

The Special Joint Committee on Georgia Revenue Structure offers the following substitute to HB 387:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 48, 2, 36, and 46 of the Official Code of Georgia Annotated, relating
2 respectively, to revenue and taxation, agriculture, local government, and public utilities, so
3 as to provide for comprehensive revision of personal income taxes; to redefine taxable net
4 income; to provide for a flat rate tax structure; to change certain adjustments to income; to
5 provide for procedures, conditions, and limitations; to revise comprehensively certain
6 provision regarding low-income tax credits; to change and provide for sales and use tax
7 definitions; to change and provide for sales and use tax exemptions; to provide for the
8 comprehensive revision of exemptions from sales and use taxes; to provide for the repeal of
9 certain exemptions at various points in time; to provide for the sales and use taxation of
10 certain services; to provide for conforming amendments; to provide for an exemption for
11 sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy
12 used in agriculture, and agricultural machinery and equipment; to provide for definitions; to
13 provide for procedures, conditions, and limitations; to provide for powers, duties, and
14 authority of the Commissioner of Agriculture; to provide for qualified agriculture producer
15 annual license fees; to provide for a new exemption regarding the sale, use, storage, or
16 consumption of machinery or equipment which is necessary and integral to the manufacture
17 of tangible personal property and the sale, use, storage, or consumption of energy, industrial
18 materials, or packaging supplies; to provide for definitions; to provide for procedures,
19 conditions, and limitations; to provide that every purchaser of certain tangible personal
20 property which is or which is required to be titled or registered by or in this state shall be
21 liable for sales and use tax on the purchase; to provide for requirements, procedures,
22 conditions, and limitations; to provide for consolidated and simplified state and local excise
23 taxes on communications services in lieu of certain other state or local taxes, charges, or fees
24 on such services; to provide for legislative findings and intent; to provide for a short title; to
25 provide for comprehensive procedures, conditions, and limitations; to provide for powers,
26 duties, and authority of the Department of Revenue and the state revenue commissioner; to
27 amend certain titles of the Official Code of Georgia Annotated so as to correct certain
28 cross-references and make conforming changes; to provide for effective dates; to provide for

applicability; to provide that certain provisions of this Act shall not abate or affect prosecutions, punishments, penalties, administrative proceedings or remedies, or civil actions related to certain violations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising Code Section 48-7-20, relating to individual tax rates and tables, as follows:

"48-7-20.

(a) A tax is imposed upon every resident of this state with respect to the Georgia taxable net income of the taxpayer as defined in Code Section 48-7-27. A tax is imposed upon every nonresident with respect to such nonresident's Georgia taxable net income not otherwise exempted which is received by the taxpayer from services performed, property owned, proceeds of any lottery prize awarded by the Georgia Lottery Corporation, or from business carried on in this state. Except as otherwise provided in this chapter, the tax imposed by this subsection shall be levied, collected, and paid annually.

(b)(~~+~~) For taxable years beginning prior to January 1, 2012:

(1) The tax imposed pursuant to subsection (a) of this Code section shall be computed in accordance with the following tables:

SINGLE PERSON

If Georgia Taxable		The Tax Is:
Net Income Is:		
Not over \$750.00.		1%
Over \$750.00 but not over \$2,250.00.. . . .	\$7.50 plus 2% of amount over \$750.00	
Over \$2,250.00 but not over \$3,750.00.	\$37.50 plus 3% of amount over \$2,250.00	
Over \$3,750.00 but not over \$5,250.00.	\$82.50 plus 4% of amount over \$3,750.00	
Over \$5,250.00 but not over \$7,000.00.	\$142.50 plus 5% of amount over \$5,250.00	

58 Over \$7,000.00.....\$230.00 plus 6% of amount over
\$7,000.00

59 MARRIED PERSON FILING A SEPARATE RETURN

60	If Georgia Taxable	The Tax Is:
61	Net Income Is:	
62	Not over \$500.00.	1%
63	Over \$500.00 but not over \$1,500.00.....	\$5.00 plus 2% of amount over \$500.00
64	Over \$1,500.00 but not over \$2,500.00.	\$25.00 plus 3% of amount over \$1,500.00
65	Over \$2,500.00 but not over \$3,500.00.	\$55.00 plus 4% of amount over \$2,500.00
66	Over \$3,500.00 but not over \$5,000.00.	\$95.00 plus 5% of amount over \$3,500.00
67	Over \$5,000.00.....	\$170.00 plus 6% of amount over \$5,000.00

68 HEAD OF HOUSEHOLD AND MARRIED PERSONS
69 FILING A JOINT RETURN

70	If Georgia Taxable	The Tax Is:
71	Net Income Is:	
72	Not over \$1,000.00.....	1%
73	Over \$1,000.00 but not over \$3,000.00.	\$10.00 plus 2% of amount over \$1,000.00
74	Over \$3,000.00 but not over \$5,000.00.	\$50.00 plus 3% of amount over \$3,000.00
75	Over \$5,000.00 but not over \$7,000.00.	\$110.00 plus 4% of amount over \$5,000.00
76	Over \$7,000.00 but not over \$10,000.00.	\$190.00 plus 5% of amount over \$7,000.00
77	Over \$10,000.00.....	\$340.00 plus 6% of amount over \$10,000.00

(2) To facilitate the computation of the tax by those taxpayers whose federal adjusted gross income together with the adjustments set out in Code Section 48-7-27 for use in arriving at Georgia taxable net income is less than \$10,000.00, the commissioner may construct tax tables which may be used by the taxpayers at their option. The tax shown to be due by the tables shall be computed on the bases of the standard deduction and the tax rates specified in paragraph (1) of this subsection. Insofar as practicable, the tables shall produce a tax approximately equivalent to the tax imposed by paragraph (1) of this subsection.

(c) For taxable years beginning on or after January 1, 2012, the tax imposed pursuant to subsection (a) of this Code section shall be the amount determined by multiplying the Georgia taxable net income of the taxpayer by 4.5 percent.

~~(c)~~(d) The amount deducted and withheld by an employer from the wages of an employee pursuant to Article 5 of this chapter, relating to current income tax payments, shall be allowed the employee as a credit against the tax imposed by this Code section. Amounts paid by an individual as estimated tax under Article 5 of this chapter shall constitute payments on account of the tax imposed by this Code section. The amount withheld or paid during any calendar year shall be allowed as a credit or payment for the taxable year beginning in the calendar year in which the amount is withheld or paid.

~~(d)~~(e) The tax imposed by this Code section applies to the Georgia taxable net income of estates and trusts, which shall be computed in the same manner as in the case of a single individual. The tax shall be computed on the Georgia taxable net income and shall be paid by the fiduciary."

SECTION 1-2.

Said Title 48 is further amended by revising Code Section 48-7-26, relating to personal exemptions, as follows:

"48-7-26.

(a) As used in this Code section, the term 'dependent' shall have the same meaning as in the Internal Revenue Code of 1986.

~~(b)(1) An exemption of \$5,400.00 shall be allowed as a deduction in computing Georgia taxable income of a taxpayer and spouse, but only if a joint return is filed.~~

~~(2) An exemption of \$2,700.00 shall be allowed as a deduction in computing Georgia taxable income for each taxpayer other than a taxpayer who files a joint return.~~

~~(3)(A) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, an exemption of \$2,000.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.~~

~~(B) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1998, an exemption of \$2,500.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.~~

~~(C) For taxable years beginning on or after January 1, 1998, an exemption of \$2,700.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.~~

~~(4) Commencing with the taxable year beginning January 1, 2003, For taxable years beginning on or after January 1, 2012, an exemption of \$3,000.00 \$2,000.00 for each dependent of a taxpayer shall be allowed as a deduction in computing Georgia taxable income of the taxpayer.~~

(c) No exemption shall be allowed under this Code section for any dependent who has made a joint return with such dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

~~(d) A deduction in lieu of a personal exemption deduction shall be allowed an estate or a trust as follows:~~

~~(1) An estate - \$2,700.00; and~~

~~(2) A trust - \$1,350.00."~~

SECTION 1-3.

Said Title 48 is further amended by revising Code Section 48-7-27, relating to computation of Georgia taxable net income, as follows:

"48-7-27.

(a) This Code section shall apply to all taxable years beginning on or after January 1, 2012.

(b) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

~~(1)(A) The Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income, subject to the following limitations: or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:~~

~~(A) In the case of a single taxpayer or a head of household, \$2,300.00;~~

~~(B) In the case of a married taxpayer filing a separate return, \$1,500.00;~~

~~(C) In the case of a married couple filing a joint return, \$3,000.00;~~

~~(D) An additional deduction of \$1,300.00 for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year. An additional deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by~~

the taxpayer and the taxpayer's spouse and the spouse has attained the age of 65 before the close of the taxable year, and

(E) ~~An additional deduction of \$1,300.00 for the taxpayer if the taxpayer is blind at the close of the taxable year. An additional deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse is blind at the close of the taxable year. For the purposes of this subparagraph, the determination of whether the taxpayer or the spouse is blind shall be made at the close of the taxable year except that, if either the taxpayer or the spouse dies during the taxable year, the determination shall be made as of the time of the death;~~

(i) Except as otherwise provided in division (ii) of this subparagraph, taxpayers whose federal adjusted gross income does not exceed \$37,500.00 may reduce their taxable income by claiming the amount of all itemized nonbusiness deductions used in computing federal taxable income or \$8,500.00, whichever is less; or

(ii) Married taxpayers filing jointly whose federal adjusted gross income does not exceed \$75,000.00 may reduce their taxable income by claiming the amount of all itemized nonbusiness deductions used in computing federal taxable income or \$17,000.00, whichever is less.

(B) For a taxpayer whose federal adjusted gross income exceeds the amount specified in division (i) or (ii) of subparagraph (A) of this paragraph, the authorized maximum deduction amounts shall be reduced dollar for dollar as federal adjusted gross income increases above the limits specified in division (i) or (ii) of subparagraph (A) of this paragraph. As an example of such dollar for dollar reduction, a taxpayer whose federal adjusted gross income equals \$37,501.00 may deduct the amount of itemized nonbusiness deductions used in computing federal taxable income or \$8,499.00, whichever is less, and married taxpayers filing jointly whose federal adjusted gross income equals \$75,001.00 may deduct the amount of itemized nonbusiness deductions used in computing federal taxable income or \$16,999.00, whichever is less. A taxpayer whose federal adjusted gross income is \$46,000.00 or more shall not be authorized to claim and be allowed itemized nonbusiness deductions and married taxpayers filing jointly whose federal adjusted gross income is \$92,000.00 or more shall not be authorized to claim and be allowed itemized nonbusiness deductions.

(C) The limitations of subparagraphs (A) and (B) of this paragraph shall not apply to unreimbursed employee business expenses which exceed the 2 percent federal adjusted gross income threshold which are claimed by and allowed the taxpayer in computing federal taxable income.

(D) A taxpayer moving into the state or moving out of the state shall prorate the amount allowed pursuant to this paragraph as provided in Code Section 48-7-85.

(E) A nonresident taxpayer shall prorate the amount allowed pursuant to this paragraph and Code Section 48-7-30 as provided in Code Section 48-7-30;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection ~~(b)~~ (c) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual's federal adjusted gross income because the individual has taken a federal jobs tax credit which requires, as a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, ~~for taxable years beginning on or after January 1, 1989,~~ no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of \$8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of \$10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of \$11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of \$12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of \$13,000.00;

- (vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of \$13,500.00 per year received from any source;
- (vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of \$14,000.00;
- (viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of \$14,500.00;
- (ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of \$15,000.00;
- (x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of \$25,000.00;
- (xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of \$30,000.00; and
- (xii) For taxable years beginning on or after January 1, 2008, ~~and prior to January 1, 2012,~~ retirement income from any source not to exceed an exclusion amount of \$35,000.00;~~;~~
- ~~(xiii) For taxable years beginning on or after January 1, 2012, and prior to January 1, 2013, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;~~
- ~~(xiv) For taxable years beginning on or after January 1, 2013, and prior to January 1, 2014, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$100,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;~~
- ~~(xv) For taxable years beginning on or after January 1, 2014, and prior to January 1, 2015, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$150,000.00 for each~~

taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph;

~~(xvi) For taxable years beginning on or after January 1, 2015, and prior to January 1, 2016, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$200,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph; and~~

~~(xvii) For taxable years beginning on or after January 1, 2016, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an exclusion of all retirement income from any source for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.~~

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older ~~but less than 65 years of age~~ during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; ~~or~~

~~(iii) Is 65 years of age or older during any part of the year.~~

(E) For the purposes of this paragraph, retirement income shall include₂ but not be limited to₂ interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than \$4,000.00 of an individual's earned income. Earned income in excess of \$4,000.00, including₂ but not limited to₂ net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income

exclusions allowed by this paragraph except to the extent of the express limitation provided in this subparagraph.

