MEMO

To: MAC Executive Committee

From: MAC Public Policy Team

Date: February 15, 2024

RE: Notable 2024 Tax Legislation

Background

While Georgia is in a strong economic position, the legislature has increasingly scrutinized tax incentives to ensure the state receives an appropriate return on investment. Additionally, some legislative leaders are interested in reducing and/or eliminating the personal income tax. Cutting tax incentives to offset the cost of an income tax rate reduction has gained momentum.

In 2022, the legislature began a process by which ten tax incentives per year are selected for audit conducted by a third party with oversight from the Department of Audits and Accounting (DOAA). The legislature also spent last year studying several of 2022's reviewed programs, many of which are critical tools for economic developers.

These factors have coalesced into highly anticipated legislative action in 2024, which is now underway, mostly in the House. Constitutionally, all bills raising revenue must originate in the Georgia House of Representatives.

Individual Income Tax Rate Reduction

HB 1015 will accelerate the state's personal income tax rate reduction starting at 5.39% instead of the planned starting point of 5.49% and continuing to drop to 4.99% by 2028. This initial reduction of 36 basis points from 5.75% to 5.39% will reduce state revenues by roughly $1 billion once it goes into effect.

In 2022, the state set the plan in place to gradually reduce the personal income tax from 5.75% to 4.99% by 2029 <u>if</u> certain economic conditions are met. The reduction will not occur:

1) in any year the state doesn't have enough money in reserve to pay for it;
2) in any year state tax collections don't grow at least 3%; or
3) or if collections are lower than any of the five previous years.

On January 1, 2024, the rate automatically dropped to 5.49%, and it is scheduled to drop to 5.39% next year. However, late last year, Governor Kemp and legislative leaders announced a plan move the timeline up. This bill sets that updated plan in motion.

Status: Passed the House. Awaiting Senate committee hearing.

Corporate Income Tax Rate Reduction

House Bill 1023 would tie the corporate income tax rate to the personal income tax rate, meaning it would drop from 5.75% to 5.39% this year and continue an annual 10 basis point step down to 4.99% in 2028, if the bill above passes. This is notable because there has been little discussion by leadership in the General Assembly to take such a step to reduce the corporate income tax rate. It may represent an attempt to offset concerns regarding changes to tax incentives.

Status: Awaiting House committee action.

Rainy Day Fund Cap Elimination

House Bill 1024, a priority for Governor Kemp, will remove the cap on the state's Revenue Shortfall Reserve, or "rainy day" fund. The fund is currently capped at 15% of the prior year's reserves, meaning the fund contains $5.3 billion right now. Georgia currently has a significant surplus well beyond the capped amount in a separate reserve fund. That fund allows the Kemp administration to fund several projects, but maintaining all surplus in one account is preferred.

Status: Awaiting House committee action.

Tax Expenditures Transparency and Auditing

Senate Bill 366 is a priority bill for the Lieutenant Governor and Senate leadership. Its goal is to tighten and strengthen the tax incentive audit process and ensure incentives are being used correctly and provide a positive ROI. The bill would:

- Clearly list state revenues sources and spending via tax credits in the budget;
- Expand which types of tax programs can be audited and increase the number of annual audits from 10 to 12;
- Introduce a comment period after the initial audit results; and

- Create a Joint Committee on Taxation and Economic Development to meet outside the legislative session to study the audits and consider changes to certain incentives. This will be similar to the committee work conducted in 2023.

Status: Passed the Senate. Awaiting House committee hearing.

Homestead Exemption Increase

House Bill 1019 would double the homestead exemption from $2,000 to $4,000, intended to deliver relief to homeowners statewide. Many counties already have exemptions above the amount offered by the state. This bill is a priority of House Majority Leadership.

Status: Passed the House. Awaiting Senate committee hearing.

Child Tax Deduction Increase

House Bill 1021 would increase the child tax deduction from $3,000 to $4,000. With rising childcare costs, this legislation would allow for an extra $1,000 deduction per child, which could help alleviate some of those costs for parents. This bill is a priority of House Majority Leadership.

Status: Passed the House. Awaiting Senate committee hearing.

BILLS JOINTLY ANNOUNCED ON FEBRUARY 7, 2024

Lt. Gov. Burt Jones, House Speaker Jon Burns and the chairmen of the House and Senate tax committees jointly announced the bills below. This work is the culmination of the tax incentive review process the legislature has undertaken over the past couple of years. They represent a general agreement between the House and Senate majority leadership.

Low-Income Housing Tax Credit Reduction

House Bill 1182 would reduce the low-income housing tax credit for apartment construction by 20% unless the project will house seniors, veterans, provide transit, or is located in a rural area. Georgia is one of a handful of states that offers a state credit to enhance federal low-income housing tax credits. Partnership returns would become subject to open records on the developer side.

Status: Awaiting House committee action.

Data Center Sales Tax Exemption Suspension

House Bill 1192 would suspend the sales tax exemption on equipment purchased for use in data centers. This exemption is currently set to expire in 2031, but this change would occur immediately upon final passage and subsequent approval by the Governor. Put in place in 2018, this newer incentive is commonly used by colocation or multi-tenant data centers. This suspension is primarily in response to increased concerns over resource availability and how much water and energy these facilities require.

Companies that have already been issued a certificate of sales tax exemption, which allows them seven years to fully comply with the program based on quality job creation, can still use their remaining seven years to participate. However, this bill updates the definition of a quality job to "employment for an individual which:

- Is located in this state;
- Has a regular work week of 30 hours or more;
- Is not a job that is or was located in Georgia already, regardless of which taxpayer employed the individual; and
- Pays at or above 200 percent of the average wage of the county in which it is located."

