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REVENUE AND TAXATION

Income Taxes: Provide for Income Tax Credits for Purchase or Lease of Certain New Low-Emission Vehicles or Conversion of Conventionally Fueled Vehicles

CODE SECTION:	O.C.G.A. § 48-7-40.15 (new)
BILL NUMBER:	HB 1161
ACT NUMBER:	982
GEORGIA LAWS:	1998 Ga. Laws 1576
SUMMARY:	The Act provides for an income tax credit to individuals and corporations who lease or purchase a new low-emission vehicle or who convert an existing conventionally fueled vehicle to a low-emission vehicle on or after January 1, 1998. The new or converted vehicle must be registered in an area of Georgia that has not attained or maintained the National Ambient Air Quality Standard for ozone as designated by the United States Environmental Protection Agency. For the purchase or lease of a new vehicle, the tax credit is \$1500. For a converted vehicle, the tax credit equals the cost of conversion or \$1500, whichever is less. The tax credit can be carried forward for three years from the taxable year of lease, purchase, or conversion. Additionally, the tax credit is not applicable to fleet operators of ten or more motor vehicles.
EFFECTIVE DATE:	April 23, 1998 ¹

History

Since 1978, Metropolitan Atlanta has been in violation of the National Ambient Air Quality Standard (NAAQS) for ozone.² Today,

1. 1998 Ga. Laws 1576, § 2, at 1578. The Act became effective upon approval by the Governor. *See id.*

2. *See Federal Agencies Act to Help Improve Air Quality in Atlanta*, BUS. WIRE, May 5, 1998, available in LEXIS, News Library, Business Wire File [hereinafter *Federal*

thirteen or more counties in the Metro Atlanta area violate the NAAQS for ozone.³ Despite numerous regulatory programs, the ozone level in Metro Atlanta exceeds the NAAQS on ten percent of the days from April 1 through October 31.⁴ During the month of May 1998, for example, state officials in Metro Atlanta issued ozone warnings on five out of thirty-one days.⁵

Air pollution in cities is caused by a variety of factors, including power plant emissions and consumer products.⁶ Motor vehicle emissions, however, are the single largest source of air pollution in cities.⁷ While alternative, cleaner-burning fuels have existed for a number of years, automakers have not invested large amounts of capital resources in alternative fuel research and production because of the absence of fueling infrastructures for these fuels.⁸ As a result, American businesses and consumers lack large-scale access to alternatively fueled vehicles.⁹

Despite these shortcomings, the federal government has been working to increase the amount of alternatively fueled motor vehicles

Agencies Act].

3. *See id.* The 13 counties are Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. *See EPD Announces Ozone Control Plan*, GA. ENVTL. PROTECTION DIV. PRESS RELEASE (Feb. 19, 1998) <<http://www.dnr.state.ga.us/dnr/env...ss/press.cgi?prfile=PR.19980219.01>> [hereinafter *EPD Plan*].

4. *See Federal Agencies Act*, *supra* note 2.

5. *See Exceedances of Federal Air Quality Standards in Georgia (1998)* (last modified May 26, 1998) <<http://uam.air/ganet.state.ga.us/tmp/98exceedances/index.html>>. Throughout the 1997 official ozone season, Metro Atlanta exceeded the NAAQS for ozone on 11 days. *See Exceedances of Federal Air Quality Standards in Georgia (1997)* (last modified Sept. 14, 1997) <<http://uam.air/ganet.state.ga.us/tmp/97exceedances/index.html>>. It was not until mid-July 1997, however, that the metro area began exceeding the NAAQS for ozone. *See id.*

6. *See Federal Agencies Act*, *supra* note 2.

7. *See Janet Ward, Financing Your AFV Fleet*, AM. CITY & COUNTY, FLEET MGMT. SUPP., Mar. 1998. Approximately 2.8 million cars are registered in the 13 counties that comprise the Metro Atlanta area. *See EPD Plan*, *supra* note 3. These motor vehicles are estimated to travel more than 100 million miles per day and their emissions contribute more than half the pollutants that form ozone. *See id.*

8. *See Ward*, *supra* note 7.

