

O.C.G.A. § 48-7-1

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*** Current Through the 2013 Regular Session ***

TITLE 48. REVENUE AND TAXATION
CHAPTER 7. INCOME TAXES
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 48-7-1 (2012)

§ 48-7-1. Definitions

As used in this chapter, the term:

(1) "Corporation" includes, but is not limited to, all associations, professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies.

(2) "Deficiency" means the amount by which the tax imposed by this chapter or any prior law exceeds the amount shown as the tax due by the taxpayer upon his return or, if no amount is shown as the tax due by a taxpayer upon his return or if no return is made by the taxpayer, the amount determined by the commissioner to be the correct amount of the tax.

(3) "Dividend," when used for the purpose of defining a taxable dividend, means any distribution made by a corporation out of its earnings or profits to its shareholders or members whether the distribution is made in cash, other property, or a stock different from the stock on which the dividend is paid. "Dividend" also includes, but is not limited to, the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings.

(4) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has elected a year consisting of 52 to 53 weeks for federal income tax purposes, the term means the period so elected.

(5) "Income tax day" means December 31 of each calendar year or, if a person can show to the satisfaction of the commissioner that the person has already established the fiscal year as his taxable year for income tax reporting purposes, the last day of the person's fiscal year.

(6) "Nonresidents" means taxable nonresidents and nontaxable nonresidents.

(7) "Nontaxable nonresident" means every individual who is not otherwise a resident of this state or a taxable nonresident of this state.

(7.1) "Owning property or doing business in this state" shall not include the following activities, either singularly or in the aggregate, with respect to any person that is not otherwise subject to income taxation in the State of Georgia that has contracted with a commercial printer for any printing, including printing related activities, and distribution services to be performed in Georgia:

(A) The ownership by that person of tangible or intangible property located at the Georgia premises of the commercial printer for use by the printer in performing its services for the owner;

(B) The sale and distribution by that person of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(C) The activities performed by or on behalf of that person at the Georgia premises of the commercial printer which are directly related to the services provided by that commercial printer; or

(D) The printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia for or on behalf of that person.

(8) "Paid," for the purpose of the deductions under this chapter, means "paid or accrued" or "paid or incurred." The terms "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(9) "Received," for the purpose of the computation of the net income under this chapter, means "received or accrued." The term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(10)(A) "Resident" means:

(i) Every individual who is a legal resident of this state on income tax day;

(ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and

(iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

(B) Every individual who, having become a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed to continue to be a resident of this state until the person shows to the satisfaction of the commissioner that he or she has become a legal resident or domiciliary of another state and that he or she does not come within division (iii) of subparagraph (A) of this paragraph. Upon such a showing with respect to any 12 month period immediately preceding income tax day, the person shall be taxable as a resident of this state only to the date of becoming a nonresident on an apportionment basis as prescribed in Code Section 48-7-85.

(C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time during the 12 month period immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) of this paragraph shall be taxable as a resident only from the date of becoming a resident on an apportionment basis as prescribed in Code Section 48-7-85.

(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;

(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) (i) For purposes of this subparagraph, the term:

(I) "Deferred compensation" means deferred compensation received from a nonqualified deferred compensation plan.

(II) "Nonqualified deferred compensation plan" means the same as it is defined in Section 3121(v)(2) of the Internal Revenue Code.

(ii) 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. For stock options granted and deferred compensation plans established before January 1, 2011, this subparagraph shall apply only to the portion earned on or after January 1, 2011. The commissioner shall by rule and regulation provide the method of determining the amount earned in Georgia using a "days worked in Georgia" method. Such earned amount shall be included in the Georgia income of the taxable nonresident.

(iii) Employers shall withhold Georgia income tax as provided in Article 5 of this chapter on all deferred compensation and stock options which are required to be included in Georgia income of the taxable nonresident. For purposes of withholding only:

(I) The employer shall use records that are available to them. However, if the records are not available, the employer may reasonably rely upon a written representation, signed under penalties of perjury, from the employee of the number of days worked in Georgia. The employer shall only be held liable if the employer had actual or constructive knowledge that the employee's written representation was false or contained erroneous information; and

(II) The employer may elect to determine the number of days worked in Georgia by assuming the employee worked in Georgia only during the time the employee was a resident of Georgia.

(iv) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this paragraph.

(12) "Taxable year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net income is computed under this chapter.

HISTORY: Ga. L. 1931, Ex. Sess., p. 24, §§ 2, 35; Ga. L. 1931, p. 7, § 85; Code 1933, §§ 92-3002, 92-3302(f); Ga. L. 1937, p. 109, § 1; Ga. L. 1937-38, Ex. Sess., p. 150, § 1; Ga. L. 1941, p. 221, § 1; Ga. L. 1957, p. 397, §§ 1, 2; Ga. L. 1962, p. 454, § 1; Ga. L. 1962, p. 703, § 1; Ga. L. 1963, p. 16, § 1; Ga. L. 1975, p. 858, § 1; Ga. L. 1976, p. 980, § 1; Code 1933, § 91A-3501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 61; Ga. L. 1994, p. 597, § 1; Ga. L. 1998, p. 124, § 2; Ga. L. 2002, p. 372, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159,

§ 7/HB 488; Ga. L. 2008, p. 159, § 6/HB 1014; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 525, § 1/HB 1198; Ga. L. 2011, p. 297, § 2/HB 346.

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