



Economic Development ADVISORY ■

APRIL 8, 2013

Several Economic Development Bills Pass as the Georgia General Assembly Wraps Up Its 2013 Regular Session

The Georgia General Assembly's 2013 Regular Session wrapped up on March 28, 2013, but not before a number of bills that should have the effect of encouraging economic development in the state were passed. Most of these bills are currently awaiting Governor Deal's signature, with the exception of HB 266, which has already been signed into law; we will continue to monitor their progress and provide status updates accordingly. Summarized below are some of the highlights of these bills.

Sales, Use and Excise Tax Exemptions

HB 164 – Property Used to Maintain or Repair Aircraft

HB 164 extends the sunset provision of the sales and use tax exemption for "engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft" (O.C.G.A. § 48-8-3(86)), which was previously set to expire on June 30, 2013. As a result of HB 164, this exemption will be in effect until June 30, 2015. Notably, the exemption continues to apply only when the "engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained" in Georgia "so long as such aircraft is not registered" in Georgia.

HB 193 – Sales to Job Training Organizations

HB 193 creates a new sales and use tax exemption, beginning on July 1, 2013, and ending on June 30, 2015, for sales of tangible personal property and services to qualified job training organizations. In order to be qualified, a job training organization must (i) be located in Georgia; (ii) be a 501(c)(3) entity; (iii) specialize in the retail sale of donated items; (iv) provide job training and employment services to individuals with workplace disadvantages and disabilities; and (v) use a majority of its revenues for job training and placement programs. The Department of Revenue must also provide the organization with an exemption determination letter.

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HB 211 – Motor Fuel Sold to Public School Systems

HB 211 exempts sales of motor fuel to public school systems in Georgia from the state motor fuel excise tax, when such fuel is paid for by the school system for its exclusive use in operating school buses. This exemption would be applicable beginning July 1, 2013, and ending June 30, 2015.

HB 318 – Sales to Zoological Institutions

HB 318 extends the sunset provision of the sales and use tax exemption for tangible personal property used for and in the renovation or expansion of zoological institutions located in Georgia. Previously, this exemption expired on June 30, 2011. As a result of HB 318, the exemption is in effect from July 1, 2013, until June 30, 2015.

HB 318 – Refunds for Expansions of Existing Tourist Attractions

HB 318 also amends sections of the Georgia Code regarding sales and use tax refunds related to tourism attractions (O.C.G.A. § 48-8-271 to -276). HB 318 extends the availability of this refund to expansions of existing tourism attractions (it previously applied only the new projects). The bill also changes the refund structure by making the refund available in each year of the 10-year agreement with the Department of Community Affairs for both new and expansion projects, in an amount equal to the lesser of the annual sales tax (or incremental sales tax, for expansion projects) or 2.5 percent of the total approved costs incurred prior to January 1 of the year in which the refund claim is being filed. In addition, HB 318 requires the commissioners of economic development and community affairs—rather than the governor—to approve applications for the refund, and it allows local jurisdictions to grant similar refunds of local sales and use tax at their discretion.

Taxation of Energy – HB 250

HB 250 amends various provisions of the Georgia Code pertaining to the local energy excise tax (O.C.G.A. § 48-13-110 et seq.), which were enacted by HB 386 in 2012.

Excise Tax Deduction

HB 250 allows a deduction from the amount of the local energy excise tax due for “dealers” that make timely payment of such taxes. This deduction is equal to three percent of the combined total amount of all excise tax that is due from the dealer to each governmental authority imposing the tax, computed on a monthly basis, up to \$3,000, and 0.5 percent of any such amount over \$3,000. The term “dealer” is defined as “any person who sells energy at retail, offers to sell energy at retail, or has in his or her possession any energy for sale at retail.”

Exemption for Competitive Projects of Regional Significance

HB 250 also provides that the local energy excise tax does not apply to the sale or use of energy associated with the construction of a competitive project of regional significance, applicable until June 30, 2014. To qualify as a competitive project of regional significance, a project must involve the location or expansion of a business's operations in Georgia, and the commissioner of economic development must have determined that it will have a significant regional impact.