9. *See id.* These shortages have even caused the U.S. Environmental Protection Agency to delay, for at least a year, the implementation of the Clean Fuel Fleet Program, "the federal government's major initiative to introduce clean-fuel vehicles into the private fleet market." Kipp Coddington, Commentary, *Last-Minute Roadblock for Clean-Air Program; Georgia is One of 2 States that May Enforce Rules Despite EPA Delay*, FULTON COUNTY DAILY REP., Aug. 20, 1997, at 6.

on American roads.¹⁰ In 1993, the United States Department of Energy created the Clean Cities Program, which is designed to increase the use of alternatively fueled motor vehicles by building upon local initiatives that encourage the use of alternative fuels.¹¹ Further, President Bill Clinton, in 1996, ordered every federal agency to develop aggressive plans to meet the "alternative fueled vehicle acquisition requirements of the Energy Policy Act of 1992."¹²

In the 1998 legislative session, the Georgia General Assembly placed Georgia among a growing number of states giving tax credits to individuals and businesses electing to utilize alternative fuel motor vehicles.¹³ With the support of Governor Zell Miller and the Democratic leadership,¹⁴ the General Assembly passed HB 1161, which creates a tax credit of up to \$1500 when individuals or some businesses convert a conventionally fueled vehicle to, or lease or purchase, an alternative fuel motor vehicle.¹⁵ Legislators intended the bill to encourage individuals and businesses to switch to motor vehicles powered by alternative fuels by compensating them for the additional expense incurred in acquiring alternative fuel motor vehicles.¹⁶ The bill was never intended to give a gratuity to taxpayers for purchasing a motor vehicle already slated for production in the near future.¹⁷

HB 1161

Road to Passage

Upon introduction by Governor Miller and the Democratic leadership of the General Assembly, HB 1161 was referred to the House Ways and Means Committee.¹⁸ The bill received the

10. See Ward, *supra* note 7.

11. See *id.*

12. *Id.*

13. See O.C.G.A. § 48-7-40.15 (Supp. 1998); Ward, *supra* note 7. Arizona, Colorado, Hawaii, Kansas, Louisiana, Maryland, Montana, North Dakota, Oklahoma, Utah, Virginia, and West Virginia are other states that allow income tax credits for leasing, purchasing, or converting to alternative fuel vehicles. See *id.* Other states offer different incentives to individuals and businesses choosing to utilize alternative fuels, including subsidizing or reimbursing part of the cost of acquisition or conversion. See *id.*

14. See Telephone Interview with Mark Cohen, Executive Counsel to Governor Zell Miller (June 25, 1998) [hereinafter Cohen Interview].

15. See O.C.G.A. § 48-7-40.15 (Supp. 1998).

16. See Cohen Interview, *supra* note 14.

17. See *id.*

18. See Telephone Interview with Rep. Jeanette Jamieson, House District No. 22,

Committee's support, and was sent to the House with a favorable recommendation.¹⁹ However, when members of the General Assembly attempted to abolish the income tax in Georgia during debates concerning HB 1162, the substantive language of HB 1161 was incorporated into HB 1596—the comprehensive income tax bill sponsored by Committee Chairperson Thomas B. Buck, III.²⁰ HB 1596 was engrossed²¹ by the Committee and, as such, could not be altered by floor amendments.²² After passing HB 1596, the House sent the bill to the Senate.²³

While HB 1596 was under consideration in the Senate, the Governor's office learned that by the year 2000 some motor vehicle manufacturers' entire model lines of sports-utility vehicles and minivans would operate on fuels then being defined as "clean fuels."²⁴ Thus, the purchasers of these motor vehicles would be eligible for the proposed tax credit.²⁵ This information suggested that the future cost

Vice-Chairperson of the House Ways and Means Committee (June 25, 1998) [hereinafter Jamieson Interview]; HOUSE WAYS AND MEANS COMMITTEE, 1998 SESSION REPORT, at 2 [hereinafter WAYS AND MEANS REPORT].

19. See Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18.

20. See Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18; Cohen Interview, *supra* note 14.

21. Engrossment is a term of art for a House procedure whereby a committee submits a bill to the full House for consideration with the condition that no House member may attach amendments to the bill. See Jamieson Interview, *supra* note 18. The procedure is utilized to ensure that bills with an impact on the State budget that has already been calculated can pass the House without members attaching amendments that would increase the cost to the State treasury. See *id.*

