Senate Bill 56

By: Senators Hufstetler of the 52nd and Williams of the 25th

AS PASSED

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 require the state revenue commissioner to contract with the Board of 3 Trustees of the Employees' Retirement System of Georgia to offer certain county tax 4 commissioners who are not eligible for any retirement system or county 401(k) or 457(b) 5 plan the option to participate in a state administered deferred compensation plan; to provide for a limited state match of contributions; to provide for terms and conditions; to revise the 6 7 terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and thereby 8 incorporate certain provisions of the federal law into Georgia law; to revise the rates of 9 taxation on income on individuals, estates, and trusts; to revise certain annual determinations; 10 to revise certain exemptions and deductions; to provide for an income tax credit for certain 11 taxpayers; to revise the definition of "force majeure" to include a pandemic, as relative to tax 12 credits for jobs associated with large-scale projects; to limit the applicability of such term; 13 to extend the sunset date for a tax credit for certain medical preceptor rotations; to provide 14 for the taxation of the sale or purchase of specified digital products, other digital goods, and 15 digital codes; to provide for procedures, conditions, and limitations; to revise and provide for 16 definitions and exemptions; to provide for related matters; to provide for effective dates and 17 applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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| 19 | PART I |
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| 20 | SECTION 1-1. |
| 21 | Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is |
| 22 | amended in Part 3 of Article 3 of Chapter 5, relating to compensation for county tax officials |
| 23 | and administration, by adding a new Code section to read as follows: |
| 24 | "48-5-184. |
| 25 | (a) As used in this Code section, the term 'eligible county tax commissioner' means any |
| 26 | county tax commissioner or tax collector who is compensated pursuant to Code Section |
| 27 | 48-5-183 and, as of March 1, 2023, was not eligible to participate in any: |
| 28 | (1) Retirement system, as such term is defined in Code Section 47-20-3; or |
| 29 | (2) Deferred compensation plan offered by the county that utilizes Section 401(k) or |
| 30 | 457(b) of the United States Internal Revenue Code of 1986. |
| 31 | (b) The state revenue commissioner shall contract with the Board of Trustees of the |
| 32 | Employees' Retirement System of Georgia for the administration of a deferred |
| 33 | compensation plan offered as a state benefit for eligible county tax commissioners as |
| 34 | provided for in this Code section. |
| 35 | (c)(1) Subject to the contract required under subsection (b) of this Code section, the |
| 36 | Board of Trustees of the Employees' Retirement System of Georgia shall investigate and |
| 37 | approve a deferred compensation plan that offers to eligible county tax commissioners |
| 38 | income tax benefits in connection with plans authorized by the United States Internal |
| 39 | Revenue Code of 1986, so that compensation deferred under such plan shall not be |
| 40 | included for purposes of computation of any federal income tax withheld on behalf of any |
| 41 | such tax commissioner or payable by such tax commissioner before any deferred payment |
| 12 | date. All contributions to such deferred compensation plans shall also be event from |

43 state withholding tax so long as such contributions are not includable in gross income for 44 federal income tax purposes. 45 (2) Notwithstanding any conflicting provisions of paragraph (1) of this subsection, for 46 any deferred compensation plan established pursuant to said paragraph, the Board of Trustees of the Employees' Retirement System of Georgia shall be authorized to include 47 as an option for eligible county tax commissioners a qualified Roth contribution program 48 49 in accordance with Section 402A of the United States Internal Revenue Code of 1986. (d)(1) On and after July 1, 2023, for any eligible county tax commissioner who 50 51 contributes a percentage from his or her minimum annual salary paid by the county 52 pursuant to paragraphs (1) and (2) of subsection (b) of Code Section 48-5-183 into the 53 deferred compensation plan established under this Code section, the state shall contribute 54 an equal amount into such eligible county tax commissioner's plan account, up to a 55 maximum of 5 percent; provided, however, that all state contributions to plan accounts 56 shall be subject to limitations imposed by federal law. 57 (2) Each eligible county tax commissioner may make such additional contributions as he or she desires, subject to limitations imposed by federal law. 58 59 (e) The Board of Trustees of the Employees' Retirement System of Georgia and the state 60 revenue commissioner shall be entitled to impose requirements for the withholding and 61 remittance of contributions by county governing authorities in order to effectuate this Code 62 section and comply with state and federal law. 63 (f) Any eligible county tax commissioner who becomes eligible to participate in a 64 retirement system or county plan described in paragraph (1) or (2) of subsection (a) of this 65 Code section on or after the effective date of this Code section shall no longer receive the state contributions paid pursuant to subsection (d) of this Code section." 66

67 PART II

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68 **SECTION 2-1.**

Said title is further amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions, as follows:

"(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years beginning on or after January 1, 2021 2022, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2022 2023, 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), and Section 174 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2017 enactment of federal Public Law 115-97; provided, however, that all provisions in federal Public Law 117-58 (Infrastructure Investment and Jobs Act) that change or affect in any manner Section 118 shall be treated as if they were in effect, 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(1) shall be treated as if they were not

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in effect, and except that all provisions in federal Public Law 117-2 (American Rescue Plan Act of 2021) that change or affect in any manner Section 461(1) 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, 2022 2023, 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, 2021 2022, provisions of the Internal Revenue Code of 1986, as amended, which were

as of January 1, 2022 <u>2023</u>, 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 2-2.

