

House Bill 846 (AS PASSED HOUSE AND SENATE)

By: Representatives Corbett of the 174th, Harrell of the 106th, Carson of the 46th, Kelley of the 16th, and Williamson of the 115th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 allow political subdivisions to elect to repay over a period of time certain final refund
5 amounts for refunds of local significance due to overpayments of sales and use taxes by a
6 taxpayer through a direct pay permit; to require the Department of Revenue to establish and
7 maintain a direct pay permit program that permits a qualified taxpayer to accrue and pay
8 directly to the department certain state and local sales and use taxes; to provide definitions;
9 to provide for a tax credit for certain personal protective equipment (PPE) manufacturers; to
10 provide for conditions and limitations; to provide for related matters; to revise the use or
11 calculation of certain tax credits for certain taxable years; to provide for effective dates and
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**PART I**
15 style="text-align:center">**SECTION 1-1.**

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
17 amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions regarding
18 revenue and taxation, as follows:

19 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
20 beginning on or after January 1, ~~2018~~ 2019, the provisions of the United States Internal
21 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
22 ~~January 1, 2019~~ March 27, 2020, except that Section 108(i), Section 163(e)(5)(F), Section
23 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8),
24 Section 168(k), Section 168(m), Section 168(n), Section 179(d)(1)(B)(ii), Section 179(f),
25 Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L,

26 Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section
 27 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they
 28 were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), and Section
 29 172(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were
 30 in effect before the 2008 enactment of federal Public Law 110-343, and except that
 31 Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as
 32 it was in effect before the 2009 enactment of federal Public Law 111-5, and except that
 33 Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in
 34 effect, and except that Section 118, Section 163(j), and Section 382(k)(1) of the Internal
 35 Revenue Code of 1986, as amended, shall be treated as they were in effect before the
 36 2017 enactment of federal Public Law 115-97, and except that all provisions in federal
 37 Public Law 116-136 (CARES Act) that change or affect in any manner Section 172 and
 38 Section 461(l) shall be treated as if they were not in effect, and except that the limitations
 39 provided in Section 179(b)(1) shall be \$250,000.00 for tax years beginning in 2010, shall
 40 be \$250,000.00 for tax years beginning in 2011, shall be \$250,000.00 for tax years
 41 beginning in 2012, shall be \$250,000.00 for tax years beginning in 2013, and shall be
 42 \$500,000.00 for tax years beginning in 2014, and except that the limitations provided in
 43 Section 179(b)(2) shall be \$800,000.00 for tax years beginning in 2010, shall be
 44 \$800,000.00 for tax years beginning in 2011, shall be \$800,000.00 for tax years
 45 beginning in 2012, shall be \$800,000.00 for tax years beginning in 2013, and shall be \$2
 46 million for tax years beginning in 2014, and provided that Section 1106 of federal Public
 47 Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in
 48 effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2015)' shall
 49 be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2015),'
 50 and notwithstanding any other provision in this title, no interest shall be refunded with
 51 respect to any claim for refund filed pursuant to Section 1106 of federal Public Law
 52 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall
 53 be treated as if it is in effect, except the phrase 'Code Section 48-2-35' shall be substituted
 54 for the phrase 'section 6511(a) of the Internal Revenue Code of 1986' and the phrase 'such
 55 section' shall be substituted for the phrase 'such subsection.' In the event a reference is
 56 made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as
 57 it existed on a specific date prior to ~~January 1, 2019~~ March 27, 2020, the term means the
 58 provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it
 59 existed on the prior date. Unless otherwise provided in this title, any term used in this
 60 title shall have the same meaning as when used in a comparable provision or context in
 61 the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after
 62 January 1, ~~2018~~ 2019, provisions of the Internal Revenue Code of 1986, as amended,

63 which were as of ~~January 1, 2019~~ March 27, 2020, enacted into law but not yet effective
 64 shall become effective for purposes of Georgia taxation on the same dates upon which
 65 they become effective for federal tax purposes."