22. See *id.*; WAYS AND MEANS REPORT, *supra* note 18.

23. See Jamieson Interview, *supra* note 18.

24. See *id.*; Telephone Interview with David Word, Assistant Director of the Georgia Department of Natural Resources, Environmental Protection Division (July 1, 1998) [hereinafter Word Interview]; Cohen Interview, *supra* note 14. General Motors (GM), which operates an assembly plant producing minivans in Doraville, Georgia, wrote the Governor's office informing it that Ford planned production of sports-utility vehicles and minivans capable of running on some of the fuels designated as clean fuels by 1999. See Letter from Ronald F. Updyke, Regional Manager of General Motors, to Dr. Steve Wrigley, Executive Secretary to the Governor (Feb. 2, 1998) (available in Georgia State University College of Law Library). GM was concerned that the definition of clean fuels included in the original bill would put their minivans at a competitive disadvantage in relation to similar motor vehicles manufactured by Ford. See *id.* GM was also concerned that the state's definition of what constituted clean fuel differed from the federal definition of alternative fuel. See *id.* Because of these concerns, GM suggested making changes to the bill's language so that it would more closely follow the federal definition of alternative fuels. See *id.*

25. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18; Word Interview, *supra* note 24.

of providing the tax credits could cause the entire budget for the State of Georgia to be out of balance.²⁶ At the behest of the Governor's office, the Senate, then in the process of considering HB 1596, changed the bill's language to lessen its economic impact and keep it true to its original incentive purpose.²⁷ The Senate changed "clean fuel" to "alternative fuel," redefined "alternative fuel" to more closely match the federal definition, and inserted the provision that the motor vehicle must run solely on an alternative fuel if the ultimate purchaser is to obtain the tax credit.²⁸ The Senate passed HB 1596 as amended and returned the bill to the House.²⁹

Although the House leadership agreed that the clean fuel language of HB 1596 should be changed, they refused to concur with the Senate's changes to avoid setting a precedent of voting on an engrossed bill amended by the Senate.³⁰ To resolve this impasse, Representative Jeanette Jamieson, Vice-Chairperson of the House Ways and Means Committee, met with Senator Terrell Starr, Chairperson of the Senate Finance and Public Utilities Committee, and the two reached an agreement.³¹ Under the agreement, the Senate first restored the language in HB 1596 to the language originally passed by the House.³² Next, after HB 1596 passed both houses, the House reintroduced HB 1161.³³ Finally, Representative Jamieson submitted a floor amendment that changed the language in HB 1161 to reflect the language amended in the Senate during its consideration of HB 1596.³⁴ Because Governor Miller signed HB 1161 after signing HB 1596, both of which contained language authorizing the tax credit

26. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18.

27. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18.

28. See Word Interview, *supra* note 24. Compare HB 1161, as introduced, 1998 Ga. Gen. Assem. (defining "clean fuel" and linking tax credit to "motor vehicle which is capable of operating on clean fuel . . .") (emphasis added), with O.C.G.A. § 48-7-40.15 (Supp. 1998) (defining "alternative fuel" and linking tax credit to "a motor vehicle which is fueled solely by an alternative fuel . . .").

29. See Georgia House of Representatives First Reader Summary, HB 1161 (Mar. 18, 1998) <http://www2.state.ga.us/Legis/1997_98/leg/fulltext/hb1161.htm>.

30. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18.

31. See Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18, at 3.

32. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18, at 3.

33. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18, at 3.

34. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18; WAYS AND MEANS REPORT, *supra* note 18, at 3.

for the lease, purchase, or conversion of a motor vehicle that uses certain cleaner burning fuels, the language of HB 1161 is controlling.³⁵ The tax credits allowed under HB 1161 were never intended to provide Georgia taxpayers with a gratuity for buying a new motor vehicle, but, rather, were meant to provide an incentive to taxpayers who incur additional costs when they switch to motor vehicles using alternative fuels.³⁶

Definitions

The Act defines the term “alternative fuel” as

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.³⁷

As originally introduced, HB 1161 defined alternative fuel rather broadly as “clean fuel.”³⁸ In addition to the fuels defined as alternative fuel, clean fuel included denatured ethanol, reformulated gasoline and diesel, and propane.³⁹ These clean fuels were removed from the definition of alternative fuels because automakers will soon be manufacturing motor vehicles that will run on these types of fuels.⁴⁰

Under the Act, a “conventionally fueled vehicle” is “a motor vehicle which is fueled solely by a petroleum based fuel such as gasoline or diesel.”⁴¹ A “converted vehicle” is

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

35. See WAYS AND MEANS REPORT, *supra* note 18, at 3.

36. See Cohen Interview, *supra* note 14; Jamieson Interview, *supra* note 18; Word Interview, *supra* note 24.

37. O.C.G.A. § 48-7-40.15(a)(1) (Supp. 1998).

38. HB 1161, as introduced, 1998 Ga. Gen. Assem.; Word Interview, *supra* note 24.

39. See HB 1161, as introduced, 1998 Ga. Gen. Assem.; Word Interview, *supra* note 24.

40. See Word Interview, *supra* note 24. Compare O.C.G.A. § 48-7-40.15(a)(1) (Supp. 1998), with HB 1161, as introduced, 1998 Ga. Gen. Assem.

