

House Bill 4EX (AS PASSED HOUSE AND SENATE)

By: Representatives Rhodes of the 120<sup>th</sup>, Powell of the 171<sup>st</sup>, Rogers of the 10<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
2 income taxes, so as to provide for legislative findings; to provide for definitions; to provide  
3 for refundable income tax credits for certain timber producers based on certain casualty  
4 losses related to Hurricane Michael; to provide for transferability of such credits; to provide  
5 for related matters; to provide for an effective date; to repeal conflicting laws; and for other  
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,  
10 is amended by adding a new Code section to read as follows:

11 "48-7-40.36.

12 (a)(1) The General Assembly finds and determines that Hurricane Michael has had a  
13 catastrophic impact on the citizens and the economy of southwest Georgia, has  
14 particularly devastated the timber industry on which the citizens of southwest Georgia are  
15 heavily dependent for their livelihood, and has created both a public fire hazard and a  
16 danger of insect infestations due to the massive amounts of downed timber caused by the  
17 severity of this natural disaster.

18 (2) The General Assembly further finds and declares that it is appropriate and advisable  
19 to provide relief to the timber industry in the form of a tax credit targeted to those  
20 taxpayers that have suffered substantial economic losses and that will have to incur  
21 significant expenses for salvaging downed timber, site clearance, and reforestation of  
22 timber over the coming years.

23 (b) As used in this Code section, the term:

24 (1) 'Disaster area' means the real property encompassed by the borders of the 28 counties  
25 included in the renewal of the State of Emergency pronounced in the Executive Order of

26 the Governor dated November 6, 2018, and filed in the official records of the office of  
27 the Governor as Executive Order 11.06.18.01.

28 (2) 'Eligible timber property' means timber which on October 8, 2018, was being grown  
29 by a taxpayer in a disaster area as part of a trade or business or a transaction entered into  
30 for profit.

31 (3) 'Timber' means trees grown for the primary purpose of commercial production of  
32 food or wood or wood fiber products.

33 (4) 'Timber casualty loss' means the amount of the diminution of value included in the  
34 computation of the casualty loss deduction for such casualty losses claimed and allowed  
35 pursuant to Section 165 of the Internal Revenue Code of 1986 as casualty losses incurred  
36 by a taxpayer between October 9, 2018, and December 31, 2018, as a result of damage  
37 to or destruction of eligible timber property caused by Hurricane Michael.

38 (c)(1) A taxpayer shall be allowed tax credits against the tax imposed by this article in  
39 an amount equal to 100 percent of such taxpayer's timber casualty loss; provided,  
40 however, that the credit amount shall not exceed the number of the taxpayer's affected  
41 acres of eligible timber property in such disaster areas multiplied by \$400.00.

42 (2) To claim such tax credits, a taxpayer shall submit an application for preapproval of  
43 such credits based on timber casualty losses incurred by such taxpayer. A taxpayer shall  
44 either submit its preapproval application between January 1, 2019, and May 31, 2019, for  
45 a first round of preapprovals or between July 1, 2019, and December 31, 2019, for a  
46 second round of preapprovals, if applicable.

47 (d)(1) The commissioner shall require preapproval applications to contain such  
48 information as is necessary to substantiate a taxpayer's eligibility for tax credits allowed  
49 pursuant to this Code section.

50 (2) The commissioner is authorized to require electronic submission of preapproval  
51 applications in the manner specified by the commissioner.

52 (3) The commissioner shall review completed preapproval applications in the order in  
53 which such applications were submitted and shall provide notice to each taxpayer that  
54 submitted an application within 30 days of receipt stating whether such taxpayer's  
55 application is complete or incomplete.

56 (4) In no event shall the commissioner preapprove tax credits pursuant to this Code  
57 section in an amount that exceeds \$200 million in aggregate.

58 (5) In the event that properly completed and timely submitted preapproval applications  
59 are submitted for an amount that exceeds the amount of funds available to fully fund the  
60 tax credits requested, the commissioner shall prorate the available funds between or  
61 among the applicants.

62 (6) The commissioner shall approve properly completed and timely submitted  
63 preapproval applications and issue a preapproval certificate to the taxpayer by  
64 June 30, 2019, certifying the amount of credits such taxpayer is eligible to claim if the  
65 taxpayer meets the conditions of this Code section.

66 (d.1)(1) If, on July 1, 2019, the commissioner has not preapproved tax credits in the  
67 amount of \$200 million in aggregate pursuant to this Code section, a second round of  
68 preapproval applications shall be reviewed by the commissioner. Preapproval  
69 applications for the second round shall be submitted on or after July 1, 2019, and on or  
70 before December 31, 2019.

71 (2) In the event that properly completed and timely submitted preapproval applications  
72 are submitted during the second round for an amount that exceeds the amount of funds  
73 available to fully fund the tax credits requested, the commissioner shall prorate the  
74 available funds between or among the applicants.

