for the 1994 tax year.[16]

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attempts to spur economic development through tax laws. *Id.*

5. Telephone Interview with Rep. Thurbert E. Baker, House District No. 70 (Apr. 6, 1994) [hereinafter Baker Interview].

6. *Id.*

7. O.C.G.A. § 48-7-40(b) (Supp. 1994).

8. *Id.* "Tier 1" is comprised of the first fifty-three counties; "tier 2" is comprised of the middle fifty-three counties; and "tier 3" is comprised of the last fifty-three counties. *Id.* § 48-7-40(b)(2) (Supp. 1994).

9. *Id.* § 48-7-40(e) (Supp. 1994).

10. *Id.*

11. *Id.*

12. *Legislative Review,* 9 GA. ST. U. L. REV. 338, 341 (1992) (citing HB 1399 (SFA), 1992 Ga. Gen. Assem.). The counties not included in the job tax program advocated a statewide system of job tax credits, so they too could reap the benefit from the credits. *Id.* They contended Georgia had to operate on a statewide level to compete with states such as South Carolina that offered extensive tax credits to attract new businesses to the state. *Id.*

13. *Compare* 1992 Ga. Laws 203 *with* O.C.G.A. § 48-7-40(b)(2) (Supp. 1994). Counties ranked fifty-fourth through eightieth remained classified as "tier 2." O.C.G.A. § 48-7-40(b)(2) (Supp. 1994).

14. *Compare* 1992 Ga. Laws 2031 *with* O.C.G.A. § 48-7-40(e) (Supp. 1994). The income tax credit increased for tier 2 businesses but the minimum number of jobs to qualify for the credit was raised from ten to twenty-five. *Id.*

15. *See* HB 1527, as introduced, 1994 Ga. Gen. Assem.

16. HB 1527 (SFA), 1994 Ga. Gen. Assem. This provision will be automatically

The Act also amends Code section 48-7-40.1, which allows job tax credits for businesses operating within an area of ten or more contiguous census tracts in which the closing of a business causes "severe . . . economic distress."[17] The amendment added a provision enabling the Commissioner to classify any area of one or more census tracts as "less developed" if, in the Commissioner's opinion, the area suffers or will suffer serious economic setbacks through business closings or airport expansions.[18] The amendment to Code section 48-7-40.1 was not included in the original version of HB 1527, but was later added in the Senate Committee substitute.[19] This amendment was intended to impact economically distressed areas in metropolitan areas.[20] By focusing on census tracts, which are smaller geographic configurations than counties, the Act grants tax credits to businesses in areas that suffer severe, but localized economic setbacks.[21]

The Act further amends Code section 48-7-40.1(e) by increasing the job tax credit available for businesses in less developed areas from $2000 to $2500.[22] The Code section formerly required that sixty percent of the jobs created go to residents of the less developed area,[23] but this Act reduces that requirement to thirty percent.[24] The drafters of the Act intended to expand both the availability and dollar amount of the job tax credit.[25] The figures used in this amendment were based on the experience of the Department of Community Affairs, which administers the job tax credits.[26]

The Act also creates a new tax credit for businesses making certain investment property purchases, but businesses cannot claim this credit and the job tax credit in the same year.[27] Code section 48-7-40.2 provides tier 1 businesses with a tax credit equal to five percent of the cost of all qualified investment property acquired that year.[28] If the

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repealed on Jan. 1, 1995. *Id.*

17. 1993 Ga. Laws 1649 (formerly found at O.C.G.A. § 48-7-40.1(c) (Supp. 1993)). O.C.G.A. § 48-7-40.1 relates to job tax credits for businesses in "less developed areas" as opposed to "less developed counties." *Compare* O.C.G.A. § 48-7-40.1 (Supp. 1994) *with id.* § 48-7-40 (Supp. 1994).

18. O.C.G.A. § 40-7-40.1 (Supp. 1994).

19. *Compare* HB 1527, as introduced, 1994 Ga. Gen. Assem. *with* HB 1527 (SCS), 1994 Ga. Gen. Assem.

20. Penton Interview, *supra* note 4.

21. *Id.*

22. *Compare* O.C.G.A. § 48-7-40.1(e) (Supp. 1994) *with* 1993 Ga. Laws 1649.

