

House Bill 283

By: Representatives Knight of the 130th, Harrell of the 106th, and Williamson of the 115th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to revise the definition of the terms "Internal Revenue Code" and "Internal
3 Revenue Code of 1986" and thereby incorporate certain provisions of federal law into
4 Georgia law; to provide for partnership proposed adjustments and assessments and related
5 appeals; to provide for an effective date and applicability; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
13 beginning on or after January 1, ~~2015~~ 2016, the provisions of the United States Internal
14 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
15 January 1, ~~2016~~ 2017, except that Section 85(c), Section 108(i), Section 163(e)(5)(F),
16 Section 164(a)(6), Section 164(b)(6), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii),
17 Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section
18 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 168(m),
19 Section 168(n), Section 172(b)(1)(H), Section 172(b)(1)(J), Section 172(j), Section
20 179(f), Section 199, Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section
21 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal
22 Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and
23 except that Section 168(e)(7), Section 172(b)(1)(F), Section 172(i)(1), and Section 1221
24 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect
25 before the 2008 enactment of federal Public Law 110-343, and except that Section
26 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in

27 effect before the 2009 enactment of federal Public Law 111-5, and except that Section
 28 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and
 29 except that the limitations provided in Section 179(b)(1) shall be \$250,000.00 for tax
 30 years beginning in 2010, shall be \$250,000.00 for tax years beginning in 2011, shall be
 31 \$250,000.00 for tax years beginning in 2012, shall be \$250,000.00 for tax years
 32 beginning in 2013, and shall be \$500,000.00 for tax years beginning in 2014, and except
 33 that the limitations provided in Section 179(b)(2) shall be \$800,000.00 for tax years
 34 beginning in 2010, shall be \$800,000.00 for tax years beginning in 2011, shall be
 35 \$800,000.00 for tax years beginning in 2012, shall be \$800,000.00 for tax years
 36 beginning in 2013, and shall be \$2 million for tax years beginning in 2014, and provided
 37 that Section 1106 of federal Public Law 112-95 as amended by federal Public Law
 38 113-243 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35 (or,
 39 if later, November 15, 2015)' shall be substituted for the phrase 'section 6511(a) of such
 40 Code (or, if later, April 15, 2015),' and notwithstanding any other provision in this title,
 41 no interest shall be refunded with respect to any claim for refund filed pursuant to Section
 42 1106 of federal Public Law 112-95-, and provided that subsection (b) of Section 3 of
 43 federal Public Law 114-292 shall be treated as if it is in effect, except the phrase 'Code
 44 Section 48-2-35' shall be substituted for the phrase 'section 6511(a) of the Internal
 45 Revenue Code of 1986' and the phrase 'such section' shall be substituted for the phrase
 46 'such subsection.' In the event a reference is made in this title to the Internal Revenue
 47 Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to
 48 January 1, ~~2016~~ 2017, the term means the provisions of the Internal Revenue Code or the
 49 Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided
 50 in this title, any term used in this title shall have the same meaning as when used in a
 51 comparable provision or context in the Internal Revenue Code of 1986, as amended. For
 52 taxable years beginning on or after January 1, ~~2015~~ 2016, provisions of the Internal
 53 Revenue Code of 1986, as amended, which were as of January 1, ~~2016~~ 2017, enacted into
 54 law but not yet effective shall become effective for purposes of Georgia taxation on the
 55 same dates upon which they become effective for federal tax purposes."

56 **SECTION 2.**

57 Said title is further amended by adding a new paragraph to subsection (b) of Code Section
 58 48-7-21, relating to taxation of corporations, as follows:

59 "(17) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53."

60

SECTION 3.

61 Said title is further amended by adding a new paragraph to subsection (b) of Code Section
62 48-7-27, relating to computation of taxable net income, as follows:

63 "(14) Georgia taxable net income shall be adjusted as provided in Code Section 48-7-53."

64

SECTION 4.

