House Bill 355

By: Representatives Pirkle of the 155th, Powell of the 171st, England of the 116th, Watson of the 172nd, and Corbett of the 174th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, computation, and exemptions from state income tax, so as to modify conditions for earning a tax credit for establishing or relocating quality jobs; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-40.17.

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

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

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

(A) Is located in this state;

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

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

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

(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.

(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, that creates: ~~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) At least five new quality jobs within a single county within one year of the first date on which the taxpayer withholds wages for employees in this state pursuant to the provisions of Code Section 48-7-101, provided that such county is designated as a tier 1 county by the commissioner of community affairs in accordance with Code

Section 48-7-40 and has a population of less than 50,000 with 10 percent or more of such population living in poverty as determined pursuant to subsection (i) of this Code section;

(2) At least ten new quality jobs within a single county within one year of the first date on which the taxpayer withholds wages for employees in this state pursuant to the provisions of Code Section 48-7-101, provided that such county is designated as a tier 2 county by the commissioner of community affairs in accordance with Code Section 48-7-40 and has a population of less than 50,000 with 10 percent or more of such population living in poverty as determined pursuant to subsection (i) of this Code section; or

(3) At least 50 new quality jobs in this state within two years 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

shall be allowed a credit for taxes imposed under this article as provided in subsection (b.1) of this Code section.

(b.1) The value of the credit allowed pursuant to this Code section shall be:

(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~~

(b.2)(1) If the amount of ~~such credit~~ the tax credit allowed pursuant to this Code section 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 shall not ~~to~~ exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of subsection (b.1) of this ~~subsection~~ Code section for each new quality job when aggregated with the credit applied against taxes under this article.

Each employee whose employer receives a 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~~ Code section. 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.

(2)(A) For each new quality job created, the credit ~~established by this subsection~~ allowed pursuant to this Code section 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.

(B) A credit ~~Credit~~ shall not be allowed during a year if the net employment increase falls below the ~~50~~ number of new quality jobs required by subsection (b) of this Code section. Any credit received for years prior to the year in which the net employment increase falls below the ~~50~~ number of new quality jobs required by subsection (b) of this Code section shall not be affected except as provided in subsection (g) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the ~~50~~ number of new quality jobs required by subsection (b) of this Code section.

(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~~ its 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. If at the time a taxpayer begins a subsequent seven-year job creation period, the taxpayer had a year or years in the prior seven-year job creation period where the number of new quality jobs ~~were~~ was below the single high yearly average number of new quality jobs, the taxpayer shall be allowed to make an irrevocable election to use the average number of new quality jobs for the completed years in the prior seven-year job creation period instead of the single high yearly average number of new quality jobs for all purposes of this subsection. If such election is made, the number of new quality jobs in the years subsequent to the completed years for the prior seven-year job creation period shall be deemed to not exceed the average number of new quality jobs for the completed years in the prior seven-year job creation period. New quality jobs over such average number shall be attributed to the subsequent seven-year job creation period as provided in this subsection.

(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.

(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.

(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.

(g) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, ~~2012~~ 2020, 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.

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

(i) On or before December 31of each year, the commissioner of community affairs shall publish a list of Georgia counties that he or she has determined to have a population of less than 50,000 with 10 percent or more of such population living in poverty. Such determination shall be based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census."

SECTION 2.

This Act shall become effective on July 1, 2019, and shall be applicable to all taxable years beginning on or after January 1, 2020.

SECTION 3.

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