

The Senate Finance Committee offered the following substitute to HB 1198:

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 change the definition of taxable nonresident for income tax purposes; to revise and change certain provisions regarding income tax credits for low-income residents, to repeal certain provisions regarding legislative findings and purposes; to change certain provisions regarding the claiming and allowing of such tax credits; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(11) 'Taxable nonresident' means:

(A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engages within this state, by himself or herself or by means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit including, but not limited to, the rental of real or personal property located within this state or for use within this state.

'Taxable nonresident' does not include a legal resident of another state whose only activity for financial gain or profit in this state consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed the lesser of 5 percent of the income received by the person for performing services in all places during any taxable year or \$5,000.00;

(B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of tangible property which at the time of the sale, exchange, or other disposition has a taxable situs within this state or who sells, exchanges, or otherwise disposes of intangible personal property which has acquired at the time of the sale, exchange, or other disposition a business or commercial situs within this state;

(C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery prize awarded by the Georgia Lottery Corporation; ~~and~~

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

(E) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engaged in a prior year within this

state, by himself or herself, in activity for financial gain or profit and who receives income from such activity in the form of deferred compensation or income from the exercise of stock options and such income exceeds the lesser of 5 percent of the income received by the person in all places during the taxable year or \$5,000.00; provided, however, that this subparagraph shall not apply in the case of an individual who receives such income when the state is prohibited from taxing such income pursuant to federal law."

SECTION 2.

Said title is further amended by repealing and reserving Code Section 48-7A-1, relating to legislative findings and purposes regarding income tax credits for low-income residents.

SECTION 3.

Said title is further amended in Code Section 48-7A-3, relating to claiming and allowing low-income tax credits, by revising subsections (a) and (c) as follows:

"(a) Except as otherwise provided in subsection (e) of this Code section, each resident taxpayer who files an individual income tax return for a taxable year and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Georgia individual income tax purposes may claim a tax credit against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that:

- (1) A husband and wife filing a joint return shall each be deemed a dependent for purposes of such joint return; and
- (2) A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed; ~~and~~
- ~~(3) A resident individual who has no income or no income taxable under Chapter 7 of this title and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Georgia individual income tax purposes may also claim a tax credit as set forth in this Code section."~~

"(c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which it is properly claimed. ~~In the event the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer, provided that a tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; provided, further, that no refunds or payment on account of the tax credit allowed by this Code section shall be made for amounts less than \$1.00; provided, however,~~ that in no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall not be allowed to be carried forward to the taxpayer's succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January

1, 2010.

SECTION 5.

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