Assessments

HB 250 establishes a three-year statute of limitations for assessment of additional local energy excise tax, unless the dealer or purchaser knowingly or willfully evaded the tax (in which case there is no statute of limitations on such assessment). In addition, a dealer or purchaser may file a refund claim within three years of paying the tax. HB 250 also prohibits a jurisdiction from employing a contract auditor on a contingency fee basis to audit a dealer or purchaser with respect to its potential local energy excise tax liability.

Returns

HB 250 sets forth guidelines for filing local energy excise tax returns. In particular, a dealer must transmit returns and remit the tax for the preceding month on or before the 20th day of the current month to each taxing jurisdiction (although such jurisdictions are authorized to allow quarterly or annual returns, and the dealer may apply in writing for a 30-day extension). A dealer that has an estimated tax liability for a period in excess of \$2,500 is required to file estimated tax returns and pay at least 50 percent of the tax on or before the 20th day of such period.

Penalties and Interest

HB 250 establishes various penalty and interest provisions applicable to the local energy excise tax, similar to those that would apply to sales and use taxes.

Changes to New Motor Vehicle Tax Scheme – HB 266

In 2012, the General Assembly overhauled the taxation of motor vehicles in Georgia by enacting HB 386, which exempted the sale of motor vehicles from sales and use tax, ended the annual ad valorem property tax on motor vehicles and imposed a new, one-time motor vehicle title fee ad valorem tax (O.C.G.A. § 48-5C-1). These changes were viewed as generally positive for both individuals and businesses in Georgia, and they recently went into effect on March 1, 2013.¹ However, HB 386 had several flaws, including that it did not extend the sales and use tax exemption to *leased* motor vehicles. Thus, a lessee would be liable for both sales and use tax on the monthly lease payments, as well as the title fee ad valorem tax.

HB 266 corrects this disparate treatment by extending the sales/use tax exemption to leased motor vehicles. HB 266 also makes several other changes to the new title fee ad valorem tax, such as amending the definition of “fair market value of the motor vehicle,” which is the basis for the tax, to provide different guidelines for new and used vehicles (including provisions that explicitly reference leased vehicles).

Invest Georgia Fund – HB 318

HB 318 creates the Invest Georgia Fund as a distinct component of the previously established Seed-Capital Fund (O.C.G.A. § 10-10-1 *et seq.*). The Invest Georgia Fund is intended to increase the amount of private investment capital available to Georgia-based businesses that require funding at the seed, early or growth stage of development, as well as for established Georgia-based businesses developing new methods or technologies, “thereby increasing employment, creating additional wealth, and otherwise benefitting the economic welfare” of Georgia.

¹ Note that a purchaser of a motor vehicle between January 1, 2012, and March 1, 2013, can opt-in to these new provisions.

In order to accomplish these intended goals, HB 318 authorizes the Invest Georgia Fund to make investments in support of Georgia-based businesses in accordance with a stated investment policy, focusing such policy principally on venture capital funds and private equity organizations that invest in Georgia-based businesses. The Invest Georgia Fund will be administered by the newly created Invest Georgia Board, consisting of three members appointed by the governor, one member appointed by the lieutenant governor and one member appointed by the speaker of the House of Representatives. The fund will be capitalized through grants from the Seed-Capital Fund, designated appropriations to the Georgia Advanced Technology Development Center and private contributions to the Invest Georgia Board. Contributed capital must be allocated 40 percent among the “early stage venture capital funds” and 60 percent among the “growth stage venture capital funds.”

Other Economic Development Bills of Note

Extension of Investment Tax Credit – HB 318

In addition to creating the Invest Georgia Fund and enacting the sales and use tax exemptions discussed above, HB 318 extends the income tax credit for qualified investments in a qualified business (O.C.G.A. § 48-7-40.30) to 2014 and 2015. This credit was set to expire at the end of 2013.