(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph;

~~(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;~~

(6) A portion of the qualified payments to minority subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

~~(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;~~

~~(9)~~(8) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such taxpayer and to establish the same basis for federal and state income tax purposes;

~~(10)~~(9) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

~~(11)~~(10) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a

dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding \$2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by \$400.00 for each \$1,000.00 of federal adjusted gross income over \$100,000.00 for a joint return or \$50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

~~(11.1)~~(11) For taxable years beginning on or after January 1, 2007:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding \$2,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or

stationed in defense of the borders of the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders;

~~(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of \$10,000.00 incurred in accordance with the 'National Organ Procurement Act.'~~

~~(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person's liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;~~

~~(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;~~

~~(14)~~(13) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

~~(15)~~(14) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

~~(b)(1)~~(c)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

~~(6) Reserved.~~

~~(7)~~(6) Except as otherwise provided in paragraph (4) of subsection ~~(a)~~ (b) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

~~(8)~~(7) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

~~(9)~~(8) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

~~(10)(A)~~(9)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection ~~(a)~~ (b) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

~~(11)~~(10) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

~~(12)~~(11) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

~~(13)~~(12) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

~~(c)~~(d) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

~~(d)(1)(A)~~(e)(1)(A) As used in this paragraph, the term 'individual' shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter 'S' corporations may make an adjustment to federal adjusted gross income for Subchapter 'S' corporation income where another state does not recognize a Subchapter 'S' corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter 'S' corporation, partnership, or limited liability company. In multitiered situations, the adjustment for

such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for such Subchapter 'S' corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter 'S' corporation is first required to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter 'S' corporation in that year. Shareholders of a federal Subchapter 'S' corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation."

SECTION 1-4.

Said Title 48 is further amended by adding a new Code section to read as follows:

"48-7-27.1.

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

(1) 'Dependent' shall have the same meaning as in the Internal Revenue Code of 1986.

(2) 'Georgia adjusted gross income' means the federal adjusted gross income of the taxpayer with the adjustments provided by this chapter, except for the adjustment provided by Code Section 48-7-26, except for the adjustment provided for in paragraph (2) of subsection (b) of Code Section 48-7-27, except for the adjustment for itemized nonbusiness deductions provided by paragraph (1) of subsection (b) of Code Section 48-7-27, and except for the adjustments to such itemized nonbusiness deductions for any income taxes imposed by any tax jurisdiction except the State of Georgia and for investment interest expense for the production of income exempt from Georgia tax.

(b) For taxable years beginning on or after January 1, 2012, a credit for each dependent of a resident taxpayer shall be allowed against Georgia individual income tax liability of the taxable year for which the individual income tax return is being filed as follows:

<u>Georgia Adjusted Gross Income</u>	<u>Dependent Credit</u>	
	<u>Married Filing Joint</u>	<u>Head of Household</u>
<u>Not over \$60,000.00</u>	<u>\$150.00</u>	<u>\$150.00</u>

512	<u>Over \$60,000.00 but not over</u>	<u>\$75.00</u>	<u>\$75.00</u>
513	<u>\$69,999.00</u>		
514	<u>\$70,000.00 or more</u>	<u>0</u>	<u>0</u>
515	<u>Georgia Adjusted Gross Income</u>	<u>Dependent Credit</u>	
		<u>Single</u>	<u>Married Filing Separate</u>
516	<u>Not over \$30,000.00</u>	<u>\$150.00</u>	<u>\$150.00</u>
517	<u>Over \$30,000.00 but not over</u>	<u>\$75.00</u>	<u>\$75.00</u>
518	<u>\$34,999.00</u>		
519	<u>\$35,000.00 or more</u>	<u>0</u>	<u>0</u>

520 (c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be
521 deductible from the resident taxpayer's individual income tax liability, if any, for the tax
522 year in which it is properly claimed; provided, however, that in no event shall the total
523 amount of the tax credit under this Code section for a taxable year exceed the taxpayer's
524 income tax liability. Any unused credit amount shall not be allowed to be carried forward
525 to the taxpayer's succeeding years' tax liability. No such credit shall be allowed the
526 taxpayer against prior years' tax liability.
527 (d) No credit shall be allowed under this Code section for any dependent who has made
528 a joint return with such dependent's spouse for the taxable year beginning in the calendar
529 year in which the taxable year of the taxpayer begins."

530 **SECTION 1-5.**

531 Said Title 48 is further amended by repealing and reserving Code Section 48-7A-2, relating
532 to the definition of dependent for low-income tax credit purposes.

533 **SECTION 1-6.**

534 Said Title 48 is further amended by revising Code Section 48-7A-3, relating to low-income
535 tax credits, as follows:

536 "48-7A-3.
537 (a) ~~Except as otherwise provided in subsection (e) of this Code section~~ For all taxable
538 years beginning on or after January 1, 2012, each resident taxpayer who files an individual
539 income tax return for a taxable year and who is not claimed or is not otherwise eligible to
540 be claimed as a dependent by another taxpayer for federal or Georgia individual income
541 tax purposes may claim a tax credit against the resident taxpayer's individual income tax
542 liability for the taxable year for which the individual income tax return is being filed;
543 ~~provided that:~~

544 ~~(1) A husband and wife filing a joint return shall each be deemed a dependent for~~
545 ~~purposes of such joint return, and~~
546 ~~(2) A husband and wife filing separate returns for a taxable year for which a joint return~~
547 ~~could have been filed by them shall claim only the tax credit to which they would have~~
548 ~~been entitled had a joint return been filed.~~
549 (b) For purposes of this subsection, the term Georgia adjusted gross income shall have the
550 same meaning as provided in paragraph (2) of subsection (a) of Code Section 48-7-27.1.
551 For all taxable years beginning on or after January 1, 2012, each resident Each taxpayer
552 may claim a tax credit in the amount indicated for each Georgia adjusted gross income
553 bracket as shown in the schedule below; ~~multiplied by the number of dependents which the~~
554 ~~taxpayer is entitled to claim. Each taxpayer 65 years of age or over may claim double the~~
555 ~~tax credit.~~

556 TAX CREDIT SCHEDULE

557 <u>Adjusted Gross Income</u>	557 <u>Tax Credit</u>
558 Under \$6,000.00	558 \$26.00
559 6,000.00 but not more than 7,999.00	559 20.00
560 8,000.00 but not more than 9,999.00	560 14.00
561 10,000.00 but not more than 14,999.00	561 8.00
562 15,000.00 but not more than 19,999.00	562 5.00

563 <u>Georgia Adjusted</u>	563 <u>Tax Credit</u>			
564 <u>Gross Income</u>				
565	<u>Single</u>	<u>Married Filing</u>	<u>Head of</u>	<u>Married Filing</u>
566		<u>Joint</u>	<u>Household</u>	<u>Separate</u>
567 <u>Under \$750.00</u>	<u>\$34.00</u>	<u>\$34.00</u>	<u>\$34.00</u>	<u>\$34.00</u>
568 <u>\$750.00 but not more than</u>	<u>\$45.00</u>	<u>\$45.00</u>	<u>\$45.00</u>	<u>\$45.00</u>
569 <u>\$999.00</u>				
570 <u>\$1,000.00 but not more</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>	<u>\$90.00</u>
571 <u>than \$1,999.00</u>				
572 <u>\$2,000.00 but not more</u>	<u>\$135.00</u>	<u>\$135.00</u>	<u>\$135.00</u>	<u>\$135.00</u>
573 <u>than \$2,999.00</u>				
574 <u>\$3,000.00 but not more</u>	<u>\$180.00</u>	<u>\$180.00</u>	<u>\$180.00</u>	<u>\$180.00</u>
575 <u>than \$3,999.00</u>				
576 <u>\$4,000.00 but not more</u>	<u>\$225.00</u>	<u>\$225.00</u>	<u>\$225.00</u>	<u>\$214.00</u>
577 <u>than \$4,999.00</u>				

578	<u>\$5,000.00 but not more</u>	<u>\$258.00</u>	<u>\$270.00</u>	<u>\$260.00</u>	<u>\$236.00</u>
579	<u>than \$5,999.00</u>				
580	<u>\$6,000.00 but not more</u>	<u>\$283.00</u>	<u>\$315.00</u>	<u>\$285.00</u>	<u>\$248.00</u>
581	<u>than \$6,999.00</u>				
582	<u>\$7,000.00 but not more</u>	<u>\$300.00</u>	<u>\$360.00</u>	<u>\$310.00</u>	<u>\$250.00</u>
583	<u>than \$7,999.00</u>				
584	<u>\$8,000.00 but not more</u>	<u>\$313.00</u>	<u>\$399.00</u>	<u>\$325.00</u>	<u>\$245.00</u>
585	<u>than \$8,999.00</u>				
586	<u>\$9,000.00 but not more</u>	<u>\$318.00</u>	<u>\$428.00</u>	<u>\$340.00</u>	<u>\$232.00</u>
587	<u>than \$9,999.00</u>				
588	<u>\$10,000.00 but not more</u>	<u>\$315.00</u>	<u>\$453.00</u>	<u>\$345.00</u>	<u>\$217.00</u>
589	<u>than \$10,999.00</u>				
590	<u>\$11,000.00 but not more</u>	<u>\$310.00</u>	<u>\$472.00</u>	<u>\$350.00</u>	<u>\$202.00</u>
591	<u>than \$11,999.00</u>				
592	<u>\$12,000.00 but not more</u>	<u>\$295.00</u>	<u>\$487.00</u>	<u>\$345.00</u>	<u>\$187.00</u>
593	<u>than \$12,999.00</u>				
594	<u>\$13,000.00 but not more</u>	<u>\$280.00</u>	<u>\$496.00</u>	<u>\$340.00</u>	<u>\$172.00</u>
595	<u>than \$13,999.00</u>				
596	<u>\$14,000.00 but not more</u>	<u>\$265.00</u>	<u>\$501.00</u>	<u>\$335.00</u>	<u>\$157.00</u>
597	<u>than \$14,999.00</u>				
598	<u>\$15,000.00 but not more</u>	<u>\$250.00</u>	<u>\$500.00</u>	<u>\$320.00</u>	<u>\$142.00</u>
599	<u>than \$15,999.00</u>				
600	<u>\$16,000.00 but not more</u>	<u>\$235.00</u>	<u>\$495.00</u>	<u>\$305.00</u>	<u>\$127.00</u>
601	<u>than \$16,999.00</u>				
602	<u>\$17,000.00 but not more</u>	<u>\$220.00</u>	<u>\$490.00</u>	<u>\$290.00</u>	<u>\$112.00</u>
603	<u>than \$17,999.00</u>				
604	<u>\$18,000.00 but not more</u>	<u>\$205.00</u>	<u>\$479.00</u>	<u>\$275.00</u>	<u>\$97.00</u>
605	<u>than \$18,999.00</u>				
606	<u>\$19,000.00 but not more</u>	<u>\$190.00</u>	<u>\$464.00</u>	<u>\$260.00</u>	<u>\$82.00</u>
607	<u>than \$19,999.00</u>				
608	<u>\$20,000.00 but not more</u>	<u>\$175.00</u>	<u>\$449.00</u>	<u>\$245.00</u>	<u>\$67.00</u>
609	<u>than \$20,999.00</u>				
610	<u>\$21,000.00 but not more</u>	<u>\$160.00</u>	<u>\$434.00</u>	<u>\$230.00</u>	<u>\$52.00</u>
611	<u>than \$21,999.00</u>				
612	<u>\$22,000.00 but not more</u>	<u>\$145.00</u>	<u>\$419.00</u>	<u>\$215.00</u>	<u>\$37.00</u>
613	<u>than \$22,999.00</u>				