66 **SECTION 1-2.**

67 Said title is further amended by revising paragraph (2) of subsection (h) of Code Section
 68 48-2-35, relating to refunds of taxes and fees, as follows:

69 "(2)(A) Within 30 business days following the department's receipt of a refund claim
 70 of local significance, the department shall notify each affected political subdivision's
 71 political subdivision designee that a refund claim of local significance to the political
 72 subdivision has been received and shall furnish the taxpayer with a copy of such
 73 notification. Such notification shall include the date the refund claim of local
 74 significance was filed, the amount in the claim for refund for which the political
 75 subdivision itself would be responsible if the request is granted, and a copy of the
 76 confidentiality provisions in Code Section 48-2-15 and this Code section.

77 (B) After the department has completed an audit of the claim for refund and
 78 determined a final refund amount, the department shall supplement the above notice by
 79 transmitting to the political subdivision designee the final refund amount for which the
 80 political subdivision is responsible.

81 (C)(i) With respect to a final refund amount due to a taxpayer that made an
 82 overpayment of taxes pursuant to a direct pay permit issued in accordance with Code
 83 Section 48-8-49.1, in lieu of a single payment of the final refund amount to the
 84 taxpayer, an affected political subdivision may elect for the final refund amount,
 85 including applicable interest, to be repaid by the department to the taxpayer over a
 86 time period less than or equal to the total duration of the periods subject to the claim
 87 for refund. Any such election must be made by the political subdivision, in a manner
 88 prescribed by the department, within 30 days of the date the department notifies the
 89 political subdivision of the final refund amount for which the political subdivision is
 90 responsible.

91 (ii) When an election is made pursuant to division (i) of this subparagraph, the
 92 department shall make payment of the total final refund amount, which shall include
 93 amounts for local sales and use taxes, to the taxpayer in monthly installments due on
 94 or before the fifteenth day of each calendar month during the repayment period.
 95 Interest shall accrue on the unpaid balance during such repayment period pursuant to
 96 subsection (a) of this Code section.

97 (iii) The provisions of this subparagraph shall only apply to refund claims of local
 98 significance and resulting final refund amounts due to a taxpayer that made an

99 overpayment of local sales and use taxes pursuant to a direct pay permit issued in
 100 accordance with Code Section 48-8-49.1."

101 **SECTION 1-3.**

102 Said title is further amended by revising subsection (a) of Code Section 48-2-35.1, relating
 103 to refunds of sales and use taxes, as follows:

104 "(a)(1) If a certificate or exemption determination letter issued by the commissioner
 105 certifying that the purchaser is entitled to purchase tangible personal property or taxable
 106 services without the payment of sales and use tax has not been obtained and used prior
 107 to purchasing such tangible personal property or taxable services, a refund of sales and
 108 use taxes shall be made to such purchaser without interest.

109 (2) For refunds of overpayments of state and local sales and use taxes made pursuant to
 110 a direct payment permit issued in accordance with Code Section 48-8-49.1, interest shall
 111 be paid on the overpaid amount of the taxes or fees pursuant to subsection (a) of Code
 112 Section 48-2-35, and subject to the provisions of Code Section 50-13A-19.1; provided,
 113 however, that interest shall begin to accrue on the overpaid amount of taxes or fees from
 114 the date an amended return or refund claim claiming a refund is filed."

115 **SECTION 1-4.**

116 Said title is further amended by adding a new Code section to read as follows:

117 "48-8-49.1.

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

119 (1) 'Direct payment permit' means a license that permits a qualified taxpayer to accrue
 120 and pay directly to the department certain state and local sales and use taxes imposed by
 121 this chapter.

122 (2) 'Qualified taxpayer' means a taxpayer that:

123 (A) Purchased more than \$2 million of tangible personal property in the 12 months
 124 prior to application, purchased an annual average amount exceeding \$2 million of
 125 tangible personal property during the 36 months prior to application, or met a lower
 126 purchase threshold prescribed the department; and

127 (B) Was classified under the previous year's federal income tax return under any
 128 industry classification code, as determined by the commissioner, that would facilitate
 129 and expedite the collection of the taxes imposed by this chapter or would be equivalent
 130 to one of the following North American Industry Classification System (NAICS) codes
 131 as such existed on January 1, 2017:

132 (i) National Industry Code 517110 - Wired Telecommunications Carriers;