65 Said title is further amended by revising Code Section 48-7-53, relating to partnership
66 returns, as follows:

67 "48-7-53.

68 (a) Every partnership including, but not limited to, a foreign partnership, the individual
69 members of which are subject to taxation under this chapter, shall make a return for each
70 taxable year. The return shall state specifically the items of the partnership's gross income
71 and the deductions allowed by this chapter, shall include the names and addresses of the
72 individuals who would be entitled to share in the net income of the partnership if the net
73 income were distributed, and shall specify the amount of the distributive share of each
74 individual. The return shall be sworn to by ~~any one of the partners~~ the partnership
75 representative specified in subsection (b) of this Code section. The term 'partnership'
76 includes, but is not limited to, a syndicate, group, pool, joint venture, or other
77 unincorporated organization through or by means of which any business, financial
78 operation, or venture is carried on and which is not, within the meaning of this chapter, a
79 trust, estate, or corporation. The term 'partner' includes, but is not limited to, a member in
80 such syndicate, group, pool, joint venture, or organization.

81 (b)(1) For taxable years beginning after December 31, 2017, any adjustment by the
82 commissioner or the Commissioner of Internal Revenue that results in a change to
83 Georgia taxable income or other tax attributes, including but not limited to credits, of a
84 partnership, which is required to file returns pursuant to subsection (a) of this Code
85 section, for a partnership taxable year, and any partner's distributive share thereof, shall
86 be determined, any tax attributable thereto shall be assessed and collected, and the
87 applicability of any interest, penalty, or additional amount which relates to an adjustment
88 to Georgia taxable income, attributes, or shares shall be determined, at the partnership
89 level in the same manner as provided by Section 6221 of the Internal Revenue Code of
90 1986 and the regulations thereunder for the reviewed year unless a different treatment is
91 specifically provided in this chapter. The additional provisions of Section 6221, and the
92 provisions of Section 6222, Section 6223, Sections 6225 through 6227, and Section 6241
93 of the Internal Revenue Code of 1986 and the regulations thereunder shall also apply in
94 the same manner as provided in such sections unless a different treatment is specifically
95 provided in this chapter. For purposes of applying such sections, due account shall be

96 made for differences in federal and Georgia terminology, substitution of 'Secretary' with
97 'Commissioner', substitution of 'section 6234' with 'Code Section 48-7-53', any reference
98 to a court shall be substituted with the courts specified in Code Section 48-2-59, and other
99 obvious differences. For purposes of this subsection, the terms 'imputed underpayment,'
100 'reviewed year,' 'administrative adjustment request,' 'adjustment year,' and any other terms
101 used in this subsection which are the same as are used in the Internal Revenue Code of
102 1986 shall have the same meaning as used in the Internal Revenue Code of 1986. Any
103 elections made under the Internal Revenue Code of 1986 relating to such sections shall
104 also apply for purposes of this Code section. The modification allowed by Section
105 6225(c)(2) of the Internal Revenue Code of 1986 shall be considered an election for
106 purposes of this subsection. Except as provided in this subsection, such elections shall
107 only be made if the elections were made under the Internal Revenue Code of 1986.

108 (2) The person designated by the partnership to be the partnership representative
109 pursuant to Section 6223 of the Internal Revenue Code of 1986 for federal purposes shall
110 be the partnership representative for purposes of this Code section. In any case in which
111 a designation is not in effect, the commissioner may select any person as the partnership
112 representative.