23. 1993 Ga. Laws 1649 (formerly found at O.C.G.A. § 48-7-40.1(e) (Supp. 1993)).

24. O.C.G.A. § 48-7-40.1(e) (Supp. 1994).

25. Penton Interview, *supra* note 4.

26. *Id.*

27. O.C.G.A. §§ 48-7-40.2 to -40.4 (Supp. 1994).

28. *Id.* § 48-7-40.2(b) (Supp. 1994). As defined in the Code, "qualified investment property" means all real and personal property relating to manufacturing facilities which are, or will be, located in the state. *Id.* §§ 48-7-40.2(a)(2), -40.3(a)(2), -40.4(a)(2)

investment property consists of recycling machinery, pollution control machinery, or involves the conversion from defense to domestic production, the credit is increased to eight percent.[29] Code section 48-7-40.3 provides tier 2 businesses with an investment credit equal to three percent of the property's cost, unless the property consists of recycling machinery, pollution control machinery, or involves the conversion from defense to domestic production, in which case a five percent credit applies.[30] Finally, Code section 48-7-40.4 provides tier 3 businesses with an investment credit equal to one percent and three percent.[31] These provisions were intended to stimulate business expansion, especially in areas vital to the state's economy and environment.[32]

The Act adds Code section 48-7-40.5, creating a new credit for any business that provides or sponsors job retraining.[33] The new credit is one-fourth the retraining costs per student or $500, whichever is less.[34] New Code section 48-7-40.6 creates a tax credit in the amount of one-half the cost the employer incurs in providing or sponsoring child care for its employees.[35] The job retraining and child care tax credits apply uniformly to businesses in all three tiers.[36] Proponents of the bill considered these provisions a timely incentive for businesses to enhance the productivity of their work force.[37]

The Act amends Code section 48-8-2(6)(B) by providing that the sale of electricity to a manufacturer is not a retail sale, and thus is not subject to the state sales tax, if the direct cost of the electricity is greater than fifty percent of the total cost of materials used directly for the product.[38] The rationale behind this provision was that if electricity constitutes over fifty percent of the costs of a manufacturer's materials, it is a raw material, and therefore not subject to sales tax.[39] By floor amendment to the bill introduced by the Senate Committee on Finance and Public Utilities, the Senate inserted a provision providing that the exemption will be phased in annually so that each year after 1994 an additional twenty percent of the electricity's cost will be

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(Supp. 1994).

29. *Id.* § 48-7-40.2(b) (Supp. 1994).
30. *Id.* § 48-7-40.3(b) (Supp. 1994).
31. *Id.* § 48-7-40.4(b) (Supp. 1994).
32. Baker Interview, *supra* note 5.
33. O.C.G.A. § 48-7-40.5 (Supp. 1994).
34. *Id.* § 48-7-40.5(b) (Supp. 1994).
35. *Id.* § 48-7-40.6(b) (Supp. 1994).
36. *Id.*
37. Baker Interview, *supra* note 5.
38. O.C.G.A. § 48-8-2(6)(B) (Supp. 1994).
39. Baker Interview, *supra* note 5.

treated as tax exempt.[40] This provision was contained in the final version of the bill.[41]

The Act amends Code section 48-8-3(34), which deals with exemptions from the state sales and use tax for the purchase or upgrade of machinery which is used by a manufacturer in the manufacture of tangible personal property.[42] The Code section formerly limited the exemption to the extent that productive capacity of the new machinery exceeded the capacity of the replaced machinery.[43] The Act discards that limitation and makes the exemption available for the entire cost of the new or upgraded machinery.[44]

The Act also adds paragraph (34.1) to Code section 48-8-3,[45] which exempts certain transactions from the Georgia sales and use tax.[46] The new paragraph exempts the sale of primary material handling equipment used in a Georgia warehouse or distribution facility, provided the sale is to a buyer who has expended at least ten million dollars in either the construction or expansion of the facility.[47] This provision was in the original version of the bill that was introduced on the House floor,[48] and it exempts the sale of machinery not used in the manufacturing process, which was excluded from the exemption granted in new Code section 48-8-3(34).[49] However, the Act still does not provide an exemption for investment in intangible personal property such as accounts receivable or goodwill.[50] Furthermore, the requirement that the buyer expend at least ten million dollars was an attempt by the drafters to establish an economic activity benchmark for warehouses and distribution facilities by providing them with a significant incentive to make large capital investments.[51]

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40. *Compare* O.C.G.A. § 48-8-2(6)(B)(ii) (Supp. 1994) *with* HB 1527 (SFACS), 1994 Ga. Gen. Assem.