614	<u>\$23,000.00 but not more</u>	<u>\$130.00</u>	<u>\$404.00</u>	<u>\$200.00</u>	<u>\$22.00</u>
615	<u>than \$23,999.00</u>				
616	<u>\$24,000.00 but not more</u>	<u>\$115.00</u>	<u>\$389.00</u>	<u>\$185.00</u>	<u>\$7.00</u>
617	<u>than \$24,999.00</u>				
618	<u>\$25,000.00 but not more</u>	<u>\$100.00</u>	<u>\$374.00</u>	<u>\$170.00</u>	<u>0</u>
619	<u>than \$25,999.00</u>				
620	<u>\$26,000.00 but not more</u>	<u>\$85.00</u>	<u>\$359.00</u>	<u>\$155.00</u>	<u>0</u>
621	<u>than \$26,999.00</u>				
622	<u>\$27,000.00 but not more</u>	<u>\$70.00</u>	<u>\$344.00</u>	<u>\$140.00</u>	<u>0</u>
623	<u>than \$27,999.00</u>				
624	<u>\$28,000.00 but not more</u>	<u>\$55.00</u>	<u>\$329.00</u>	<u>\$125.00</u>	<u>0</u>
625	<u>than \$28,999.00</u>				
626	<u>\$29,000.00 but not more</u>	<u>\$40.00</u>	<u>\$314.00</u>	<u>\$110.00</u>	<u>0</u>
627	<u>than \$29,999.00</u>				
628	<u>\$30,000.00 but not more</u>	<u>\$25.00</u>	<u>\$299.00</u>	<u>\$95.00</u>	<u>0</u>
629	<u>than \$30,999.00</u>				
630	<u>\$31,000.00 but not more</u>	<u>\$10.00</u>	<u>\$284.00</u>	<u>\$80.00</u>	<u>0</u>
631	<u>than \$31,999.00</u>				
632	<u>\$32,000.00 but not more</u>	<u>0</u>	<u>\$269.00</u>	<u>\$65.00</u>	<u>0</u>
633	<u>than \$32,999.00</u>				
634	<u>\$33,000.00 but not more</u>	<u>0</u>	<u>\$254.00</u>	<u>\$50.00</u>	<u>0</u>
635	<u>than \$33,999.00</u>				
636	<u>\$34,000.00 but not more</u>	<u>0</u>	<u>\$239.00</u>	<u>\$35.00</u>	<u>0</u>
637	<u>than \$34,999.00</u>				
638	<u>\$35,000.00 but not more</u>	<u>0</u>	<u>\$224.00</u>	<u>\$20.00</u>	<u>0</u>
639	<u>than \$35,999.00</u>				
640	<u>\$36,000.00 but not more</u>	<u>0</u>	<u>\$209.00</u>	<u>\$5.00</u>	<u>0</u>
641	<u>than \$36,999.00</u>				
642	<u>\$37,000.00 but not more</u>	<u>0</u>	<u>\$194.00</u>	<u>0</u>	<u>0</u>
643	<u>than \$37,999.00</u>				
644	<u>\$38,000.00 but not more</u>	<u>0</u>	<u>\$179.00</u>	<u>0</u>	<u>0</u>
645	<u>than \$38,999.00</u>				
646	<u>\$39,000.00 but not more</u>	<u>0</u>	<u>\$164.00</u>	<u>0</u>	<u>0</u>
647	<u>than \$39,999.00</u>				
648	<u>\$40,000.00 but not more</u>	<u>0</u>	<u>\$149.00</u>	<u>0</u>	<u>0</u>
649	<u>than \$40,999.00</u>				

650	<u>\$41,000.00 but not more</u>	<u>0</u>	<u>\$134.00</u>	<u>0</u>	<u>0</u>
651	<u>than \$41,999.00</u>				
652	<u>\$42,000.00 but not more</u>	<u>0</u>	<u>\$119.00</u>	<u>0</u>	<u>0</u>
653	<u>than \$42,999.00</u>				
654	<u>\$43,000.00 but not more</u>	<u>0</u>	<u>\$104.00</u>	<u>0</u>	<u>0</u>
655	<u>than \$43,999.00</u>				
656	<u>\$44,000.00 but not more</u>	<u>0</u>	<u>\$89.00</u>	<u>0</u>	<u>0</u>
657	<u>than \$44,999.00</u>				
658	<u>\$45,000.00 but not more</u>	<u>0</u>	<u>\$74.00</u>	<u>0</u>	<u>0</u>
659	<u>than \$45,999.00</u>				
660	<u>\$46,000.00 but not more</u>	<u>0</u>	<u>\$59.00</u>	<u>0</u>	<u>0</u>
661	<u>than \$46,999.00</u>				
662	<u>\$47,000.00 but not more</u>	<u>0</u>	<u>\$44.00</u>	<u>0</u>	<u>0</u>
663	<u>than \$47,999.00</u>				
664	<u>\$48,000.00 but not more</u>	<u>0</u>	<u>\$29.00</u>	<u>0</u>	<u>0</u>
665	<u>than \$48,999.00</u>				
666	<u>\$49,000.00 but not more</u>	<u>0</u>	<u>\$14.00</u>	<u>0</u>	<u>0</u>
667	<u>than \$49,999.00</u>				
668	<u>\$50,000.00 or more</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

669 (c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be
670 deductible from the resident taxpayer's individual income tax liability, if any, for the tax
671 year in which it is properly claimed; provided, however, that in no event shall the total
672 amount of the tax credit under this Code section for a taxable year exceed the taxpayer's
673 income tax liability. Any unused credit amount shall not be allowed to be carried forward
674 to the taxpayer's succeeding years' tax liability. No such credit shall be allowed the
675 taxpayer against prior years' tax liability.

676 ~~(d) All claims for a tax credit under this Code section, including any amended claims, must~~
677 ~~be filed on or before the end of the twelfth month following the close of the taxable year~~
678 ~~for which the credit may be claimed. Failure to comply with this subsection shall~~
679 ~~constitute a waiver of the right to claim the credit.~~

680 ~~(e) Any individual who receives a food stamp allotment for all or any part of a taxable year~~
681 ~~shall not be entitled to claim a credit under this Code section for that taxable year.~~

682 ~~(e.1) Any individual incarcerated or confined in any city, county, municipal, state, or~~
683 ~~federal penal or correctional institution for all or any part of a taxable year shall not be~~
684 ~~entitled to claim a credit under this Code section for that taxable year.~~

(f)(d) The commissioner shall be authorized by rule and regulation to provide for the proper administration of this Code section."

PART II

SECTION 2-1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-8-2, relating to definitions regarding sales and use tax, by adding a new subparagraph in paragraph (8), to read as follows:

"(K.1) Provides any services described under Code Section 48-8-2.1;"

SECTION 2-2.

Said Title 48 is further amended in said Code section by adding a new subparagraph in paragraph (31), to read as follows:

"(D.1) Sales of or charges made for any services enumerated in Code Section 48-8-2.1;"

SECTION 2-3.

Said Title 48 is further amended by adding a new Code section to read as follows:

"48-8-2.1.

(a) As used in this Code section, the term 'motor vehicle' shall have the same meaning as provided for in paragraph (33) of Code Section 40-1-1.

(b) Services provided for under subparagraph (D.1) of paragraph (31) of Code Section 48-8-2 means motor vehicle maintenance, repair, or installation services, including those made on:

(1) Tires;

(2) Audio equipment;

(3) Video equipment;

(4) Body work and painting;

(5) Clutches or transmissions;

(6) Drive shaft or rear-end work;

(7) Brakes;

(8) Steering or front-end work;

(9) Engine cooling systems;

(10) Motor tune-ups;

(11) Oil change, lubrication, or oil filter;

(12) Front-end alignment, wheel balancing, or wheel rotation;

- (13) Shock absorbers;
- (14) Batteries or miscellaneous equipment work;
- (15) Exhaust systems;
- (16) Electrical systems;
- (17) Engines;
- (18) Vehicle accessories or customizations; and
- (19) Vehicle cleaning or detailing."

SECTION 2-4.

Said Title 48 is further amended in Code Section 48-8-3, relating to exemptions from sales and use tax, by revising paragraphs (23), (25), (26), (27), (28), (29), (29.1), (33), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90) as follows:

"(23) Fees or charges for services rendered by repairmen for which a separate charge is made but not including services for motor vehicle maintenance, repair, or installation listed in Code Section 48-8-2.1;"

"(25) The sale of seed; fertilizers; insecticides; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; and feed for livestock, fish, or poultry when used either directly in tilling the soil or in animal, fish, or poultry husbandry. This paragraph shall stand repealed in its entirety on January 1, 2012;

(26) The sale to persons engaged primarily in producing farm crops for sale of machinery and equipment which is used exclusively for irrigation of farm crops including, but not limited to, fruit, vegetable, and nut crops. This paragraph shall stand repealed in its entirety on January 1, 2012;

(27) The sale of sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees when the commissioner's prior approval is obtained. This paragraph shall stand repealed in its entirety on January 1, 2012;

(28) The sale of cattle, hogs, sheep, horses, poultry, or bees when sold for breeding purposes. This paragraph shall stand repealed in its entirety on January 1, 2012;

(29) The sale of the following types of agricultural machinery:

(A) Machinery and equipment for use on a farm in the production of poultry and eggs for sale;

(B) Machinery and equipment used in the hatching and breeding of poultry and the breeding of livestock;

(C) Machinery and equipment for use on a farm in the production, processing, and storage of fluid milk for sale;

(D) Machinery and equipment for use on a farm in the production of livestock for sale;
 (E) Machinery and equipment which is used by a producer of poultry, eggs, fluid milk, or livestock for sale for the purpose of harvesting farm crops to be used on the farm by that producer as feed for poultry or livestock;

(F) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time into a new farm unit engaged in tilling the soil or in animal husbandry in this state;

(G) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is incorporated as additional machinery for the first time into an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

(H) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

(I) Rubber-tired farm tractors and attachments to the tractors which are sold to persons engaged primarily in producing farm crops for sale and which are used exclusively in tilling, planting, cultivating, and harvesting farm crops, and equipment used exclusively in harvesting farm crops or in processing onion crops which are sold to persons engaged primarily in producing farm crops for sale. For the purposes of this subparagraph, the term 'farm crops' includes only those crops which are planted and harvested within a 12 month period; and

(J) Pecan sprayers, pecan shakers, and other equipment used in harvesting pecans which is sold to persons engaged in the growing, harvesting, and production of pecans;

This paragraph shall stand repealed in its entirety on January 1, 2012;

(29.1) The sale or use of any off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, and motor graders and the related attachments. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common

carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article. Labor charges on repairs of such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles by such carriers shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, repair, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;"

"(34) The sale of the following types of manufacturing machinery:

(A) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is bought to replace or upgrade machinery or equipment in a manufacturing plant presently existing in this state and machinery or equipment components which are purchased to upgrade machinery or equipment which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant;

(B) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used for the first time in a new manufacturing plant located in this state;

(C) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used as additional machinery or equipment for the first time in a manufacturing plant presently existing in this state; and

(D) Any person making a sale of machinery or equipment for the purpose specified in subparagraph (B) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at the commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by

the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph;

This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(34.3)(A) The sale or use of repair or replacement parts, machinery clothing or replacement machinery clothing, molds or replacement molds, dies or replacement dies, waxes, and tooling or replacement tooling for machinery which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant presently existing in this state.

(B) The commissioner shall promulgate rules and regulations to implement and administer this paragraph.

(C) This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(35)(A) The sale, use, storage, or consumption of:

(i) Industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product;

(ii) Industrial materials other than machinery and machinery repair parts that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion; or

(iii) Materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse;

(B) As used in this paragraph, the term 'industrial materials' does not include natural or artificial gas, oil, gasoline, electricity, solid fuel, ice, or other materials used for heat, light, power, or refrigeration in any phase of the manufacturing, processing, or converting process;

(C) This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(37) The sale of machinery and equipment for use in combating air and water pollution and any industrial material bought for further processing in the manufacture of tangible personal property for sale or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process. Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect a tax imposed on the sale by this article unless the purchaser furnishes the person making the sale with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery, equipment, or industrial material without paying the tax. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(49) Sales of liquefied petroleum gas or other fuel used in a structure in which broilers, pullets, or other poultry are raised. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(64) The sale of electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of crops. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(77) Sales of liquefied petroleum gas or other fuel used in a structure in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(79) The sale or use of ice for chilling poultry or vegetables in processing for market and for chilling poultry or vegetables in storage rooms, compartments, or delivery trucks. This paragraph shall stand repealed in its entirety on January 1, 2012;"

"(90) The sale of electricity to a manufacturer located in this state used directly in the manufacture of a product if the direct cost of such electricity exceeds 50 percent of the cost of all materials, including electricity, used directly in the product. This paragraph shall stand repealed in its entirety on January 1, 2012; or"

SECTION 2-5.

Said Title 48 is further amended by adding a new Code section to read as follows:

"48-8-3.2.

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

(1) 'Consumable supplies' means tangible personal property, other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.

(2) 'Energy' means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) 'Equipment' means tangible personal property, other than machinery, industrial materials, and consumable supplies. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. Examples of equipment include, but are not limited to, machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution

control devices. The term includes components and repair or replacement parts. The term excludes real property.

(4) 'Fixtures' means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(5) 'Industrial materials' means materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term includes raw materials.

(6) 'Machinery' means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term includes a machine and all of its components including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality. The term includes repair or replacement parts. The term excludes real property and consumable supplies.

(7) 'Machinery clothing' means felts, screen plates, wires, or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(8) 'Manufacture of tangible personal property,' used synonymously with the term 'manufacturing,' means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations, engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means, into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a

continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(9) 'Manufacturer' means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or

(B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services, or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(10) 'Manufacturing plant' means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(11) 'Packaging operation' means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods, or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(12) 'Packaging supplies' means materials including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags used in a packaging operation solely for packaging tangible personal property.

(13) 'Real property' means land, any buildings thereon, and any fixtures attached thereto.