113 (3) The adjustment provided by Section 6225 of the Internal Revenue Code of 1986 shall
114 be determined as provided in such section but shall be based on the Georgia taxable
115 income or other tax attributes of the partnership as determined pursuant to this chapter.
116 The modification allowed by Section 6225(c)(2) of the Internal Revenue Code of 1986
117 shall only be allowed for purposes of this subsection to the extent the partners elect to file
118 federal amended returns and have either filed a Georgia amended return or been included
119 in an amended composite return as is required by this subsection. In addition to the
120 modifications provided by Section 6225(c) of the Internal Revenue Code of 1986, the
121 partnership may determine the imputed underpayment without regard to the portion
122 thereof that the partnership demonstrates is attributable directly or indirectly to a partner
123 that is exempt pursuant to paragraph (2) of subsection (a) of Code Section 48-7-25 or that
124 is exempt pursuant to subsection (c) of Code Section 48-7-24. Any imputed
125 underpayment shall include the entire adjustment amount attributable to Georgia resident
126 partners and for nonresident partners, the adjustment amount allocated and apportioned
127 to Georgia pursuant to Code Section 48-7-31. Such partners shall be those partners
128 which are partners in the reviewed year. The apportionment ratio used for such purposes
129 shall be the ratio as adjusted for the reviewed year. To determine the adjustment amount
130 attributable to each partner for purposes of the foregoing computation, the adjustment
131 shall be attributed to each partner in the reviewed year based on the partner's direct
132 distributive share percentage used for federal income tax purposes; provided, however,

133 that if any separately reported item, such as guaranteed payments, is allocated directly to
134 a partner, such partner's direct distributive share percentage shall be adjusted accordingly.
135 With respect to any partner which is included in the computation of the tax paid by the
136 partnership pursuant to this subsection, such partner shall be relieved of reporting and
137 paying tax on such adjustments and any such adjustment shall not be included in Georgia
138 taxable income of such partner. With respect to any partner which is a partnership,
139 fiduciary or Subchapter 'S' corporation, its partners, beneficiaries, or shareholders,
140 respectively, shall be relieved of reporting and paying tax on such adjustments and any
141 such adjustment shall not be included in Georgia taxable income of such partners,
142 beneficiaries, or shareholders.

143 (4) Any adjustment that does not result in an imputed underpayment for purposes of this
144 subsection, including an adjustment that results in an imputed underpayment for federal
145 purposes but not for purposes of this subsection, shall be passed to the partners and be
146 taken into account by such partners in the reviewed year or the year affected by the
147 reviewed year if the partner has a different taxable year than the partnership. Any income
148 subtracted from federal taxable income for the adjustment year pursuant to Section 6225
149 of the Internal Revenue Code of 1986 shall be added to the taxpayer's Georgia taxable
150 income for the adjustment year.

151 (5) Any tax, interest, and penalties shall be assessed on and collected for the reviewed
152 year from the partnership, or assessed on and collected from the partners if the adjustment
153 has been passed to the partners or the partners have elected to file federal amended
154 returns and have filed Georgia amended returns for the reviewed year as is allowed by
155 Section 6225(c)(2) of the Internal Revenue Code of 1986, as if it is a tax imposed by this
156 chapter. Any penalties or interest imposed on the partnership or its partners shall be as
157 provided and at the rates in this title except that penalties and interest imposed on the
158 partnership shall be from the day after the due date of the reviewed year return without
159 extension. With respect to any adjustment to Georgia taxable income or other tax
160 attributes of a partnership, and any partner's distributive share thereof, the period of
161 limitations on making adjustments and assessments for the partnership and partners and
162 claiming refunds for the partners shall be the time as provided by this title. Regardless
163 of whether the tax is paid by the partners or the partnership, the partnership shall file an
164 amended income tax return for the reviewed year. In the event the adjustment has been
165 passed to the partners or the partners have elected to file federal amended returns for the
166 reviewed year, unless such partners were originally included in a composite return as is
167 allowed by Code Section 48-7-129, the partners shall file amended Georgia returns for
168 the reviewed year. If such partner is a partnership or Subchapter 'S' corporation and the
169 adjustment was passed through to the partner for purposes of this chapter, any direct or

170 indirect owner who was required to recognize the adjustment for purposes of this chapter
171 shall also file an amended Georgia return for the reviewed year reporting such changes.
172 Any resulting tax, interest, and penalty shall be paid accordingly. Each such partner or
173 owner shall adjust its reviewed year income accordingly.