- Said title is further amended by revising Code Section 48-7-20, relating to individual income tax rates, credit for withholding and other payments, and applicability to estates and trusts, as in effect on January 1, 2024, as follows:
- 127 "48-7-20.

- 128 (a) A tax is imposed upon every resident of this state with respect to the Georgia taxable
 129 net income of the taxpayer as defined in Code Section 48-7-27. A tax is imposed upon
 130 every nonresident with respect to such nonresident's Georgia taxable net income not
 131 otherwise exempted which is received by the taxpayer from services performed, property
 132 owned, proceeds of any lottery prize awarded by the Georgia Lottery Corporation, or from
 133 business carried on in this state. Except as otherwise provided in this chapter, the tax
 134 imposed by this subsection shall be levied, collected, and paid annually.
 - (a.1)(1) On and after January 1, 2024, the tax imposed pursuant to subsection (a) of this Code section shall be at the rates provided in subsection (a.2) of this Code section for each respective tax year 5.49 percent for taxable years beginning on or after January 1, 2024; provided, however, that the actual rates for a given year tax year such rate shall be reduced by 0.10 percent annually beginning on January 1, 2025, until the rate reaches 4.99 percent, provided such annual reductions in the tax rate shall be subject to delays as provided in paragraph (2) of this subsection.
 - (2) Each prospective change in the tax rates annual reduction in the tax rate that would otherwise occur as provided in paragraphs (2) through (6) of subsection (a.2) of this Code section paragraph (1) of this subsection shall be delayed by one year for each year that any of the following are true as of December 1:

146 (A) The Governor's revenue estimate for the succeeding fiscal year is not at least 3

147 percent above the Governor's revenue estimate for the present fiscal year;

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- (B) The prior fiscal year's net revenue collection was not higher than each of the preceding five three fiscal years' net tax revenue collection; or
- (C) The Revenue Shortfall Reserve provided for in Code Section 45-12-93 does not contain a sum that exceeds the amount of the decrease in state revenue projected to occur as a result of the prospective reduction in the tax rates set to occur the following year.
- (3) The Office of Planning and Budget shall make the determinations necessary to implement the provisions of paragraph (2) of this subsection and shall report its determinations by December 1 of each year to the department, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House Appropriations Committee, the House Ways and Means Committee, the Senate Appropriations Committee, and the Senate Finance Committee. This paragraph shall not be applicable after the final reduction in the rates occurs as provided in paragraph (6) of subsection (a.2) of this Code section to the rate of 4.99 percent occurs.
- 162 (a.2) Subject to the provisions of subsection (a.1) of this Code section:
- 163 (1) For tax years beginning on or after January 1, 2024, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.49 percent;
- 165 (2) For tax years beginning on or after January 1, 2025, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.39 percent;
- 167 (3) For tax years beginning on or after January 1, 2026, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.29 percent;
- (4) For tax years beginning on or after January 1, 2027, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.19 percent;
- 171 (5) For tax years beginning on or after January 1, 2028, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 5.09 percent; and

173 (6) For tax years beginning on or after January 1, 2029, the tax imposed pursuant to subsection (a) of this Code section shall be levied at the rate of 4.99 percent.

(b)(1) Reserved.

(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) 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) 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 2-3.

Said title is further amended by revising subsection (b) of Code Section 48-7-26, relating to personal exemptions from income tax, as in effect on January 1, 2024, as follows:

| 198 | "(b) Each taxpayer shall be allowed as a deduction in computing his or her Georgia taxable |
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| 199 | income a personal exemption in the amount of \$3,000.00 for each dependent of such |
| 200 | taxpayer an amount as follows: |
| 201 | (1) For each married couple filing a joint return: |
| 202 | (A) For taxable years beginning on or after January 1, 2024, \$18,500.00; |
| 203 | (B) For taxable years beginning on or after January 1, 2026, \$20,000.00; |
| 204 | (C) For taxable years beginning on or after January 1, 2028, \$22,000.00; or |
| 205 | (D) For taxable years beginning on or after January 1, 2030, \$24,000.00; |
| 206 | (2) For each married taxpayer filing a separate return, one-half of the amount of the |
| 207 | personal exemption allowed under paragraph (1) of this subsection for the given year; |
| 208 | (3) For each single taxpayer or head of household, \$12,000.00; and |
| 209 | (4) For each dependent of a taxpayer, \$3,000.00." |
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| 210 | SECTION 2-4. |
| 211 | Said title is further amended in Code Section 48-7-27, relating to computation of state |
| 212 | taxable net income, as in effect on January 1, 2024, by revising paragraph (1) of subsection |
| 213 | (a) as follows: |
| 214 | "(1) At the taxpayer's election, either: |
| 215 | (A) The sum of all itemized nonbusiness deductions used in computing such taxpayer's |
| 216 | federal taxable income; or |
| 217 | (B) A standard deduction in an amount as follows: |
| 218 | (i) In the case of a married couple filing a joint return, \$24,000.00; or |
| 219 | (ii) In the case of a single taxpayer, head of household, or married taxpayer filing a |
| 220 | separate return, \$12,000.00;" |
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| 221 | SECTION 2-5. |
| 222 | Said title is further amended by adding a new Code section to read as follows: |

- 223 "48-7-27.1.
- 224 (a) As used in this Code section, the term 'eligible itemizer' means any resident taxpayer
- 225 who files an individual income tax return for a taxable year and makes the election under
- subparagraph (a)(1)(A) of Code Section 48-7-27 to deduct the itemized nonbusiness
- 227 <u>deductions used in computing such taxpayer's federal taxable income.</u>
- 228 (b) For taxable years beginning on or after January 1, 2024, each eligible itemizer shall be
- entitled to a credit in the amount of \$300.00 per taxpayer against the tax imposed by Code
- 230 Section 48-7-20.
- 231 (c) The tax credit claimed allowed by this Code section shall be deducted from such
- taxpayer's individual income tax liability, if any, for the tax year in which it is properly
- claimed; provided, however, that in no event shall:
- (1) The total amount of the tax credit under this Code section for a taxable year exceed
- such taxpayer's income tax liability; or
- 236 (2) Such credit amount be allowed to be carried forward to the taxpayer's succeeding
- years' tax liability or applied against prior years' tax liability."
- 238 **SECTION 2-6.**
- 239 Said title is further amended by revising subsection (h) of Code Section 48-7-29.22, relating
- 240 to tax credits for certain medical preceptor rotations, as follows:
- 241 "(h) This Code section shall stand repealed by operation of law at the last moment of
- 242 December 31, 2023 <u>2026</u>."
- **SECTION 2-7.**
- 244 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
- 245 48-7-40.24, relating to tax credits for jobs associated with large-scale projects, as follows:
- 246 "(3) 'Force majeure' means any:
- 247 (A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

248 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, 249 tornadoes, hurricanes, lightning, or other natural calamities or acts of God; 250 (C) Acts of war (whether or not declared), carnage, blockade, or embargo; 251 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, 252 public disorder, or violent demonstrations; 253 (E) Strikes or other labor disturbances; or 254 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites of a qualified project or any part thereof; or 255 256 (G) Pandemic which is an outbreak of a disease that occurs over a wide geographic 257 area, affects a significant proportion of the population, causes a substantial and 258 unforeseeable threat to the public health, and materially impacts the ability to conduct business, provided that this subparagraph shall only apply with respect to a qualified 259 260 project first certified pursuant to paragraph (2) of subsection (b) of this Code section 261 on or after July 1, 2023; 262 but such term shall not include any event or circumstance that could have been prevented, 263 overcome, or remedied in whole or in part by the taxpayer through the exercise of 264 reasonable diligence and due care, nor shall such term include the unavailability of 265 funds." 266 **PART III** 267 SECTION 3-1. 268

Said title is further amended in Code Section 48-8-2, relating to definitions, by adding a new subparagraph to paragraph (31) and by adding new paragraphs to read as follows:

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"(11.2) 'Digital audio-visual works' means any series of related images, together with accompanying sounds, if any and which, when shown in succession, impart an impression of motion.