Clarification Related to Motor Fuel Excise Tax – HB 371

The motor fuel excise tax is imposed at the rate of 7.5 cents “per gallon” of motor fuel sold or used in Georgia (O.C.G.A. § 48-9-3). The statute specifies that “the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units.” However, the statute previously did not contain a similar provision for liquefied natural gas. HB 371 amends the statute to specify that “the gallon equivalent of liquefied natural gas shall not be less than 6.06 pounds.” HB 371 also defines “liquefied natural gas” as “methane or natural gas in the form of a cryogenic or refrigerated liquid for use as a motor fuel.”

Emerging Crops Fund Amendments – SB 91

The Emerging Crops Fund Act (O.C.G.A. § 2-8A-1 *et seq.*) was established to promote economic development related to plant or crop production in Georgia. Previously, “emerging crop” was defined as a crop “[that] has potential for economic development, which has a development time from beginning of production to commercial harvest or initial sale of the product of not less than 18 months nor more than five years, and which has been designated an emerging crop by the Georgia Development Authority.” SB 91 would broaden that definition to only require a crop to have a “demand” in order to be an emerging crop. SB 91 deletes the previous list of examples of emerging crops. The fund may also pay interest to lenders who make loans to farmers to finance the production of an emerging crop. Previously, such loans only covered “nonland capital costs” of “establishing” production. Under SB 91, such loans would cover all costs of production.

Freeport Exemption Expansion – HB 304

Georgia’s freeport exemption from ad valorem property tax applies to inventories of goods “in the process of manufacture or production,” among other categories of goods. In particular, such exemption applies “only to tangible personal property which is substantially modified, altered, or changed in the ordinary course of the taxpayer’s manufacturing, processing, or production operations” in Georgia. HB 304 makes clear that the “blending of fertilizer bulk materials into a custom mixture, whether performed at a commercial fertilizer blending plant, retail outlet, or any application site” is considered a “substantial modification” activity for purposes of the freeport exemption.

A Few Steps Backward – HB 266

Not every piece of legislation passed in 2013 will have a positive effect on economic development in Georgia, however. In particular, HB 266 (which made significant changes to the new motor vehicle tax scheme, as discussed above) restricts the utility of the income tax credit for research expenses and revises the standards associated with a vendor's acceptance of a resale certificate for sales and use tax purposes.

Research Expense Credits

HB 266 amends the income tax credit for research expenses (O.C.G.A. § 48-7-40.12) to make clear that the withholding tax offset provision, which was enacted by HB 868 in 2012, would only apply to credits earned on or after January 1, 2012. This provision is applicable retroactively to all taxable years beginning on or after January 1, 2012. Thus, a business that had created research expense credits in years prior to 2012 and carried forward such credits to 2012 and subsequent years would not be able to utilize such credits against its withholding tax liability. Prior to this amendment, there was a strong argument that carried-forward credits *could* be used against withholding.

Resale Certificates

In addition, HB 266 revises the standards associated with a vendor's acceptance of a resale certificate (O.C.G.A. § 48-8-38). Previously, accepting a resale certificate would relieve a vendor from the burden of proving that a sale was for resale (or otherwise exempt) and therefore not taxable, provided that the resale certificate was properly completed and that the vendor obtained it within 90 days after the sale. HB 266 would reestablish the "good faith" standard, under which the resale certificate must be both properly completed and "taken in good faith." This good faith requirement was previously removed from the Georgia Code effective January 1, 2011. HB 266 explains the circumstances under which a resale certificate will be taken in good faith. For example, the certificate will be taken in good faith if it claims an exemption that is available on the date of the transaction, that could be applicable to the item being purchased and that is reasonable for the purchaser's type of business. In addition, in order for the resale certificate to relieve the vendor from collecting the tax, the purchaser must be engaged in the business of selling tangible personal property and have a valid sales tax registration number at the time of purchase, and the vendor must have no reason to believe that the purchaser does not intend to resell the item in its regular course of business. Finally, HB 266 also removes language allowing a vendor to accept a resale certificate after the transaction has occurred.

Conclusion

Overall, although there were no substantial revisions made to the Georgia Code, the legislation enacted by the General Assembly in the 2013 legislative session should prove to be beneficial to the state from an economic development standpoint.

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