75 (3) The commissioner shall approve all properly completed and timely submitted  
76 preapproval applications during the second round and issue a preapproval certificate to  
77 the taxpayer by January 31, 2020, certifying the amount of credits such taxpayer is  
78 eligible to claim if the taxpayer meets the conditions of this Code section.

79 (e) In no event shall the amount of the tax credits allowed pursuant to this Code section  
80 exceed \$200 million in aggregate.

81 (f)(1) Tax credits allowed pursuant to this Code section shall be eligible to be claimed  
82 only by the taxpayer to which a preapproval certificate was issued by the commissioner.  
83 Such tax credits shall only be claimed in the taxable year in which the taxpayer first  
84 completes the replanting of timber in a quantity projected to yield at maturity at least 90  
85 percent of the value of the timber casualty loss claimed. Such timber shall be planted  
86 within the same county in which the eligible timber property was being grown when the  
87 timber casualty loss was incurred. Timber market conditions as of October 8, 2018, shall  
88 be used for the purposes of establishing projected value.

89 (2) In order to claim such tax credits, a taxpayer shall attach to such taxpayer's state tax  
90 return certification from the taxpayer that the requirements of this Code section have been  
91 met and any other information required by the commissioner including information which  
92 demonstrates that it has completed the replanting of timber required pursuant to  
93 paragraph (1) of this subsection.

94 (3) Any tax credits allowed pursuant to this Code section shall be claimed on or before  
95 December 31, 2024.

96 (g)(1) The total amount of the tax credits allowed pursuant to this Code section for a  
97 taxable year may exceed the taxpayer's income tax liability. Such tax credits allowed in  
98 excess of a taxpayer's income tax liability shall be refundable to such taxpayer.

99 (2) Tax credits claimed pursuant to this Code section but not used in any taxable year  
100 may be carried forward for ten years from the close of the taxable year in which the  
101 credits are claimed.

102 (h) Tax credits claimed pursuant to this Code section but not used by the taxpayer against  
103 its income tax or refunded may be transferred or sold one time to a single other Georgia  
104 taxpayer, subject to the following conditions:

105 (1) Only the taxpayer that claimed tax credits allowed pursuant to this Code section shall  
106 make the transfer or sale of such tax credits;

107 (2) The taxpayer that claimed the tax credits allowed pursuant to this Code section shall  
108 submit to the commissioner written notification of any transfer or sale of tax credits  
109 within 30 days after the transfer or sale of such tax credits. The notification shall include:

110 (A) Such taxpayer's credit balance prior to transfer;

111 (B) The credit certificate number;

112 (C) The remaining balance of credits after transfer;

113 (D) The tax identification numbers for the transferee;

114 (E) The date of transfer;

115 (F) The amount of credits transferred; and

116 (G) Other information as may be required by the department;

117 (3) Failure to comply with this subsection shall result in the disallowance of the tax  
118 credits allowed pursuant to this Code section until the taxpayer that claimed the credits  
119 is in full compliance;

120 (4) The transfer or sale of the tax credits does not extend the time during which such tax  
121 credits can be used. The carry-forward period for tax credits that are transferred or sold  
122 shall begin on the date on which such tax credits were originally claimed;

123 (5) A transferee shall have only such rights to claim and use the tax credits that were  
124 available to the transferor at the time of the transfer. To the extent that the transferor did  
125 not have rights to claim or use the tax credits at the time of the transfer, the commissioner  
126 shall disallow the tax credits claimed by the transferee or recapture the tax credits from  
127 the transferee or transferor. The transferee's recourse shall not be against the  
128 commissioner; and

129 (6) The transferee must acquire the tax credits allowed pursuant to this Code section for  
130 a minimum of 60 percent of the amount of the tax credits so transferred.

131 (i)(1) A taxpayer claiming, transferring, or selling tax credits allowed pursuant to this  
132 Code section shall be required to reimburse the department for any department initiated  
133 audits relating to the tax credits, provided that such amount shall not exceed the value of  
134 the credits claimed by the taxpayer. This paragraph shall not apply to routine tax audits

135 of such taxpayer that may include the review of the tax credits provided in this Code  
136 section.

137 (2) The commissioner shall have access to timber property for the purpose of  
138 determining eligibility for both the preapproval and claiming of tax credits allowed and  
139 conducting audits pursuant to this Code section, provided that prior notice is given to any  
140 taxpayer that submitted an application for the preapproval of tax credits or that  
141 transferred or claimed such tax credits and the owner of the underlying real property.

142 (3) The commissioner may pursue all remedies available by law as necessary to  
143 recapture tax credits wrongfully preapproved, allowed, or claimed by a taxpayer or a  
144 taxpayer's transferee.

145 (4) The commissioner shall be authorized to consult with the Georgia Forestry  
146 Commission as necessary to administer and enforce this Code section.

147 (j) The commissioner shall be authorized to promulgate any rules and regulations  
148 necessary to implement and administer this Code section."

149 **SECTION 2.**

150 This Act shall become effective upon its approval by the Governor or upon its becoming law  
151 without such approval.

152 **SECTION 3.**

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