| 273 | (11.3) Digital audio works' means digitized works that result from the fixation of a series |
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| 274 | of musical, spoken, or other sounds. Such term shall include digitized sound files that are |
| 275 | downloaded onto a device and that may be used to alert an end user with respect to a |
| 276 | communication. |
| 277 | (11.4) 'Digital code' means a key, activation, or enabling code that conveys a right to |
| 278 | obtain one or more specified digital goods or other digital goods. Such term shall not |
| 279 | include a code that represents a stored monetary value that is deducted from a total as it |
| 280 | is used by the purchaser or a redeemable card, gift card, or gift certificate that entitles the |
| 281 | holder to select specified digital goods or other digital goods of an indicated cash value." |
| 282 | "(15.1) 'End user' means any person other than a person that receives by contract a |
| 283 | product transferred electronically for further commercial broadcast, rebroadcast, |
| 284 | transmission, retransmission, licensing, relicensing, distribution, redistribution, or |
| 285 | exhibition of the product, in whole or in part, to another person or persons." |
| 286 | "(16.05) 'Internet access service' shall have the same meaning as such term is defined in |
| 287 | 47 U.S.C. Section 151, note." |
| 288 | "(20.05) 'Other digital goods' means the following items transferred electronically to an |
| 289 | end user: |
| 290 | (A) Artwork; |
| 291 | (B) Photographs; |
| 292 | (C) Periodicals; |
| 293 | (D) Newspapers; |
| 294 | (E) Magazines; |
| 295 | (F) Video or audio greeting cards; or |
| 296 | (G) Video games or electronic entertainment." |
| 297 | "(E.1)(i) Sales of digital codes. |
| 208 | (ii) Salas of specified digital products or other digital goods:" |

299 "(34.1)(A) 'Specified digital products' means the following items transferred 300 electronically to an end user: 301 (i) Digital audio-visual works; 302 (ii) Digital audio works; or (iii) Digital books." 303 304 "(39.2) 'Transferred electronically' means obtained, accessed, or available to be accessed by means other than tangible storage media." 305 306 **SECTION 3-2.** 307 Said title is further amended in Code Section 48-8-3, relating to exemptions from sales and 308 use tax, by revising paragraphs (90) and (91) as follows: 309 "(90) Internet access service Reserved; 310 (91) The sale of prewritten computer software which has been transferred electronically 311 to the purchaser or delivered to the purchaser electronically or by means of load and 312 leave; provided, however, that the exemption granted by this paragraph shall not include sales of specified digital products, other digital goods, or digital codes;" 313 314 **SECTION 3-3.** 315 Said title is further amended in Code Section 48-8-30, relating to imposition of tax, rates, and 316 collection, by revising subsection (a) as follows: 317 "(a)(1) There is levied and imposed a tax on the retail purchase, retail sale, rental, 318 storage, use, or consumption of tangible personal property and on the services described 319 in this article. 320 (2)(A) There is levied and imposed a tax on the retail purchase or retail sale of 321 specified digital products, other digital goods, or digital codes sold to an end user in this state, provided that such end user receives or will receive the right of permanent use of 322

323 such products, goods, or codes and the transaction is not conditioned upon continued 324 payment by the end user. (B) The tax levied under this paragraph shall apply regardless of whether possession 325 326 of the specified digital goods, other digital goods, or digital codes is maintained by the 327 seller or a third party. 328 (C) Except as provided otherwise in this article, the tax imposed by this article on 329 specified digital products, other digital goods, and digital codes shall be levied, collected, remitted, and administered in the same manner and at the same rate as is 330 331 provided in this article for the retail purchase, retail sale, rental, storage, use, or 332 consumption of tangible personal property."

SECTION 3-4.

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Said title is further amended in Code Section 48-8-38, relating to burden of proof on seller as to taxability, certificate that property purchased for resale, requirements of purchaser having certificate, contents, and proof of claimed exemption, by adding a new subsection to read as follows:

"(f) A sale of any specified digital product, other digital good, or digital code shall be considered a sale for resale if the specified digital product, other digital good, or digital code is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in part, as an integral, inseparable component part of a service or another such product, good, or code by the purchaser of the specified digital product, other digital good, or digital code to an ultimate consumer. The purchaser of the specified digital product, other digital good, or digital code for resale shall maintain records that substantiate such resale in a manner consistent with this subsection, as determined by the commissioner."

| 346 | PART IV |
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| 347 | SECTION 4-1. |
| 348 | (a) This Act shall become effective upon its approval by the Governor or upon its becoming |
| 349 | law without such approval; provided, however, that: |
| 350 | (1) Section 2-1 of this Act shall be applicable to all taxable years beginning on or after |
| 351 | January 1, 2022; |
| 352 | (2) Sections 2-2 through 2-6 of this Act shall be effective on January 1, 2024, and shall be |
| 353 | applicable to all taxable years beginning on or after January 1, 2024; |
| 354 | (3) Section 2-7 of this Act shall become effective on July 1, 2023; and |
| 355 | (4) Part III of this Act shall become effective on January 1, 2024, and shall be applicable |
| 356 | to transactions occurring on or after January 1, 2024. |
| 357 | (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not |
| 358 | be affected by the passage of this Act and shall continue to be governed by the provisions of |
| 359 | Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable |
| 360 | years. |
| 361 | SECTION 4-2. |
| 362 | All laws and parts of laws in conflict with this Act are repealed. |