(14) 'Repair or replacement part' means a part for any machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(15) 'Substantial purpose' means the purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria including, but not limited to, the number of items produced,

(b) The sales and use taxes levied or imposed by this article shall not apply to the sale, use, storage, or consumption of machinery, equipment, or energy which is necessary and integral to the manufacture of tangible personal property, and the sale, use, storage, or the consumption of industrial materials or packaging supplies.

(c) The exemption under this Code section shall be applied as follows:

(1) The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants;

(2) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property, and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The commissioner shall consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable;

(3) For leased machinery or equipment that did not qualify for an exemption at the date of lease inception and subsequently qualifies for the exemption under this Code section, the exemption shall apply to all lease payments made subsequent to such qualification;

(4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

(5) Energy necessary and integral to the manufacture of tangible personal property includes energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, or to perform an actual part of the manufacture of tangible personal property; energy used in administrative or other ancillary activities that are located and performed at the manufacturing plant as long as such activities primarily benefit such manufacture of tangible personal property; energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the manufacturer's employees at the manufacturing plant; and energy used for any other purpose at a manufacturing plant.

(d) Examples that will qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

(1) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants, or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(3) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(4) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment;

(6) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(7) Machinery or equipment used to provide safety for the employees working at a manufacturing plant including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;

(8) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(10) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(11) Machinery or equipment used to manufacture tangible personal property to be used for promotional use;

(12) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and

(13) Energy used at a manufacturing plant."

SECTION 2-6.

Said Title 48 is further amended by adding a new Code section to read as follows:

"48-8-3.3.

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

(1)(A) 'Agricultural machinery and equipment' means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time or as additional machinery for the first time into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in this state; directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state; machinery and equipment used exclusively for irrigation of agricultural products including, but not limited to, fruit, vegetable, and nut crops; and machinery and equipment used to cool agricultural products in storage facilities.

(B) 'Agricultural machinery and equipment' also means farm tractors and attachments to the tractors; off-road vehicles used primarily in the production of nursery and horticultural crops; self-propelled fertilizer or chemical application equipment sold to persons engaged primarily in producing agricultural products for sale and which are used exclusively in tilling, planting, cultivating, and harvesting agricultural products, including, but not limited to, growing, harvesting, or processing onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops; devices and containers used in the transport and shipment of agricultural products;

pecan sprayers, pecan shakers, and other equipment used in harvesting pecans sold to
 persons engaged in the growing, harvesting, and production of pecans; and off-road
 equipment and related attachments which are sold to or used by persons engaged
 primarily in the growing or harvesting of timber and which are used exclusively in site
 preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting
 shall include all off-road equipment and related attachments used in every forestry
 procedure starting with the severing of a tree from the ground until and including the
 point at which the tree or its parts in any form has been loaded in the field in or on a
 truck or other vehicle for transport to the place of use. Such off-road equipment shall
 include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip
 harvestors, tub-grinders, woods cutters, chippers of all types, loaders of all types,
 dozers, mid-motor graders, and the related attachments; grain bins and attachments to
 grain bins; any repair, replacement, or component parts installed on agricultural
 machinery and equipment; trailers used to transport agricultural products; all-terrain
 vehicles and multipassenger rough-terrain vehicles; and any other off-road vehicles
 used directly and principally in the production of agricultural or horticultural products.

(2) 'Agricultural operations' or 'agricultural products' means raising, growing, harvesting,
 or storing of crops; feeding, breeding, or managing livestock, equine, or poultry;
 producing or storing feed for use in the production of livestock, including, but not limited
 to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the
 production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys;
 producing plants, trees, Christmas trees, fowl, equine, or animals; or the production of
 aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry,
 eggs, and apiarian products. Agricultural products are considered grown in this state if
 such products are grown, produced, or processed in this state, whether or not such
 products are composed of constituent products grown or produced outside this state.

(3) 'Agricultural production inputs' means seed; seedlings; plants grown from seed,
 cuttings or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and
 instruments used for the administration of such drugs; fencing products and materials
 used to produce agricultural products; fungicides; rodenticides; herbicides; defoliants;
 soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited
 to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for
 animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used
 as food for honeybees kept for the commercial production of honey, beeswax, and
 honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes;
 ice or other refrigerants including, but not limited to, nitrogen, carbon dioxide, ammonia,
 and propylene glycol used in the processing for market or the chilling of agricultural

products in storage facilities, rooms, compartments, or delivery trucks; materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.

(4) 'Energy used in agriculture' means fuels used for agricultural purposes, including, but not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood products, or wood byproducts; liquefied petroleum gas or other fuel used in structures in which broilers, pullets, or other poultry are raised, in which swine are raised, in which dairy animals are raised or milked or where dairy products are stored on a farm, in which agricultural products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale; electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of agricultural products; and electricity or other fuel used in the drying, cooking, or further processing of raw agricultural products, including, but not limited to, food processing of raw agricultural products.

(5) 'Qualified agriculture producer' includes producers of agricultural products that meet one of the following criteria:

(A) The person or entity is the owner or lessee of agricultural land or other real property from which \$2,500.00 or more of agricultural products were produced and sold during the year, including payments from government sources;

(B) The person or entity is in the business of providing for-hire custom agricultural services including, but not limited to, plowing, planting, harvesting, growing, animal husbandry or the maintenance of livestock, raising or substantially modifying agricultural products, or for the maintenance of agricultural land from which \$2,500.00 or more of such services were provided during the year;

(C) The person or entity is the owner of land that qualifies for taxation under the qualifications of bona fide conservation use property as defined in Code Section 48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land Protection Act as defined in Code Section 48-5-7.7;

(D) The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term

agricultural products will be produced which have the capacity to generate at least \$2,500.00 in sales annually in the future; or

(E) The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate at least \$2,500.00 in sales annually.

(b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.

(c) The Commissioner of Agriculture, at his or her discretion, may use one or both of the following criteria as a tool to determine eligibility under this Code section:

(1) Business activity on IRS schedule F (Profit or Loss from Farming); or

(2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule B (Supplemental Income and Loss).

(d) Qualified applicants will be issued by the Commissioner of Agriculture an agricultural sales and use tax exemption certificate which contains an exemption number. To facilitate the use of the exemption certificate, a wallet-sized card containing that same information will also be issued by the Commissioner of Agriculture.

(e) The Commissioner of Agriculture is authorized to promulgate rules and regulations governing the issuance of agricultural exemption certificates and the administration of this program. The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge annual fees of not less than \$15.00 nor more than \$25.00 per year in accordance with Code Section 2-1-5, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering the program."

SECTION 2-7.

Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended by revising Code Section 2-1-5, relating to certain agricultural annual license fees, as follows:

"2-1-5.

(a) An individual conducting business as a grain dealer, commercial feed dealer, and grain warehouseman shall pay an annual license fee in an amount not less than \$1,500.00 nor more than \$3,000.00. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) A qualified agriculture producer, as defined in Code Section 48-8-3.2, shall pay an annual license fee in an amount not less than \$15.00 nor more than \$25.00 but in no event shall the total amount of the proceeds from such fees exceed the cost of administering the

program under Code Section 48-8-3.3. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1."

SECTION 2-8.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-8-30, relating to imposition of sales and use taxes, by adding a new subsection to read as follows:

"(b.1)(1) As used in this subsection, the term:

(A) 'Aircraft' means any aircraft which is required to be registered with the Federal Aviation Administration.

(B) 'Immediate family member' means spouse, parent, child, or sibling.

(C) 'Motor vehicle' shall have the same meaning as provided in paragraph (33) of Code Section 40-1-1.

(D) 'Vessel' shall have the same meaning as provided in paragraph (25) of Code Section 52-7-3.

(2) In the case of a transaction where the tax under this Code section is not levied and collected under paragraph (1) of subsection (b) of this Code section, except as provided in paragraph (3) of this subsection, every purchaser of tangible personal property, including, but not limited to, a motor vehicle, vessel, and aircraft which is or which is required to be titled or registered by or in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price. Every such purchaser shall make a return and remit the tax using such forms as prescribed by the commissioner at the time of applying for a title or transfer of title or registration. Failure to make such return and remit such tax shall be cause to deny the issuance of a title or registration for such tangible personal property.

(3) In the event of a transfer of ownership of tangible personal property which is otherwise subject to the tax under paragraph (2) of this subsection from an immediate family member to another immediate family member such transfer shall be exempt from such tax."

PART III

SECTION 3-1.

The General Assembly recognizes that the communications industry has become increasingly competitive and that the distinctions among the providers of the various types of communications services have become blurred. The General Assembly desires to treat similar services consistently under the tax laws of this state. Accordingly, the General

Assembly finds that it is no longer appropriate for the providers of certain types of communications services to be required to pay a myriad of local taxes, licenses, and fees while other communications service providers are not required to pay some or all of such taxes, licenses, and fees. The General Assembly finds, however, that it is in the best interests of the state and its political subdivisions that the tax revenues available to such political subdivisions not be diminished by the elimination of certain local taxes, licenses, and fees imposed on communications service providers; and that a state level communications services tax imposed equitably on communications services is expected at a minimum to provide to each such political subdivision comparable tax revenues to the local taxes, licenses, and fees that should be eliminated. The General Assembly further finds that, in order to promote investment in Georgia's communications infrastructure and since the communications services sold will be taxed, the equipment purchased to provide such communications services should be exempt from state and local sales tax. The General Assembly further finds that a state-wide communications services tax in lieu of other taxes on communications would promote simplicity, uniformity, and efficiency in the administration of and compliance with the taxes on communications services which is in the best interests of the state.

SECTION 3-2.

This part of this Act shall be known and may be cited as the "Georgia Communications Services Tax Act."

SECTION 3-3.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-8-2, relating to definitions regarding sales and use tax, by revising paragraphs (31), (34), and (39) and by adding new paragraphs to read as follows:

"(4.1) 'Call center' means one or more locations that utilize telecommunications services in one or more of the following activities: customer services, soliciting sales, reactivating dormant accounts, conducting surveys or research, fundraising, collection of receivables, receiving reservations, receiving orders, or taking orders."

"(5.1) 'Communications services' means telecommunications services, ancillary services, and video programming services."

"(11.1) 'Direct broadcast satellite service' means the distribution or broadcasting of video programming or services by satellite directly to a subscriber's or customer's receiving equipment."

"(18.1) 'Mobile telecommunications service' has the same meaning given to such term in Section 124(7) of the Mobile Telecommunications Sourcing Act, P.L.106-252, 4 U.S.C. 124(7)."

"(31) 'Retail sale' or a 'sale at retail' means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the commissioner's rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner's rules and regulations shall ~~himself~~ be liable for and shall pay the tax. The terms 'retail sale' or 'sale at retail' include but are not limited to the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, ~~local telephone service~~ prepaid calling service and prepaid wireless calling service, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale. Sales of communications services other than prepaid calling service and prepaid wireless calling service shall not be 'retail sales' or 'sales at retail' for purposes of this chapter and shall not be subject to the tax imposed by this chapter;

(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

(C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, or entertainment, including, but not limited to:

(i) Billiard and pool rooms;

(ii) Bowling alleys;

(iii) Amusement devices;

(iv) Musical devices;

(v) Theaters;

(vi) Opera houses;

(vii) Moving picture shows;

(viii) Vaudeville;

(ix) Amusement parks;

(x) Athletic contests including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;

(xi) Skating rinks;

(xii) Race tracks;

(xiii) Public bathing places;

1295 (xiv) Public dance halls; and

1296 (xv) Any other place at which any exhibition, display, amusement, or entertainment

1297 is offered to the public or any other place where an admission fee is charged;

1298 (D) Charges made for participation in games and amusement activities;

1299 (E) Sales of tangible personal property to persons for resale when there is a likelihood

1300 that the state will lose tax funds due to the difficulty of policing the business operations

1301 because:

1302 (i) Of the operation of the business;

1303 (ii) Of the very nature of the business;

1304 (iii) Of the turnover of so-called independent contractors;

1305 (iv) Of the lack of a place of business in which to display a certificate of registration;

1306 (v) Of the lack of a place of business in which to keep records;

1307 (vi) Of the lack of adequate records;

1308 (vii) The persons are minors or transients;

1309 (viii) The persons are engaged in essentially service businesses; or

1310 (ix) Of any other reasonable reason.

1311 The commissioner may promulgate rules and regulations requiring vendors of persons

1312 described in this subparagraph to collect the tax imposed by this article on the retail

1313 price of the tangible personal property. The commissioner shall refuse to issue

1314 certificates of registration and may revoke certificates of registration issued in violation

1315 of his rules and regulations; or

1316 ~~(F) Charges, which applied to sales of telephone service, made for local exchange~~

1317 ~~telephone service, except coin operated telephone service, except as otherwise provided~~

1318 ~~in subparagraph (G) of this paragraph; or~~ In the case of a bundled transaction, including

1319 a transaction that includes any of the following: telecommunication service, ancillary

1320 service, Internet access, or audio or video programming service:

1321 ~~(G)~~(i) If the price is attributable to products or services that are taxable and products

1322 or services that are nontaxable, the portion of the price attributable to the nontaxable

1323 products or services may be subject to tax unless the provider can identify by

1324 reasonable and verifiable standards such portion from its books and records that are

1325 kept in the regular course of business for other purposes, including, but not limited to,

1326 nontax purposes.