- 133 (ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except
 134 Satellite);
- 135 (iii) National Industry Code 517410 - Satellite Telecommunications;
- 136 (iv) NAICS Industry Code 48111 - Scheduled Air Transportation;
- 137 (v) NAICS Industry Code 48211 - Rail Transportation;
- 138 (vi) Industry Group Code 4841 - General Freight Trucking;
- 139 (vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction;
- 140 (viii) Economic Sector Code 22 - Utilities; or
- 141 (ix) Economic Sector Codes 31-33 - Manufacturing.
- 142 (b) The department shall establish and maintain a direct pay permit program for the
 143 purpose of enabling qualified taxpayers to pay directly to the department taxes that are
 144 imposed by this chapter on the qualified taxpayers; provided, however, that such program
 145 shall exclude taxation on the following:
- 146 (1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section
 147 48-8-2;
- 148 (2) Purchases of meals, beverages, or tobacco;
- 149 (3) Purchases of local telephone services, transportation of persons, or lodging
 150 accommodations and ancillary charges associated with lodging accommodations;
- 151 (4) Purchases to places of amusement, entertainment, or athletic events; admissions to
 152 displays or exhibitions; participation in games or sports; or charges for the use of
 153 amusement devices; or
- 154 (5) Rental charges for periods of 31 days or less for motor vehicles required to be titled
 155 in this state.
- 156 (c) The commissioner shall not require a qualified taxpayer to waive interest on refunds
 157 made in accordance with Code Section 48-2-35 as a condition for obtaining a direct pay
 158 permit.
- 159 (d) The department shall, at a minimum, provide for the following by rule or regulation:
- 160 (1) Certain attestations to be made by a qualified taxpayer in its application for a direct
 161 pay permit;
- 162 (2) Responsibilities and duties for holders of direct pay permits;
- 163 (3) Transferability or nontransferability of direct pay permits;
- 164 (4) Expiration and renewal of direct pay permits; and
- 165 (5) Revocation of direct pay permits."

166 **PART II**

167 **SECTION 2-1.**

168 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 169 imposition, rate, and computation, and exemptions, is amended by adding a new Code
 170 section to read as follows:

171 "48-7-40.1A.

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

173 (1) 'Establishment' means an economic unit at a single physical location where business
 174 is conducted or where services or industrial operations are performed.

175 (2) 'Hand sanitizer' means any hand antiseptic, hand rub, soap, or agent applied to the
 176 hands for the purpose of removing common pathogens, including, but not limited to, hand
 177 cleaners and sanitizers provided for under 7 C.F.R. Section 3201.18.

178 (3) 'Personal protective equipment' or 'PPE' means any protective clothing, helmets,
 179 gloves, face shields, goggles, facemasks, hand sanitizer, and respirators or other
 180 equipment designed to protect the wearer from injury or to prevent the spread of
 181 infection, disease, virus, or other illness. Such term shall include equipment identified
 182 under 29 C.F.R. Section 1910, Subpart I.

183 (4) 'Personal protective equipment manufacturer' or 'PPE manufacturer' means any
 184 business enterprise which is engaged in the manufacturing of PPE in this state. Such term
 185 shall include any business enterprise which, in response to COVID-19, began
 186 manufacturing PPE in this state. Such term shall not include retail businesses that sell
 187 PPE.

188 (b)(1) When any PPE manufacturer is qualified to claim a job tax credit under Code
 189 Section 48-7-40 or 48-7-40.1, there shall be allowed an additional \$1,250.00 job tax
 190 credit against the tax imposed under this article for those qualifying jobs to the extent
 191 they are engaged in the qualifying activity of manufacturing PPE in this state during the
 192 taxable year. Such PPE manufacturer shall be eligible for such additional job tax credit
 193 at an individual establishment of the business. If more than one business activity is
 194 conducted at the establishment, then only those jobs engaged in the qualifying activity
 195 of manufacturing PPE in this state shall be eligible for such additional job tax credit.

196 (2) The additional tax credit provided for in paragraph (1) of this subsection shall be
 197 claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but
 198 shall, except as provided in this Code section, be allowed subject to the conditions and
 199 limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the
 200 credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the
 201 amount allowed to offset taxes imposed by this article shall be 100 percent; and provided,

202 further, that when such tax credit exceeds a business enterprise's liability for taxes
 203 imposed by this article in a taxable year, the excess may be taken as a credit against such
 204 business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the
 205 same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the
 206 dollar limitations provided therein. Additionally, such tax credit shall be disallowed
 207 during any year that a business enterprise does not qualify as a PPE manufacturer.