41. *See* O.C.G.A. § 48-8-2(6)(B)(ii) (Supp. 1994).

42. *Id.* § 48-8-3(34) (Supp. 1994). The limitation on the type of manufacturing machinery which qualifies for the exemption is significant because machinery used in the transportation or distribution of tangible personal property is excluded. Penton Interview, *supra* note 4. Similar limitations relating to the use of the machinery are used in other states, and the purpose of this provision was to put Georgia on par with other southeastern states. *Id.*

43. 1992 Ga. Laws 3173 (formerly found at O.C.G.A. § 48-8-3(34) (Supp. 1993)).

44. O.C.G.A. § 48-8-3(34) (Supp. 1994).

45. *Id.* § 48-8-3(34.1) (Supp. 1994).

46. *See id.* § 48-8-3 (1982 & Supp. 1994).

47. *Id.* § 48-8-3(34.1) (Supp. 1994).

48. HB 1527, as introduced, 1994 Ga. Gen. Assem.

49. Penton Interview, *supra* note 4; *see supra* notes 42-44 and accompanying text.

50. O.C.G.A. § 48-8-3(34.1) (Supp. 1994).

51. Penton Interview, *supra* note 4. Warehouses and distribution facilities are capital intensive because they require a significant investment in equipment, land, and structures, although they do not typically create many new jobs. *Id.* The drafters wanted to reward only significant investments in this area because otherwise, the

Finally, the Act also adds a new subsection to Code section 36-62-5.1, which relates to the creation of local development authorities.[52] The new subsection guarantees that businesses located within a joint authority formed by two or more contiguous counties will be eligible for the largest job tax credit offered to businesses located in those counties.[53] The Act also grants an additional $500 tax credit for each full-time position created to businesses[54] engaged in manufacturing, warehousing, distributing, wholesaling, processing, research and development, or any other project pursuant to paragraph (6) of Code section 36-62-2.[55] The rationale behind the tax credit was to encourage counties to cooperate with one another by forming joint development authorities.[56]

A fiscal note attached to a Senate substitute to the bill discussed the impact of the bill on the state's revenues.[57] The note stated that the state's revenue collections growth would slow due to tax concessions.[58] The note concluded, however, that "[a]s long as new hirings are at or near the median manufacturing wage and returns to new investments are close to manufacturing's median rate of return to capital, the credits and exemptions which the bill offers would be fully recouped in tax collections."[59]

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state would give businesses more benefits in the form of tax credits than it would receive in new jobs and development. *Id.*

52. O.C.G.A. § 36-62-5.1(e) (Supp. 1994).

53. *Id.*

54. Businesses must either be headquartered in or conduct their qualifying activities within the joint authority's jurisdiction in order to receive the tax credit. *Id.* § 36-62-5.1(e) (Supp. 1994).

55. *Id.* Code section 36-62-2 defines "project" as the acquisition, construction, leasing or improvement of land, offices, industrial property, structures and equipment, along with virtually any other activity connected with "the development of trade, commerce, industry and employment opportunities." *Id.* § 36-62-2(6) (1993).

56. Penton Interview, *supra* note 4. There are over 300 organized local development authorities in the state of Georgia. Some were created in the constitution, and others by statute, and generally they have different rights and powers. As a rule, the counties have not cooperated with one another by forming joint development authorities. The $500 tax credit offered to businesses located within a joint development authority is an attempt by the drafters to encourage the counties to cooperate rather than compete with each other in forming authorities. *Id.*

57. Fiscal Note from Claude L. Vickers, State Auditor, Department of Audits, and Henry M. Huckaby, Director of Office of Planning and Budget, to Rep. Thomas B. Buck, III, Chairman, House Ways and Means Committee (Feb. 23, 1994) (available in Georgia State University College of Law Library).

58. *Id.*

59. *Id.*