1327 (ii) If the price is attributable to products or services that are subject to tax at different

1328 tax rates or subject to different taxes, the total price may be treated as attributable to

1329 the products or services subject to tax at the ~~highest tax~~ higher rate or the higher-rate

1330 tax unless the provider can identify by reasonable and verifiable standards the portion

1331 of the price attributable to the products subject to tax at the lower rate or the

lower-rate tax from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes."

"(34)(A) 'Sales price' applies to the measure subject to ~~sales~~ tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) Delivery charges;
- (v) Installation charges; and
- (vi) Credit for any trade-in, except as otherwise provided in division (vii) of subparagraph (B) of this paragraph.

(B) 'Sales price' shall not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (v) Charges by the seller for any services necessary to complete the sale if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (vi) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
- (vii) Credit for any motor vehicle trade-in.

(C) 'Sales price' shall include consideration received by the seller from third parties if:

- (i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a 'preferred customer' card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser."

"(39) 'Telecommunications service' means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term 'telecommunications service' includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. 'Telecommunications service' shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer's premises;

(C) Tangible personal property;

(D) Advertising, including, but not limited to, directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) ~~Radio and television audio and video~~ Video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. ~~Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47~~

~~USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3 service;~~

(H) Ancillary services; or

(I) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones."

"(42.1) 'Video programming service' means the sale, offering, transmission, conveyance, or routing of audio or video programming services for purchase by subscribers or customers, regardless of the medium, technology, or method of display, including the furnishing of transmission, conveyance, and routing of such programming by the programming service provider. Such term shall include, but not be limited to:

(A) Cable service, as defined in Section 602(6) of the Communications Act of 1934(47 U.S.C. 522(6));

(B) Interactive on-demand service, as defined in Section 602(12) of such Act (47 U.S.C. 522(12));

(C) The provision of video programming by a multichannel video programming distributor, as defined in paragraphs (20) and (13) of Section 602 of such Act (47 U.S.C. 522); and

(D) The distribution of audio or video programming by providers of 'mobile service,' as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, when such services are offered for purchase by subscribers or customers of such service."

SECTION 3-4.

Said Title 48 is further amended in Code Section 48-8-3, relating to exemptions from sales and use taxes, by replacing "; or" with a semicolon at the end of paragraph (90), replacing the period at the end of paragraph (91) with a semicolon, and by adding new paragraphs to read as follows:

"(92) The sale of any products or services purchased by a communications services provider for further commercial broadcast, rebroadcast, transmission, or retransmission, in whole or in part, to another person as such product or as a communications service; or
(93) The sale of equipment used in the business of providing communications services. For purposes of this paragraph, the term 'equipment used in the business of providing communications services' means all equipment, machinery, software, or other infrastructure that is used in whole or in part in producing, broadcasting, or distributing programs; sending, receiving, storing, transmitting, retransmitting, amplifying, switching, or routing voice, data, or video communications; or which is used in monitoring, testing, maintaining, enabling, or facilitating such equipment, machinery, software, or other infrastructure. Such term includes, but is not limited to, wires, cables, antennas, poles,

switches, routers, amplifiers, rectifiers, repeaters, receivers, multiplexers, duplexers, transmitters, power equipment, backup power equipment, diagnostic equipment, storage devices, modems, and other general central office equipment, such as channel cards, frames, and cabinets."

SECTION 3-5.

Said Title 48 is further amended in Code Section 48-8-32, relating to collectability and rates of sales and use tax, as follows:

"48-8-32.

The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the purchase price at the time of purchase, as the case may be, shall be collectable from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property, prepaid calling service, and prepaid wireless calling service."

SECTION 3-6.

Said Title 48 is further amended in Code Section 48-8-39, relating to the effect of certain use of sales tax certificates, by revising subsection (a) as follows:

"(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by ~~him~~ the purchaser, and the purchase price of the property to ~~him~~ the purchaser shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in ~~his~~ the purchaser's gross receipts either the amount of the rental charged or the total amount of the charges made by ~~him~~ the purchaser for the transportation rather than the cost of the property to ~~him~~ the purchaser. If the sole use of the property by a purchaser, other than retention, demonstration, or display in the regular course of business, is the transfer of such property, either free of charge or at a sale price not exceeding the purchase price of the property, to another person in conjunction with such other person entering into a contract to purchase communications services subject to the tax imposed under Chapter 18 of this title, then such use shall be treated as a retail sale to such other person for no consideration, in the case of a transfer that is free of charge, or for the sale price collected with respect to such transfer."

SECTION 3-7.

Said Title 48 is further amended in Code Section 48-8-42, relating to credit for taxes paid in other states, by adding a new subsection to read as follows:

"(c) Any communications services provider that erroneously but in good faith pays the tax imposed by Chapter 18 of this title on an item of tangible personal property or a service subject to the tax imposed by this chapter shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax paid."

SECTION 3-8.

Said Title 48 is further amended by repealing subsection (e) of Code Section 48-8-77, relating to sourcing of local telecommunications services.

SECTION 3-9.

Said Title 48 is further amended by adding a new Code Section to read as follows:

"48-8-78.

(a) As used in this chapter and Chapter 18 of this title, the term:

(1) 'Air-to-ground radiotelephone service' means a radio service, as that term is defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications services for hire to subscribers in an aircraft.

(2) 'Call-by-call basis' means any method of charging for telecommunications services where the price is measured by individual calls.

(3) 'Communications channel' means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) 'Customer' means the person or entity that contracts with the seller of telecommunications services. If the end user of the telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service but only for the purpose of sourcing sales of telecommunications services. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(5) 'Customer channel termination point' means, in the context of a private communications service, the location where the customer either inputs or receives communications.

(6) 'End user' means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity.

(7) 'Home service provider' has the same meaning given to such term in Section 124(5) of the Mobile Telecommunications Sourcing Act, P.L. 106-252, 4 U.S.C. 124(5).

(8) 'Postpaid calling service' means a telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service, except that the right provided is not exclusively to access telecommunications services.

(9) 'Private communication service' means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(10) 'Service address' means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location under subparagraph (A) of this paragraph is not known, 'service address' means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or, in information received by the seller from its service provider, where the system used to transport such signal is not that of the seller; or

(C) If the locations under both subparagraphs (A) and (B) of this paragraph are not known, 'service address' means the location of the customer's place of primary use.

(b) The provisions of this Code section are solely for the purposes of sourcing communications services, the taxability of which is governed by this chapter with respect to prepaid calling services and prepaid wireless calling service and Chapter 18 of this title with respect to all other communications services.

(c) The following sourcing rules shall apply to telecommunications services:

(1) Except as otherwise provided in paragraph (4) of this subsection, telecommunications services sold on a call-by-call basis shall be sourced to this state if either of the following occurs:

(A) The call both originates and terminates in this state; or

(B) The call either originates in this state or terminates in this state, and the service address associated with the call is located in this state;

(2) Except as otherwise provided in paragraph (4) of this subsection, telecommunications services sold on a basis other than a call-by-call basis shall be sourced to this state if the

telecommunications service is charged to a customer whose place of primary use is in this state;

(3) Except as otherwise provided in paragraph (4) of this subsection, mobile telecommunications services provided by a customer's home service provider shall be sourced to this state if the customer's place of primary use is in this state; and

(4) Notwithstanding the provisions of paragraphs (1), (2), and (3) of this subsection, the following rules shall apply:

(A) Air-to-ground radio telephone services shall be sourced to this state if the customer's place of primary use is located in this state;

(B) Postpaid calling services shall be sourced to this state if the origination point of the telecommunications signal is located in this state, as first identified by either of the following:

(i) The seller's telecommunications system; or

(ii) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(C) Private communications services shall be sourced to this state under the following rules:

(i) Service for a separate charge related to a customer channel termination point shall be sourced to this state if the customer channel termination point is located in this state;

(ii) Service for a separate charge for the use of a channel that is exclusively between two channel termination points located in this state shall be sourced to this state; and

(iii) Where channel termination points of a channel are located both within and outside this state:

(I) Fifty percent of any separate charge for a segment of a channel between two such channel termination points; and

(II) To the extent that the charge for any segment or segments of a channel is not separately billed, an amount equal to the total charge for such channel segment or segments multiplied by a fraction, the numerator of which is the number of channel termination points located in this state and the denominator of which is the total number of channel termination points; and

(D) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced in accordance with subsection (b) of Code Section 48-8-77; provided, however, that in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of Code Section 48-8-77 shall include as an option the location associated with the mobile telephone number.

(d) All communications services other than telecommunications services shall be sourced to the customer's place of primary use if located in this state."

SECTION 3-10.

Said Title 48 is further amended by adding a new chapter to read as follows:

"CHAPTER 18

48-18-1.

(a) Except as otherwise provided in this Code section, there is imposed on the sales price, as defined in paragraph (34) of Code Section 48-8-2, paid for the retail purchase of communications services, as defined in paragraph (5.1) of Code Section 48-8-2, that are sourced to this state under Code Section 48-8-78 the following:

(1) A state tax on direct broadcast satellite service at the rate of 7 percent;

(2) A state tax on communications services other than direct broadcast satellite service at a rate of 3.5 percent; and

(3) A local tax on communications services other than direct broadcast satellite service at the rate of 3.5 percent.

(b) It is the intent of the legislature that a total combined state and local tax rate of 7 percent shall be imposed on all communications services throughout the state.

(c) The tax imposed by this chapter shall be paid by the person paying for such communications services and shall be collected from such person by the retailer and remitted to the department pursuant to Code Section 48-18-5.

(d) No sale of communications services shall be taxable to the person furnishing the communications services which is not taxable to the purchaser of the communications services.

(e) The sales price paid for the retail purchase of communications services shall not include amounts paid for or attributable to:

(1) Communications services which are resold, used as a component part of, or integrated into a communications service provided to the ultimate retail purchaser who originates or terminates the taxable end-to-end communication, including, but not limited to, carrier access charges, right of access charges, interconnection charges paid by the providers of mobile telecommunications services or other communications services, charges paid by cable or video service providers for the transmission of video or other programming by another communications service provider over facilities owned or operated by such other communications service provider, charges for the sale of unbundled network elements, and charges for use of intercompany facilities;

(2) Coin operated telephone service;

(3) Communications services provided to any person or entity exempt from the tax imposed by Chapter 8 of this title;

(4) Discounts, bad debts, taxes, or any other deduction to the extent allowed as a deduction under Chapter 8 of this title;

(5) Prepaid calling service, prepaid wireless calling service, tangible personal property, or services subject to tax pursuant to Chapter 8 of this title; or

(6) Communications services or transactions among entities under 50 percent or greater, direct or indirect, common control.

(f) A retailer of communications services may combine the taxes due under this chapter and Chapter 8 of this title as a single line item on the retailer's invoice to a purchaser of communications services.

48-18-2.

(a) Notwithstanding any provision of law to the contrary, with respect to sales of telecommunications services to any person for use in the operation of one or more call centers, the state tax imposed by this chapter shall not exceed \$12,500.00 per calendar year and the local tax imposed by this chapter shall not exceed \$12,500.00 per calendar year.

(b) The limitation set forth in subsection (a) of this Code section shall apply only to holders of a direct payment number issued by the department. In order to obtain such direct payment number, the applicant shall establish that the applicant satisfies the criteria for a call center as defined in paragraph (4.1) of Code Section 48-8-2.

(c) The department shall not issue any refunds of taxes paid prior to receiving a direct payment number.

(d) All entities wholly owned by the same person or entity shall be considered a single person.

48-18-3.

(a) To prevent multistate taxation of a communications service subject to taxation under this chapter, any taxpayer, upon proof that such taxpayer has paid a tax in another state on such service, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax paid in such other state.

(b) Any communications services provider that erroneously but in good faith pays the tax imposed by Chapter 8 of this title on the provision of communications services shall be allowed credit against the tax imposed by this chapter to the extent of the amount of such tax paid.

48-18-4.

All procedural and administrative provisions of Chapters 2 and 8 of this title, including those which set forth the limitations periods and procedures for assessment, collection, refunds, and credits, and those which fix penalties and interest for nonpayment of tax and for noncompliance with the provisions of this title, and all other requirements and duties imposed upon the taxpayer, shall apply to all taxpayers liable for the communications services tax imposed under the provisions of this chapter and to all providers of communications services required to collect and remit such taxes. In addition, all definitions, sourcing rules, customer remedy rules, and bundled transaction rules, which have been enacted in compliance with the Streamlined Sales Tax Agreement and codified in Chapter 8 of this title, shall apply to the communications services tax imposed under the provisions of this chapter. The commissioner shall exercise all power and authority and perform all duties with respect to persons obligated under this chapter as are provided in Chapters 2 and 8, except where there is a conflict, in which case, the provisions of this chapter shall control. The commissioner may from time to time make such rules and regulations not inconsistent with this chapter as may be deemed necessary to carry out its provisions.