41. O.C.G.A. § 48-7-40.15(a)(2) (Supp. 1998).

Resources applicable to clean fueled fleets, as amended, when operating on such alternative fuel.⁴²

The language of the Act is narrower than the language originally introduced in HB 1161, which allowed motor vehicle owners to obtain the tax credit even if their converted motor vehicle did not operate solely on cleaner burning fuels.⁴³ Similarly, the Act defines "low-emission vehicle" as "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 fleets, as amended, when operating on such alternative fuel."⁴⁴ Again, the Act's language is narrower in that the original version of the bill allowed a motor vehicle owner to obtain the tax credit even if the vehicle could operate on both conventional and cleaner burning fuels.⁴⁵

The Act defines "covered area" as a "geographic area designated by the United States Environmental Protection Agency in the Code of Federal Regulations as an area which has not attained or maintained the [NAAQS] for ozone in accordance with the federal Clean Air Act, as amended, or any county adjacent to a covered area."⁴⁶

Finally, the Act defines "fleet operator" as "a person who operates a fleet of ten or more motor vehicles and that fleet is operated in a single covered area, even if the fleet motor vehicles are garaged outside a covered area."⁴⁷

Applicability

The Act allows a taxpayer a tax credit of \$1500 for the purchase or lease of a new low-emission vehicle that is registered in a covered area.⁴⁸ The Act also allows a taxpayer who converts a conventionally fueled vehicle, registered in a covered area, to obtain a tax credit equal to the cost of conversion, but not exceeding \$1500.⁴⁹ To obtain the tax credit for the purchase or lease of a new motor vehicle, the claim must

42. *Id.* § 48-7-40.15(a)(3).

43. *Compare id.* § 48-7-40.15(a)(3), (6), with HB 1161, as introduced, 1998 Ga. Gen. Assem.

44. O.C.G.A. § 48-7-40.15(a)(6) (Supp. 1998).

45. *Compare id.* with HB 1161, as introduced, 1998 Ga. Gen. Assem.

46. O.C.G.A. § 48-7-40.15(a)(4) (Supp. 1998). For the counties currently not meeting NAAQS for ozone, see *EDP Plan*, *supra* note 3.

47. O.C.G.A. § 48-7-40.15(a)(5) (Supp. 1998).

48. *See id.* § 48-7-40.15(b).

49. *See id.* § 48-7-40.15(c).

be certified by the dealership where the new low-emission vehicle was purchased or leased, and the credit may only be taken by the ultimate purchaser or lessee.⁵⁰ If the credit is claimed for a leased motor vehicle, “the lease must be in effect prior to or on the last day of the calendar year in which the credit is claimed.”⁵¹ If the credit is being claimed for a converted vehicle, the claim “must be accompanied by a certification issued by the Environmental Protection Division of the Department of Natural Resources.”⁵²

The Act’s tax credit is not available to fleet operators of ten or more motor vehicles.⁵³ The Act excludes these fleet operators from receiving the credit because they are required to convert their fleets under the federal Clean Air Act.⁵⁴ Additionally, the amount of the tax credit cannot exceed the taxpayer’s income tax liability.⁵⁵ The tax credit, however, may be carried forward “for three years from the close of the taxable year in which” a low-emission vehicle was leased or purchased or a conventionally fueled vehicle was converted, provided that the appropriate certification accompanies each claim.⁵⁶

The State Revenue Commission is authorized under the Act to adopt rules and regulations pertaining to the administration of the tax credit.⁵⁷ Additionally, the Board of Natural Resources is authorized under the Act to adopt rules and regulations pertaining to the standards, requirements, and approved certification for new and converted low-emission vehicles under the Act.⁵⁸

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50. *See id.* § 48-7-40.15(d)(1)(A)-(B).
 51. *Id.* § 48-7-40.15(d)(2).
 52. *Id.* § 48-7-40.15(d)(3).
 53. *See id.* § 48-7-40.15(d)(4).
 54. *See* Word Interview, *supra* note 24.
 55. *See* O.C.G.A. § 48-7-40.15(d)(6) (Supp. 1998).
 56. *Id.* § 48-7-40.15(d)(5).
 57. *See id.* § 48-7-40.15(e).
 58. *See id.* § 48-7-40.15(f)(1)-(3).