208 (3) The additional tax credit provided for in paragraph (1) of this subsection may be used
 209 in conjunction with the tax credit provided for under Code Section 48-7-40.15.

210 (c) The additional tax credit provided for under paragraph (1) of subsection (b) of this
 211 Code section shall be subject to the following conditions and limitations:

212 (1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a
 213 schedule to the taxpayer's state income tax return which shall set forth the following
 214 information, as a minimum, in addition to the information required under Code
 215 Sections 48-7-40 and 48-7-40.1:

216 (A) The number of jobs otherwise qualified to claim a credit under this Code section;

217 (B) A verification that the taxpayer is a PPE manufacturer and a description of the PPE
 218 manufactured during the current taxable year;

219 (C) Any tax credit utilized by the taxpayer in prior years;

220 (D) The amount of tax credit carried over from prior years;

221 (E) The amount of tax credit utilized by the taxpayer in the current taxable year; and

222 (F) The amount of tax credit to be carried over to subsequent tax years.

223 (2) Any tax credit claimed under subsection (b) of this Code section, but not used in any
 224 taxable year, may be carried forward for ten years from the close of the taxable year in
 225 which the qualified jobs were established.

226 (d) No tax credit shall be claimed and allowed pursuant to this Code section for any jobs
 227 created on or after January 1, 2025.

228 (e) This Code section shall be effective as of January 1, 2020, and shall be applicable to
 229 taxable years beginning on and after January 1, 2020."

230 **PART III**

231 **SECTION 3-1.**

232 Said article is further amended by adding a new subsection to Code Section 48-7-40, relating
 233 to designation of counties as less developed areas and tax credits for certain business
 234 enterprises, to read as follows:

235 "(m) For the taxable years beginning in 2020 and 2021, a taxpayer with a business
 236 enterprise that in the taxable year beginning on or after January 1, 2019, and before

237 December 31, 2019, was claiming a tax credit under this Code section shall have the option
 238 to utilize the number of new full-time employee jobs that the taxpayer claimed in such
 239 taxable year or calculate the number of new full-time employee jobs based upon subsection
 240 (e) of this Code section."

241 **SECTION 3-2.**

242 Said article is further amended by adding a new subsection to Code Section 48-7-40.1,
 243 relating to tax credits for business enterprises in less developed areas, to read as follows:

244 "(k) For the taxable years beginning in 2020 and 2021, a taxpayer with a business
 245 enterprise that in the taxable year beginning on or after January 1, 2019, and before
 246 December 31, 2019, was claiming a tax credit under this Code section shall have the option
 247 to utilize the number of new full-time employee jobs that the taxpayer claimed in such
 248 taxable year or calculate the number of new full-time employee jobs based upon subsection
 249 (e) of this Code section."

250 **SECTION 3-3.**

251 Said article is further amended by adding a new subsection to Code Section 48-7-40.17,
 252 relating to establishing or relocating quality jobs and tax credit, to read as follows:

253 "(i) For the taxable years beginning in 2020 and 2021, a taxpayer that in the taxable year
 254 beginning on or after January 1, 2019, and before December 31, 2019, was claiming a tax
 255 credit under this Code section shall have the option to utilize the number of new quality
 256 jobs that the taxpayer claimed in such taxable year, or calculate the number of new quality
 257 jobs based upon subsection (d) of this Code section."

258 **PART IV**

259 **SECTION 4-1.**

260 This Act shall become effective upon its approval by the Governor or upon its becoming law
 261 without such approval; provided, however, that:

262 (a) Section 1-1 of this Act shall be applicable to all taxable years beginning on or after
 263 January 1, 2019.

264 (b) Sections 1-2, 1-3, and 1-4 of this Act shall become effective on September 1, 2020.
 265 The revisions to paragraph (2) of subsection (h) of Code Section 48-2-35 in Section 1-2 of
 266 this Act shall apply to notices for final refund amounts received by a political subdivision
 267 on or after September 1, 2020, and the interest rate provided in Section 1-3 of this Act shall
 268 apply to interest accruing on or after September 1, 2020.

269

SECTION 4-2.

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