MAC's primary concern with this bill is that it suddenly changes the rules for how the data center incentive is administered. Many pending projects are set to commence, and active contracts are in place, but they could lose access to an incentive a company has already factored into the project. This is a dangerous precedent to set for broader economic development public policy.

Status: Awaiting House committee action.

Film Tax Credit Updates

House Bill 1180 would alter the film tax credit in several ways.

- The minimum amount of spending required to be eligible would go up from $500,000 to $1 million. The ability to aggregate spending across multiple productions to reach that amount would end, meaning a single production would have to hit that $1 million mark. This will impact smaller productions and other entertainment outlets such as esports.
- Productions that currently get the 10% bonus, or "uplift," for including the Georgia logo, commonly seen in film credits, would be required to provide additional

benefits to the state from a list of options. Productions must meet at least four of the following nine criteria:

1. At least 50 percent of the crew are Georgia residents
2. At least 50 percent of vendors are Georgia vendors
3. At least $30 million of production expenditures in the state are incurred
4. At least 50 percent of photography days occur in one or more rural counties
5. At least 50 percent of photography days in studio facilities are in studio facilities in the state, or the company makes qualifying capital improvements to a Georgia studio
6. At least 50 percent of photography days in studio facilities are in studio facilities in Georgia, or the company enters into a long-term lease with a studio facility in this state in an approved scope and duration
7. At least 20 percent of a production's postproduction expenditures or 20 percent of a production's visual effects expenditures are contracted with Georgia vendors
8. The company participates in at least one Georgia workforce development program, including, but not limited to, a Georgia Film Academy program
9. The production includes a qualified Georgia promotion, or the company engages in alternative marketing opportunities approved by the state

- A total cap of transferrable credits would be set at 2.5% of the Governor's revenue estimate. The Governor's Fiscal Year 2025 revenue estimate is just over $36 billion, placing the cap at approximately $900 million, which is on par with current program levels. In years where the cap is hit, productions will get additional time to carry forward the credit for future use. Transferability is the key to the film program's success.

MAC is part of a large coalition of film, gaming, and entertainment organizations working to improve this bill and ensure productions continue investing in Georgia.

Status: Awaiting House committee action.

Carryforward and Sunsets Streamlining

House Bill 1181 does two things: alters the carryforward period on several tax credits and moves the sunset period on several incentives. The general intent is to streamline the treatment of tax incentive programs.

Carryforward is the amount of time that a tax benefit may be used after it is earned. Lessening this period helps the state better project expenses, enhancing budget certainty. Additionally, it could save the state money if some taxpayers cannot use the full benefit before it expires. However, for the taxpayer, it reduces flexibility and usability.

Tax credits with a carryforward period of ten years would be reduced to five, while those at five years would be reduced to three years. Tax credit programs that would be impacted are:

- Disaster assistance funds
- Depository financial institutions
- Qualified life insurance premiums for National Guard and Air National Guard members
- Qualified donation of real property
- Qualified health insurance expenses
- Clean energy property
- Contributions to student scholarship organizations
- Single-family residences
- Donations for the purpose of awarding grants to public schools
- Contributions to foster child support organizations
- Contributions to law enforcement foundations
- Certain business enterprises in less developed areas
- Existing manufacturing and telecommunications facilities
- Employers providing approved retraining programs
- Qualified research and development expenses
- Qualified investments in a research fund
- Georgia ports use
- Alternative fuel, low-emission and zero-emission vehicles, and electric vehicle chargers
- Quality jobs tax credit
- All job tax credits
- Manufacturing of cigarettes for exportation
- Certain leased motor vehicles
- Mega tax credit
- High impact aerospace defense projects
- Film, gaming, video, or digital productions
- Post-production expenditures
- Fixtures that reduce business or domestic energy or water usage
- Short line railroads

The second half of the bill either adds or moves the future repeal date of an incentive or the "sunset" date. It moves all sunsets to within five years, or the end of 2029. The goal is to force a review of each tax benefit and make proponents advocate for an extension. The legislature has increasingly favored sunsets in recent years, but they are unfavorable to business because they do not provide long-term certainty.

Five years is an arbitrary number, and the current elected leadership could change dramatically in that time. Furthermore, Georgia's competitor states have longer sunsets or even no sunsets at all. This forces prospective companies to guess whether their incentive will be renewed, meaning Georgia risks losing projects to states where there is greater certainty.

Incentives that would be impacted are:

- Certain types of employer-provided health insurance
- Alternative fuel, low-emission and zero-emission vehicles, and electric vehicle chargers
- Certain leased motor vehicles
- Qualified investments in a research fund
- Wine sold to religious institutions for use in sacramental services
- Car tags for disabled law enforcement personnel
- Construction and operation of facilities for athletics, meetings, trade shows, expos, political conventions, agriculture shows, fine arts performances, etc.
- Sales to any agriculture commodities commission
- Sales to educational or cultural institutions
- Adaptations of vehicles for disabled veterans
- Church organs and steeple bells
- Parts installed on aircraft in Georgia
- Pollution control equipment
- Property purchased by the various named charities
- Crab bait
- Parent-teacher organizations sales
- Food bank donations
- Funeral items related sales
- Equipment in telecoms manufacturing facilities which improves air quality
- Certain fuel used in commercial fishing
- Nonprofits providing poultry diagnostic services
- Wheelchairs
- Short line railroads
- Seed capital investments
- Purchases by foreign consulates in the state
- Tickets to major sporting events. MAC worked to extend this sunset in 2022 to allow us to better compete for major sporting events.

Status: Awaiting House committee action.