48-18-5.

(a) A communications services provider shall be permitted to deduct and retain 2 percent of total communications services taxes that are collected and remitted by the provider on a timely basis to the department.

(b) The tax imposed by Code Section 48-18-1, including any penalties or interest attributable to the nonpayment of such taxes or for noncompliance with the provisions of this chapter, shall be collected by the department and shall be accounted for separately from all other taxes. One percent of the amounts collected shall be paid into the general fund of the state treasury in order to defray the costs of administration.

(c)(1) The remaining amounts collected pursuant to paragraphs (1) and (2) of subsection (a) of Code Section 48-18-1 shall be credited in the same manner as the state sales and use taxes collected pursuant to Article 1 of Chapter 8 of this title.

(2) The remaining amounts collected pursuant to paragraph (3) of subsection (a) of Code Section 48-18-1 shall be distributed as follows:

(A) Each municipality or county that has complied with the requirements of subsection (e) of this Code section shall receive an amount equal to the average monthly revenues that were received from communications services providers during 2010 by such municipality or county pursuant to taxes, charges, and fees, other than

local option sales taxes prohibited by Code Section 48-18-6, which were validly imposed and in effect during that time;

(B) The amount remaining after the distributions required by subparagraph (A) of this paragraph shall be distributed as follows:

(i) Each municipality that has complied with the requirements of subsection (e) of this Code section shall receive an amount equal to such remaining amount multiplied by a fraction, the numerator of which is the population in such municipality and the denominator of which is the total population of this state, using the most recent annual estimates of the population of cities and counties in Georgia as prepared by the United States Bureau of the Census; and

(ii) Each county that has complied with the requirements of subsection (e) of this Code section shall receive an amount equal to such remaining amount multiplied by a fraction, the numerator of which is the sum of the population within the unincorporated areas of such county and the denominator of which is the total population of this state, using the most recent annual estimates of the population of cities and counties in Georgia as prepared by the United States Bureau of the Census.

(d)(1) Each county and municipality that received in 2010 taxes, charges, or fees, other than local option sales taxes prohibited by Code Section 48-18-6, which were validly imposed and in effect during that time shall report the amounts of such taxes, charges, or fees received in 2010 to the department by October 31, 2011.

(2) Each communications services provider that paid in 2010 such taxes, charges, or fees, other than local option sales taxes prohibited by Code Section 48-8-6 shall report the amounts of such taxes, charges, or fees paid in 2010 to the department by October 31, 2011.

(3) The department shall be charged with reviewing such data from all political subdivisions and communications services providers to ensure accuracy and to reconcile the data based on the best information available.

(e) Each county and municipality shall impose by ordinance or resolution a local tax on communications services other than direct broadcast satellite service pursuant to paragraph (3) of subsection (a) of Code Section 48-18-1 under the following conditions:

(1) On or before December 31 of the year prior to enactment, the county or municipality shall file with the department a certified copy of the pertinent parts of all ordinances, resolutions, and amendments thereto which levy the 3.5 percent tax on communications services other than direct broadcast satellite services;

(2) Such ordinance shall have an effective date of January 1 of the following year;

(3) The filing required by this subsection shall be a condition to the imposition of the local tax pursuant to paragraph (3) of subsection (a) of Code Section 48-18-1 by a county or a municipality; and

(4) If a county or municipality does not file with the department a certified copy of the pertinent parts of all ordinances, resolutions, or amendments thereto which levy the 3.5 percent tax on communications services other than direct broadcast satellite services as required in paragraph (1) of this subsection, or if a county or municipality does not provide the department with the amount of taxes, charges, or fees received in 2010, as required in paragraph (1) of subsection (d) of this Code section, the department shall upon receipt of such information distribute such funds on the first day of the next succeeding calendar quarter.

(f) Other than for purposes of collecting and remitting certain enhanced 9-1-1 charges, providers of communications services shall not be required to identify, report, or source communications services or communications services tax on the county or municipal level.

(g) The state auditor shall annually review the disbursements pursuant to paragraph (2) of subsection (c) of this Code section for each fiscal year. The state auditor shall issue such state auditor's findings to the Governor on or before December 31 of each year, with a copy to each municipality and county.

48-18-6.

(a)(1) For purposes of this subsection, the term 'providers of communications services' shall include parties providing infrastructure directly involved in the transmission, receipt, or processing of radio waves or electrical signals used in the provision or provisioning of communications services. Infrastructure shall include, but not be limited to, towers, poles, and other structures of whatever kind to which are attached antennas or other equipment for the transmission or receipt of radio waves or electrical signals, as well as fixtures necessary to affix antennas or other equipment to such towers, poles, or structures. Infrastructure shall not include residences or commercial or industrial buildings. Parties providing infrastructure are considered providers of communications services only to the extent of their provision or provisioning of such infrastructure.

(2) Except as provided in paragraph (4) of this subsection, no county, municipality, or other political subdivision of this state shall:

(A) Levy any tax, charge, fee, or other imposition on or with respect to communications services, or collect any such tax, charge, fee, or other imposition, from providers of communications services;

(B) Require any provider of communications services, including, but not limited to, cable service providers or video service providers, to enter into or extend the term of

a franchise or other agreement which requires the payment of a tax, charge, fee, or other imposition; or

(C) Adopt or enforce any provision of any ordinance or agreement to the extent that such provision obligates a provider of communications services to pay to the county and municipality a tax, charge, fee, or other imposition.

(3) For purposes of this subsection, a tax, charge, fee or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a political subdivision by or through a provider of communications services in its capacity as a provider of communications services, regardless of whether such tax, charge, fee, or in-kind payment of property or services is:

(A) Designated as a franchise fee, excise tax, sales tax, services tax, user fee, occupancy fee, occupational or business license tax or fee, subscriber charge, tower fee, base station fee, or otherwise;

(B) Measured by the amounts charged or received for services, the type of equipment or facilities deployed, or otherwise;

(C) Intended as compensation for the use of public rights of way, the right to conduct business, or otherwise; or

(D) Permitted or required to be separately stated on the customer's bill.

(4) This subsection shall not apply to:

(A) Ad valorem taxes levied pursuant to Chapter 5 of this title;

(B) Emergency telephone surcharges;

(C) Amounts charged for the rental or other use of property owned by a public body which is not in the public rights of way to a provider of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services;

(D) Amounts charged for the rental of space on a utility pole or tower owned by a political subdivision of this state, whether in the public right of way or not, for the attachment of equipment used in the provision of communications services;

(E) Permit fees generally imposed and applicable to a majority of all other businesses, which are not related to placing or maintaining facilities in or on public roads or rights of way;

(F) Taxes, charges, and fees which are ordinary and generally applicable which are validly levied and required to be paid by a person in a capacity other than its capacity as a provider of communications services. Such taxes, charges, and fees include, by way of example, and are not limited to, taxes, charges, and fees for water, sewer, electricity, sanitation, police, fire, or other such services, or any special district,

community improvement district, or similar such district services, or any taxes, fees, or assessments imposed to pay bonded indebtedness;

(G) Taxes imposed pursuant to paragraph (3) of subsection (a) of Code Section 48-18-1;

(H) Zoning and similar entitlement application fees, provided such fees do not exceed the lower of either the actual direct cost incurred by the county or municipality in the review of such applications or the amount generally imposed by the county or municipality for zoning and similar entitlement applications;

(I) Any civil penalties or fines, any criminal penalties or fines, or both; and

(J) Emergency telephone surcharges pursuant to Chapter 5 of Title 46.

(5) This subsection shall not preempt the provisions of Code Section 25-9-6 or 25-9-13 and shall not be construed to prohibit a municipality or county from seeking to recover the actual direct cost of repairing damage to public streets caused by a communications service provider's installation or repair of its facilities.

(b) In establishing guidelines and conditions for placing, constructing, repairing, or maintaining communications lines or facilities over, on, under, through, or along any public highways, public roads, public streets, or other public places or rights of way, neither the state nor any agency or political subdivision thereof shall discriminate between or among communications services providers in violation of Section 253(c) of the Communications Act of 1934, 47 U.S.C. Section 253(c).

48-18-7.

All or part of the proceeds received by a county from the levy of the tax authorized by this chapter may be expended for services provided within the unincorporated area of the county including within any special district created by a county for the provision of services in all or parts of the unincorporated area of the county."

SECTION 3-11.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended in Code Section 36-76-2, relating to definitions regarding expedited franchising of cable and video services, by revising paragraphs (1) and (8) as follows:

~~"(1) 'Advertising and home shopping services revenues' means the amount of a cable service provider or video service provider's nonsubscriber revenues from advertising disseminated through cable service or video service and home shopping services. The amount of such revenues that are allocable to a municipality or county shall be equal to the total amount of the cable service provider or video service provider's revenue received from such advertising and home shopping services multiplied by the ratio of the number~~

of such provider's subscribers located in such municipality or in the unincorporated area of such county to the total number of such provider's subscribers. Such ratio shall be based on the number of such provider's subscribers as of January 1 of the current year, except that in the first year in which services are provided, such ratio shall be computed as of the earliest practical date Reserved."

"(8) 'Gross revenues' means all revenues received from subscribers for the provision of cable service or video service, including franchise fees for cable service providers and video service providers, and advertising and home shopping services revenues and shall be determined in accordance with generally accepted accounting principles. Gross revenues shall not include:

(A) Amounts billed and collected as a line item on the subscriber's bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefor; provided, however, that for purposes of this Code section, such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services;

(B) Any revenue, such as bad debt, not actually received, even if billed;

(C) Any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable service or video programming;

(D) Any amounts attributable to refunds, rebates, or discounts;

(E) Any revenue from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, including, without limitation, revenues received from telecommunications services, information services other than cable service or video service, Internet access services, or directory or Internet advertising revenue, including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such noncable or nonvideo service is bundled with the sale of one or more cable services or video services and sold for a single nonitemized price, the term 'gross revenues' shall include only those revenues that are attributable to cable service or video service based on the provider's books and records; such revenues shall be allocated in a manner consistent with generally accepted accounting principles;

(F) Any revenue from late fees not initially booked as revenues, returned check fees, or interest;

~~(G) Any revenue from sales or rental of property, except such property as the subscriber shall be required to buy or rent exclusively from the cable service provider or video service provider to receive cable service or video service;~~
~~(H) Any revenue received from providing or maintaining inside wiring;~~
~~(I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or~~
~~(J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming Reserved.~~"

SECTION 3-12.

Said Title 36 is further amended by revising subsection (c) and paragraphs (4) and (8) of subsection (g) of Code Section 36-76-4, relating to PEG support, as follows:

"(c) The application for a state franchise shall consist of an affidavit signed by an officer or general partner of the applicant that contains each of the following:

(1) An affirmative declaration that the applicant shall comply with all applicable federal and state laws and regulations, including municipal and county ordinances and regulations regarding the placement and maintenance of facilities in the public right of way that are generally applicable to all users of the public right of way and specifically including Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act';

(2) A description of the applicant's service area, which description shall be sufficiently detailed so as to allow a local government to respond to subscriber inquiries, including the name of each municipal or county governing authority within the service area. For the purposes of this paragraph, an applicant may, in lieu of or as a supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area by making reference to the municipal or county governing authority to be served. If the geographical area is less than an entire municipality or county, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(3) The location of the applicant's principal place of business, the name or names of the principal executive officer or officers of the applicant, information concerning payment locations or addresses, and general information concerning equipment returns; and

(4) Certification that the applicant is authorized to conduct business in the State of Georgia and that the applicant possesses satisfactory financial and technical capability to provide cable service or video service and a description of such capabilities. Such certification shall not be required from an incumbent service provider or any cable

service provider or video service provider that has wireline facilities located in the public right of way as of January 1, 2008;~~and~~

~~(5) Notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code Section 36-76-6."~~

~~"(4) An incumbent service provider that elects to terminate a franchise under this subsection shall continue to provide PEG access support, as such existed on January 1, 2007, under the same terms as the terminated local franchise had it not been terminated until the local franchise would have expired under its own terms Reserved."~~

~~"(8) Each holder of a state franchise shall have the obligation to provide access to the same number of PEG channels pursuant to Code Section 36-76-8 and the additional PEG support cash payments specified in this paragraph for PEG access facilities in a service area as the incumbent service provider with the most subscribers in such service area as of January 1, 2007, which obligation shall continue until the local franchise would have expired under its own terms as specified in paragraph (4) of this subsection; provided, however, that if a local franchise would have expired before July 1, 2012, the holder of a state franchise shall continue to provide access to the same number of PEG channels until July 1, 2012, as provided in paragraph (5) of this subsection. To the extent such incumbent service provider provides PEG access support during said period in the form of periodic payments to the municipal or county governing authority equal to a percentage of gross revenue or a prescribed per subscriber amount, the state franchise holder shall be obligated to make the same periodic payments to the governing authority at the same time and equal to the same percentage of gross revenue or prescribed per subscriber amount. To the extent such incumbent service provider provides PEG access support to the applicable governing authority during said period in the form of a lump sum payment that remains unsatisfied as of January 1, 2008, the holder of a state franchise shall be obligated to provide a lump sum payment to said authority based on its proportion of the total number of cable service and video service subscribers of all service providers in such service area. No payments shall be due under this paragraph until the municipality or county notifies the respective providers, in writing, of the percentage of gross revenues, the per subscriber amount, or the lump sum payment amount and the expiration date of the local franchise obtaining such obligations. The holder of a state franchise may designate that portion of the subscriber's bill attributable to any fee imposed pursuant to this paragraph as a separate item on the bill and recover such amount from the subscriber."~~

SECTION 3-13.

