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Act No. 411

House Bill 846 (AS PASSED HOUSE AND SENATE)

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

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to allow political subdivisions to elect to repay over a period of time certain final refund amounts for refunds of local significance due to overpayments of sales and use taxes by a taxpayer through a direct pay permit; to require the Department of Revenue to establish and maintain a direct pay permit program that permits a qualified taxpayer to accrue and pay directly to the department certain state and local sales and use taxes; to provide definitions; to provide for a tax credit for certain personal protective equipment (PPE) manufacturers; to provide for conditions and limitations; to provide for related matters; to revise the use or calculation of certain tax credits for certain taxable years; to provide for effective dates and applicability; 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 paragraph (14) of Code Section 48-1-2, relating to definitions regarding revenue and taxation, as follows:

"(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years beginning on or after January 1, ~~2018~~ 2019, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before ~~January 1, 2019~~ March 27, 2020, except that Section 108(i), Section 163(e)(5)(F), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k), Section 168(m), Section 168(n), Section 179(d)(1)(B)(ii), Section 179(f), Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), and Section 172(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343, and except that Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in effect before the 2009 enactment of federal Public Law 111-5, and except that Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and except that Section 118, Section 163(j), and Section 382(k)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the enactment of federal Public Law 115-97, and except that all provisions in federal Public Law 116-136 (CARES Act) that change or affect in any manner Section 172 and Section 461(l) shall be treated as if they were not in effect, and except that the limitations provided in Section 179(b)(1) shall be $250,000.00 for tax years beginning in 2010, shall be $250,000.00 for tax years beginning in 2011, shall be $250,000.00 for tax years beginning in 2012, shall be $250,000.00 for tax years beginning in 2013, and shall be $500,000.00 for tax years beginning in 2014, and except that the limitations provided in Section 179(b)(2) shall be $800,000.00 for tax years beginning in 2010, shall be $800,000.00 for tax years beginning in 2011, shall be $800,000.00 for tax years beginning in 2012, shall be $800,000.00 for tax years beginning in 2013, and shall be $2 million for tax years beginning in 2014, and provided that Section 1106 of federal Public Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2015)' shall be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2015),' and notwithstanding any other provision in this title, no interest shall be refunded with respect to any claim for refund filed pursuant to Section 1106 of federal Public Law 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35' shall be substituted for the phrase 'section 6511(a) of the Internal

Revenue Code of 1986' and the phrase 'such section' shall be substituted for the phrase 'such subsection.' In the event a reference is made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to ~~January 1, 2019~~ March 27, 2020, the term means the provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term used in this title shall have the same meaning as when used in a comparable provision or context in the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after January 1, ~~2018~~ 2019, provisions of the Internal Revenue Code of 1986, as amended, which were as of ~~January 1, 2019~~ March 27, 2020, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

SECTION 1-2.

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

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

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

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

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

(iii) The provisions of this subparagraph shall only apply to refund claims of local significance and resulting final refund amounts due to a taxpayer that made an overpayment of local sales and use taxes pursuant to a direct pay permit issued in accordance with Code Section 48-8-49.1."

SECTION 1-3.

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

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

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

SECTION 1-4.

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

"48-8-49.1.

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

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

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

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

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

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

(ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except Satellite);

(iii) National Industry Code 517410 - Satellite Telecommunications;

(iv) NAICS Industry Code 48111 - Scheduled Air Transportation;

(v) NAICS Industry Code 48211 - Rail Transportation;

(vi) Industry Group Code 4841 - General Freight Trucking;

(vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction;

(viii) Economic Sector Code 22 - Utilities; or

(ix) Economic Sector Codes 31-33 - Manufacturing.

(b) The department shall establish and maintain a direct pay permit program for the purpose of enabling qualified taxpayers to pay directly to the department taxes that are imposed by this chapter on the qualified taxpayers; provided, however, that such program shall exclude taxation on the following:

(1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section 48-8-2;

(2) Purchases of meals, beverages, or tobacco;

(3) Purchases of local telephone services, transportation of persons, or lodging accommodations and ancillary charges associated with lodging accommodations;

(4) Purchases to places of amusement, entertainment, or athletic events; admissions to displays or exhibitions; participation in games or sports; or charges for the use of amusement devices; or

(5) Rental charges for periods of 31 days or less for motor vehicles required to be titled in this state.

(c) The commissioner shall not require a qualified taxpayer to waive interest on refunds made in accordance with Code Section 48-2-35 as a condition for obtaining a direct pay permit.

(d) The department shall, at a minimum, provide for the following by rule or regulation:

(1) Certain attestations to be made by a qualified taxpayer in its application for a direct pay permit;

(2) Responsibilities and duties for holders of direct pay permits;

(3) Transferability or nontransferability of direct pay permits;

(4) Expiration and renewal of direct pay permits; and

(5) Revocation of direct pay permits."

PART II

SECTION 2-1.

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

"48-7-40.1A.

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

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

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

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

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

(b)(1) When any PPE manufacturer is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1, there shall be allowed an additional $1,250.00 job tax credit against the tax imposed under this article for those qualifying jobs to the extent they are

engaged in the qualifying activity of manufacturing PPE in this state during the taxable year. Such PPE manufacturer shall be eligible for such additional job tax credit at an individual establishment of the business. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity of manufacturing PPE in this state shall be eligible for such additional job tax credit.

(2) The additional tax credit provided for in paragraph (1) of this subsection shall be claimed separately from the job tax credit under Code Section 48-7-40 or 48-7-40.1 but shall, except as provided in this Code section, be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that the amount allowed to offset taxes imposed by this article shall be 100 percent; and provided, further, that when such tax credit exceeds a business enterprise's liability for taxes imposed by this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 in the same manner as provided under Code Section 48-7-40 or 48-7-40.1 but not subject to the dollar limitations provided therein. Additionally, such tax credit shall be disallowed during any year that a business enterprise does not qualify as a PPE manufacturer.

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

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

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

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

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

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

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

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

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

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

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

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

PART III

SECTION 3-1.

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

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

SECTION 3-2.

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

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

SECTION 3-3.

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

"(i) For the taxable years beginning in 2020 and 2021, a taxpayer that in the taxable year beginning on or after January 1, 2019, and before December 31, 2019, was claiming a tax credit under this Code section shall have the option to utilize the number of new quality

jobs that the taxpayer claimed in such taxable year, or calculate the number of new quality jobs based upon subsection (d) of this Code section."

PART IV

SECTION 4-1.

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

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

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

SECTION 4-2.

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

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