174 (6) The rate of tax imposed on the partnership shall be 6 percent.

175 (7) If a partnership is audited by the Commissioner of Internal Revenue, the provisions
176 of subsection (e) of Code Section 48-7-82 shall apply to the department and the
177 partnership and its partners.

178 (8) The commissioner shall issue notices and the partnership shall appeal as provided by
179 this title. Any adjustment made at the partnership level may not be appealed by the
180 partners.

181 (9) If the adjustment has been passed to the partners or the partners have elected to file
182 federal amended returns for the reviewed year as is allowed by Section 6225(c)(2) of the
183 Internal Revenue Code of 1986, only with respect to partners that were originally
184 included in a composite return as is allowed by Code Section 48-7-129, the partnership
185 shall amend the composite return for the adjustments and pay any tax, interest, or penalty
186 or claim a refund as the case may be.

187 (10) Any tax paid by the partnership pursuant to this subsection shall be considered a tax
188 on the partnership for purposes of this chapter. If the Georgia tax is determined and paid
189 at the partnership level pursuant to this subsection, in lieu of the credit allowed by Code
190 Section 48-7-28 and in lieu of the subtraction allowed by subsection (d) of Code Section
191 48-7-27, a direct or indirect Georgia resident partner in the reviewed year who is a natural
192 person or a fiduciary, shall be eligible to claim a refundable credit in the reviewed year
193 if such partner pays additional tax to another state which is based on net income or the
194 partnership pays additional tax to another state which is based on net income. For
195 purposes of Code Section 48-2-35, such credit shall be considered a credit listed in
196 Article 2 of this chapter. The credit shall be equal to the additional tax paid to such other
197 state, as a result of the imputed underpayment, by the partnership or partner reduced by
198 any additional credits allowed by such other state and shall be limited as provided by this
199 paragraph. If such amount is paid by the partnership, the commissioner shall by
200 regulation provide how to determine the amount attributable to each partner which was
201 included in such other state's return. In no event shall the total amount of the tax credit
202 for a taxable year exceed the imputed underpayment pursuant to this subsection which
203 is attributable to such other state's increased net income. The commissioner shall by
204 regulation provide how to determine such amount and how to determine the amount
205 attributable to each partner which was included in the computation of the imputed
206 underpayment pursuant to this subsection. Nonresident partners shall be attributed an

207 amount but shall not be eligible for the credit. Notwithstanding Code Section 48-2-35,
 208 any tax credit claimed pursuant to this paragraph shall be claimed within the later of the
 209 time provided by this title or within one year of the final determination of the imputed
 210 underpayment.

211 (11) An administrative adjustment request filed by the partnership with the Internal
 212 Revenue Service or the commissioner shall be treated in the reviewed year in a similar
 213 manner as provided by this subsection except that:

214 (A) Such request shall not be subject to the provisions of Code Section 48-7-82 for any
 215 purpose;

216 (B) The period of limitations on making adjustments and assessments, claiming
 217 refunds, and claiming the credit provided by this subsection shall be as provided by this
 218 title; and

219 (C) Any partner which is itself a partnership or a corporation which is not exempt
 220 pursuant to Code Section 48-7-25 and which is not a Subchapter 'S' corporation shall
 221 not be included. Such excluded partnership shall be eligible to file an administrative
 222 adjustment request provided such partner does not have partners which are partnerships
 223 or which are corporations which are not exempt pursuant to Code Section 48-7-25 and
 224 which are not Subchapter 'S' corporations.

225 (c) The commissioner shall be authorized to promulgate any rules and regulations
 226 necessary to implement and administer the provisions of this Code section."

227 **SECTION 4.**

228 This Act shall become effective upon its approval by the Governor or upon its becoming law
 229 without such approval. Section 1 of this act shall be applicable to all taxable years beginning
 230 on or after January 1, 2016.

231 **SECTION 5.**

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