Said Title 36 is further amended by revising Code Section 36-76-6, relating to franchise fees, as follows:

"36-76-6.

~~(a)(1) The holder of a state franchise, whether a cable service provider or a video service provider, shall pay to each affected local governing authority which complies with this Code section a franchise fee which shall not exceed the maximum percentage rate permitted in 47 U.S.C. Section 542(b) of such holder's gross revenues received from the provision of cable service or video service to subscribers located within such holder's service area.~~

~~(2) Each affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and each applicant for or holder of a state franchise with a service area located within that affected local governing authority's jurisdiction of the franchise fee rate that applies to the applicant for or holder of such state franchise. The applicant for or holder of a state franchise shall start assessing the franchise fee within 15 days of receipt of written notice from the affected local governing authority or its authorized designee and shall not be required to pay such franchise fee until the expiration of 15 days after receipt of such written notice. Any incumbent service provider who obtains a state franchise under paragraph (1) of subsection (g) of Code Section 36-76-4 shall pay its existing franchise fee during the 15 day period after receipt of written notice of the new fee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority. For purposes of this Code section, an authorized designee is an agent authorized by charter or other act of the affected local governing authority.~~

~~(3) Any affected local governing authority may change the franchise fee applicable to holders of a state franchise once every two years. The affected local governing authority or its authorized designee shall provide written notice to the Secretary of State and the applicants for or holders of a state franchise with a service area within that affected local governing authority's jurisdiction of the new franchise fee rate. The holder of a state franchise shall start assessing the new franchise fee within 45 days of receipt of written notice of the change from the affected local governing authority or its authorized designee. The franchise fee rate shall be uniformly applicable to all cable service providers and video service providers that obtain a state franchise within the affected local governing authority's jurisdiction.~~

~~(b) Such franchise fee shall be paid directly to each affected local governing authority within 30 days after the last day of each calendar quarter. Such payment shall be~~

considered complete if accompanied by a statement showing, for the quarter covered by the payment:

(1) ~~The aggregate amount of the state franchise holder's gross revenues, specifically identifying subscriber and advertising and home shopping services revenues under this chapter insofar as the franchise holder's existing billing systems include such capability, attributable to such municipality or unincorporated areas of the county, and~~

(2) ~~The amount of the franchise fee payment due to such municipality or county.~~

In the event that franchise fees are not paid on or before the dates specified above, then the affected local governing authority shall provide written notice to the franchise holder giving the cable service provider or video service provider 15 days from the date of the franchise holder's receipt of such notice to cure any such nonpayment. In the event franchise fees are not remitted to the affected local government authority postmarked on or before the expiration of the 15-day cure period, then the holder of the state franchise shall pay interest thereon at a rate of 1 percent per month to the affected local governing authority. If the 15-day cure period expires on Saturday, Sunday, or a legal holiday, the due date shall be the next business day. Moreover, the franchise holder shall not be assessed interest on late payments if franchise payments were submitted in error to a neighboring local governing authority.

(c) ~~Each affected local governing authority may, no more than once annually, audit the business records of the state franchise holder to the extent necessary to ensure payment in accordance with this Code section. For purposes of this subsection, an audit shall be defined as a comprehensive review of the records of the holder of a state franchise. Once any audited period of a state franchise holder has been the subject of a requested audit, such audited period of such state franchise holder shall not again be the subject of any audit. In the event of a dispute concerning the amount of the franchise fee due to an affected local governing authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected local governing authority seeking to recover an additional amount alleged to be due or by a state franchise holder seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates. Such time period may be extended by written agreement between the state issued franchise holder and such affected local governing authority. Each party shall bear the party's own costs incurred in connection with any such examination or dispute. In the event that an affected local governing authority files an action to recover alleged underpayments of franchise fees and a court of competent jurisdiction determines the cable service provider or video service provider has underpaid franchise fees due for any 12-month period by 10 percent or more, the cable service provider or video service provider may be required to pay the affected~~

local governing authority its reasonable costs associated with the audit along with any franchise fee underpayments; provided, however, late payments shall not apply.

(d) ~~The statements made pursuant to subsection (b) of this Code section and any records or information furnished or disclosed by a cable service provider or video service provider to an affected local governing authority pursuant to subsection (c) of this Code section shall be exempt from public inspection under Code Section 50-18-70.~~

(e) ~~No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim an affected local governing authority may have for further or additional sums payable as a franchise fee.~~

(f) ~~Any amounts overpaid by the holder of a state franchise shall be deducted from future franchise payments.~~

(g) ~~The holder of a state franchise may designate that portion of a subscriber's bill attributable to any franchise fee imposed pursuant to this Code section as a separate item on the bill and recover such amount from the subscriber; provided, however, that such separate listing shall be referred to as a 'franchise' or a 'franchise fee.'~~

(h) ~~No affected local governing authority shall levy any additional tax, license, fee, surcharge, or other assessment on a cable service provider or video service provider for or with respect to the use of any public right of way other than the franchise fee authorized by this Code section. Nor shall an affected local governing authority levy any other tax, license, fee, or assessment on a cable service provider or video service provider or its subscribers that is not generally imposed and applicable to a majority of all other businesses. The franchise fee authorized by this Code section shall be in lieu of any permit fee, encroachment fee, degradation fee, or other fee that could otherwise be assessed on a state issued franchise holder for the holder's occupation or work within the public right of way; provided, however, that nothing in this Code section shall restrict the right of any municipal or county governing authority to impose ad valorem taxes, sales taxes, or other taxes lawfully imposed on a majority of all other businesses within such municipality or county Reserved."~~

SECTION 3-14.

Said Title 36 is further amended in Code Section 36-76-10, relating to limitations on requirements for state franchise holders, by revising paragraph (4) as follows:

"(4) The enactment and enforcement of lawful and reasonable laws and rules and municipal or county ordinances and regulations concerning excavation, permitting, bonding requirements, indemnification requirements, and placement and maintenance of facilities in any public right of way that are generally applicable to all users of any public

right of way, ~~except to the extent specifically precluded by subsection (h) of Code Section 36-76-6; and~~"

SECTION 3-15.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities, is amended by revising Code Section 46-5-1, relating to due compensation provisions, as follows:

"46-5-1.

(a)(1) Any telegraph or telephone company chartered by the laws of this or any other state shall have the right to construct, maintain, and operate its lines and facilities upon, under, along, and over the public roads and highways and rights of way of this state with the approval of the county or municipal authorities in charge of such roads, highways, and rights of way. The approval of such municipal authorities shall be limited to the process set forth in paragraph (3) of subsection (b) of this Code section, and the approval of the county shall be limited to the permitting process set forth in subsection (c) of this Code section. ~~Upon making due compensation, as defined for municipal authorities in paragraph (9) of subsection (b) of this Code section and as provided for counties in subsection (c) of this Code section, a~~ A telegraph or telephone company shall have the right to construct, maintain, and operate its lines through or over any lands of this state; on, along, and upon the right of way and structures of any railroads; and, where necessary, under or over any private lands; and, to that end, a telegraph or telephone company may have and exercise the right of eminent domain.

(2) Notwithstanding any other law, a municipal authority or county shall not:

(A) Require any telegraph or telephone company to apply for or enter into an individual license, franchise, or other agreement with such municipal authority or county; or

(B) Impose any occupational license tax or fee as a condition of placing or maintaining lines and facilities in its public roads and highways or rights of way, except as specifically set forth in this Code section.

(3) A county or municipal authority shall not impose any occupational license, tax, fee, regulation, obligation, or requirement upon the provision of the services described in paragraphs (1) and (2) of Code Section 46-5-221, ~~including any occupational license, tax, fee, regulation, obligation, or requirement specifically set forth in any part of this chapter other than Part 4.~~

(4) Whenever a telegraph or telephone company exercises its powers under paragraph (1) of this subsection, the posts, arms, insulators, and other fixtures of its lines shall be erected, placed, and maintained so as not to obstruct or interfere with the ordinary use of such railroads or public roads and highways, or with the convenience of any landowners,

more than may be unavoidable. Any lines constructed by a telegraph or telephone company on the right of way of any railroad company shall be subject to relocation so as to conform to any uses and needs of such railroad company for railroad purposes. Such fixtures, posts, and wires shall be erected at such distances from the tracks of said railroads as will prevent any and all damage to said railroad companies by the falling of said fixtures, posts, or wires upon said railroad tracks; and such telegraph or telephone companies shall be liable to said railroad companies for all damages resulting from a failure to comply with this Code section.

(5) No county or municipal authority shall impose upon a telegraph or telephone company any build-out requirements on network construction or service deployment, and, to the extent that a telegraph or telephone company has elected alternative regulation pursuant to Code Section 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code Section 46-5-169 by providing communications service, at the company's option, through any affiliated companies and through the use of any technology or service arrangement; provided, however, that such company shall remain subject to its obligations as set forth in paragraphs (4) and (5) of Code Section 46-5-169.

(b)(1) Except as set forth in paragraph (6) of this subsection, any telegraph or telephone company that places or seeks to place lines and facilities in the public roads and highways or rights of way of a municipal authority shall provide to such municipal authority the following information:

(A) The name, address, and telephone number of a principal office and local agent of such telegraph or telephone company;

(B) Proof of certification from the Georgia Public Service Commission of such telegraph or telephone company to provide telecommunications services in this state;

(C) Proof of insurance or self-insurance of such telegraph or telephone company adequate to defend and cover claims of third parties and of municipal authorities;

(D) A description of the telegraph or telephone company's service area, which description shall be sufficiently detailed so as to allow a municipal authority to respond to subscriber inquiries. For the purposes of this paragraph, a telegraph or telephone company may, in lieu of or as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area within the boundaries of the municipal authority. If such service area is less than the boundaries of an entire municipal authority, the map shall describe the boundaries of the geographic area to be served in clear and concise terms;

(E) A description of the services to be provided;

(F) An affirmative declaration that the telegraph or telephone company shall comply with all applicable federal, state, and local laws and regulations, including municipal

ordinances and regulations, regarding the placement and maintenance of facilities in the public rights of way that are reasonable, nondiscriminatory, and applicable to all users of the public rights of way, including the requirements of Chapter 9 of Title 25, the 'Georgia Utility Facility Protection Act'; and

(G) A statement in bold type at the top of the application as follows: 'Pursuant to paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia Annotated, the municipal authority shall notify the applicant of any deficiencies in this application within 15 business days of receipt of this application.'

(2) If an application is incomplete, the municipal authority shall notify the telegraph or telephone company within 15 business days of the receipt of such application; such notice shall specifically identify all application deficiencies. If no such notification is given within 15 business days of the receipt of an application, such application shall be deemed complete.

(3) Within 60 calendar days of the receipt of a completed application, the municipal authority may adopt such application by adoption of a resolution or ordinance or by notification to the telegraph or telephone company. The failure of a municipal authority to adopt an application within 60 calendar days of the receipt of a completed application shall constitute final adoption of such application.

(4) If it modifies its service area or provisioned services identified in the original application, the telegraph or telephone company shall notify the municipal authority of changes to the service area or the services provided. Such notice shall be given at least 20 days prior to the effective date of such change. Such notification shall contain a geographic description of the new service area or areas and new services to be provided within the jurisdiction of the affected municipal authority, if any. The municipal authority shall provide to all telegraph and telephone companies located in its rights of way written notice of annexations and changes in municipal corporate boundaries which, for the purposes of this Code section, shall become effective 30 days following receipt.

(5) An application adopted pursuant to this Code section may be terminated by a telegraph or telephone company by submitting a notice of termination to the affected municipal authority. For purposes of this Code section, such notice shall identify the telegraph or telephone company, the affected service area, and the effective date of such termination, which shall not be less than 60 calendar days from the date of filing the notice of termination.

(6) Any telegraph or telephone company that has previously obtained permits for the placement of its facilities, has specified the name of such telegraph or telephone company in such permit application, has previously placed its facilities in any public right of way, and has paid and continues to pay any applicable municipal authority's ~~occupational~~

license taxes, permit fees, franchise fees, except as set forth in paragraph (8) of this subsection, or, if applicable, county permit fees shall be deemed to have complied with this Code section without any further action on the part of such telegraph or telephone company except as set forth in paragraphs (8), ~~(9)~~, ~~(11)~~, and ~~(17)~~ (10) of this subsection.

(7) Any telegraph or telephone company that has placed lines and facilities in the public roads and highways or rights of way of a municipal authority without first obtaining permits or otherwise notifying the appropriate municipal authority of its presence in the public roads and highways or rights of way shall provide the information required by paragraph (1) of this subsection, if applicable, to such municipal authority on or before October 1, 2008. As of October 1, 2008, if any telegraph or telephone company, other than those who meet the requirements of paragraph (6) of this subsection, has failed or fails to provide the information required by paragraph (1) of this subsection to the municipal authority in which its lines or facilities are located, such municipal authority shall provide written notice to such telegraph or telephone company giving that company 15 calendar days from the date of receipt of such notice to comply with subsection (b) of this Code section. In the event the 15 calendar day cure period expires without compliance, such municipal authority may petition the Georgia Public Service Commission which shall, after an opportunity for a hearing, order the appropriate relief.

~~(8)~~(A) In the event any telegraph or telephone company has an existing, valid municipal franchise agreement as of January 1, 2008, the terms and conditions of such existing franchise agreement, with the exception of any imposition of taxes, charges, or fees prohibited pursuant to Code Section 48-18-6, shall only remain effective and enforceable until the expiration of the existing agreement or December 31, 2012, whichever shall first occur.

~~(B) In the event any telegraph or telephone company is paying an existing occupational license tax or fee, based on actual recurring local services revenues, as of January 1, 2008, such payment shall be considered the payment of due compensation without further action on the part of the municipal authority. In the event that the rate of such existing tax or fee exceeds 3 percent of actual recurring local service revenues, that rate shall remain effective until December 31, 2012; thereafter, the payment by such telegraph or telephone company at the rate of 3 percent shall be considered the payment of due compensation without further action on the part of the municipal authority.~~

~~(9) As used in this Code section, 'due compensation' for a municipal authority means an amount equal to no more than 3 percent of actual recurring local service revenues received by such company from its retail, end user customers located within the boundaries of such municipal authority. 'Actual recurring local service revenues' means those revenues customarily included in the Uniform System of Accounts as prescribed~~

by the Federal Communications Commission for Class 'A' and 'B' companies; provided, however, that only the local service portion of the following accounts shall be included:

(A) ~~Basic local service revenue, as defined in 47 C.F.R. 32.5000;~~

(B) ~~Basic area revenue, as defined in 47 C.F.R. 32.5001;~~

(C) ~~Optional extended area revenue, as defined in 47 C.F.R. 32.5002;~~

(D) ~~Public telephone revenue, as defined in 47 C.F.R. 32.5010;~~

(E) ~~Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however, that the portion of such accounts attributable to audio and video program transmission service where both terminals of the private line are within the corporate limits of the municipal authority shall not be included;~~

(F) ~~Other local exchange revenue, as defined in 47 C.F.R. 32.5060;~~

(G) ~~Local exchange service, as defined in 47 C.F.R. 32.5069;~~

(H) ~~Network access revenue, as defined in 47 C.F.R. 32.5080;~~

(I) ~~Directory revenue, as defined in 47 C.F.R. 32.5320; provided, however, that the portion of such accounts attributable to revenue derived from listings in portion of directories not considered white pages shall not be included;~~

(J) ~~Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided, however, that the portion of such accounts attributable to revenues derived from private lines shall not be included; and~~

(K) ~~Uncollectible revenue, as defined in 47 C.F.R. 32.5300.~~

Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory and competitively neutral manner.

(10) ~~Any due compensation paid to municipal authorities pursuant to paragraph (9) of this subsection shall be in lieu of any other permit fee, encroachment fee, degradation fee, disruption fee, business license tax, occupational license tax, occupational license fee, or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92 et seq. or any other provision of law regardless of nomenclature.~~

(11) ~~A telegraph or telephone company with facilities in the public rights of way of a municipal authority shall begin assessing due compensation, as defined in subsection (a) of this Code section, on subscribers on the date that service commences unless such company is currently paying a municipal authority's occupational license tax. Such due compensation shall be paid directly to each affected municipal authority within 30 calendar days after the last day of each calendar quarter. In the event that due compensation is not paid on or before 30 calendar days after the last day of each calendar quarter, the affected municipal authority shall provide written notice to such telegraph or telephone company, giving such company 15 calendar days from the date such company~~

receives such notice to cure any such nonpayment. In the event the due compensation remitted to the affected municipal authority is not postmarked on or before the expiration of the 15-day cure period, such company shall pay interest thereon at a rate of 1 percent per month to the affected municipal authority. If the 15-day cure period expires on a Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day. A telegraph or telephone company shall not be assessed any interest on late payments if due compensation was submitted in error to a neighboring municipal authority.

~~(12)~~ Each municipal authority may, no more than once annually, audit the business records of a telegraph or telephone company to the extent necessary to ensure payment in accordance with this Code section. As used in this Code section, 'audit' means a comprehensive review of the records of a company which is reasonably related to the calculation and payment of due compensation. Once any audited period of a company has been the subject of a requested audit, such audited period of such company shall not again be the subject of any audit. In the event of a dispute concerning the amount of due compensation due to an affected municipal authority under this Code section, an action may be brought in a court of competent jurisdiction by an affected municipal authority seeking to recover an additional amount alleged to be due or by a company seeking a refund of an alleged overpayment; provided, however, that any such action shall be brought within three years following the end of the quarter to which the disputed amount relates, although such time period may be extended by written agreement between the company and such affected municipal authority. Each party shall bear the party's own costs incurred in connection with any dispute. The auditing municipal authority shall bear the cost of the audit; provided, however, that if an affected municipal authority files an action to recover alleged underpayments of due compensation and a court of competent jurisdiction determines the company has underpaid due compensation due for any 12-month period by 10 percent or more, such company shall be required to pay such municipal authority's reasonable costs associated with such audit along with any due compensation underpayments; provided, further, that late payments shall not apply. All undisputed amounts due to a municipal authority resulting from an audit shall be paid to the municipal authority within 45 days, or interest shall accrue.

~~(13)~~(9) The information provided pursuant to paragraph (1) of this subsection and any records or information furnished or disclosed by a telegraph or telephone company to an affected municipal authority pursuant to paragraph ~~(12)~~ of this subsection shall be exempt from public inspection under Code Section 50-18-70. It shall be the duty of such telegraph or telephone company to mark all such documents as exempt from Code Section 50-18-70, et seq., and the telegraph or telephone company shall defend,

indemnify, and hold harmless any municipal authority and any municipal officer or employee in any request for, or in any action seeking, access to such records.

~~(14) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim an affected municipal authority may have for further or additional sums payable as due compensation.~~

~~(15) Any amounts overpaid by a company as due compensation shall be deducted from future due compensation owed.~~

~~(16) A telegraph or telephone company paying due compensation pursuant to this Code section may designate that portion of a subscriber's bill attributable to such charge as a separate line item of the bill and recover such amount from the subscriber.~~

~~(17)~~(10) Nothing in this Code section shall affect the authority of a municipal authority to require telegraph or telephone companies accessing the public roads and highways and rights of way of a municipal authority to obtain permits and otherwise comply with the reasonable regulations established pursuant to paragraph (10) of subsection (a) of Code Section 32-4-92.

~~(18) If a telegraph or telephone company does not have retail, end user customers located within the boundaries of a municipal authority, then the payment by such company at the same rates that such payments were being made as of January 1, 2008, to a municipal authority for the use of its rights of way shall be considered the payment of due compensation; provided, however, that at the expiration date of any existing agreement for use of such municipal rights of way or December 31, 2012, whichever is earlier, the payment at rates in accordance with the rates set by regulations promulgated by the Department of Transportation shall be considered the payment of due compensation. Provided, further, that if a telegraph or telephone company begins providing service after January 1, 2008, and such telegraph or telephone company does not have retail, end user customers located within the boundaries of a municipal authority, the payment by such company at rates in accordance with the rates set by regulations promulgated by the Department of Transportation to a municipal authority for the use of its rights of way shall be considered the payment of due compensation.~~

~~(19) Nothing in this Code section shall be construed to affect any franchise fee payments which were in dispute on or before January 1, 2008.~~

(c) If a telegraph or telephone company accesses the public roads and highways and rights of way of a county and such county requires such telegraph or telephone company to pay due compensation, such due compensation shall be limited to an administrative cost recoupment fee which shall not exceed such county's direct, actual costs incurred in its permitting process, including issuing and processing permits, plan reviews, physical inspection, and direct administrative costs; and such costs shall be demonstrable and shall

2299 be equitable among applicable users of such county's roads and highways or rights of way.
 2300 Permit fees shall not include the costs of highway or rights of way acquisition or any
 2301 general administrative, management, or maintenance costs of the roads and highways or
 2302 rights of way and shall not be imposed for any activity that does not require the physical
 2303 disturbance of such public roads and highways or rights of way or does not impair access
 2304 to or full use of such public roads and highways or rights of way. Nothing in this Code
 2305 section shall affect the authority of a county to require a telegraph or telephone company
 2306 to comply with reasonable regulations for construction of telephone lines and facilities in
 2307 public highways or rights of way pursuant to the provisions of paragraph (6) of Code
 2308 Section 32-4-42."

2309 **PART IV**
 2310 **SECTION 4-1.**

2311 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 2312 amended in Code Section 48-7-1, relating to definitions regarding income taxes, by revising
 2313 subparagraph (D) of paragraph (11) as follows:

2314 "(D) Every individual who is not a resident of this state for income tax purposes and
 2315 who makes a withdrawal as provided for in paragraph ~~(10)~~ (9) of subsection ~~(b)~~ (c) of
 2316 Code Section 48-7-27; and"

2317 **SECTION 4-2.**

2318 Said Title 48 is further amended in Code Section 48-7-30, relating to taxation of nonresident
 2319 income, by revising subsection (a) as follows:

2320 "(a) The tax imposed by this chapter shall apply to the entire net income of a taxable
 2321 nonresident derived from employment, trade, business, professional, or other activity for
 2322 financial gain or profit performed or carried on within this state including, but not limited
 2323 to, the rental of real or personal property located within this state or for use within this
 2324 state, the sale, exchange, or other disposition of tangible or intangible property having a
 2325 situs in this state, the receipt of proceeds of any lottery prize awarded by the Georgia
 2326 Lottery Corporation, and withdrawals of contributions to a savings trust account under
 2327 Article 11 of Chapter 3 of Title 20 which are required to be included in taxable net income
 2328 as provided in subparagraph ~~(b)(10)(C)~~ (c)(9)(C) of Code Section 48-7-27."

2329 **SECTION 4-3.**

2330 Said Title 48 is further amended in Code Section 48-7-30, relating to taxation of nonresident
 2331 income, by revising paragraph (2) of subsection (d) as follows:

"(2) Expenses allowable to a taxable nonresident as provided in paragraph (1) of this subsection shall be allowable only to the extent that the expenses are attributable to the production of income allocable to and taxable by this state. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, alimony, medical expenses, ~~the optional standard deduction, personal exemptions,~~ and credits for dependents, the taxable nonresident shall be allowed deductions for such deductions essentially personal in nature in the ratio that the gross income allocated to this state bears to the total gross income of the taxable nonresident computed as if the taxable nonresident were a resident of this state. The commissioner may accept total federal gross income as the equivalent of total Georgia gross income for purposes of this allocation."

PART V

SECTION 5-1.

Except as otherwise provided in this part, this Act shall become effective upon this Act's approval by the Governor or upon its becoming law without such approval.

SECTION 5-2.

(a) Part I of this Act shall become effective January 1, 2012, and shall be applicable to all taxable years beginning on or after January 1, 2012.

(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to January 1, 2012.

(c) Part I of this Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to January 1, 2012.

SECTION 5-3.

(a) Except as otherwise provided in this section, Part II of this Act shall become effective upon this Act's approval by the Governor or upon its becoming law without such approval.

(b) Sections 2-1, 2-2, 2-3, 2-5, 2-6, 2-7, and 2-8 of this Act shall become effective on January 1, 2012.

SECTION 5-4.

Part III of this Act shall become effective on January 1, 2012.

2363 **SECTION 5-5.**

2364 Part IV of this Act shall become effective on January 1, 2012, and shall be applicable to all
2365 taxable years beginning on or after that date.

2366 **PART VI**

2367 **SECTION 6-1.**

2368 All laws and parts of laws in conflict with this Act are repealed.