

The House Committee on Ways and Means offers the following substitute to HB 43:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide for an exemption with respect to sales of certain tangible
3 personal property to, or used in the construction of, certain aquariums; to provide for
4 conditions and limitations; to authorize and direct the Department of Revenue to enter into
5 the Streamlined Sales and Use Tax Agreement with one or more states to simplify and
6 modernize sales and use tax administration in order to substantially reduce the burden of tax
7 compliance for all sellers and for all types of commerce; to provide for a short title; to
8 provide for definitions; to authorize the Department of Revenue to act jointly with other
9 states that are members of the agreement to establish standards for certification of certified
10 service providers and certified automated systems and establish performance standards for
11 multistate sellers; to provide for certain minimum standards; to provide an effective date; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
16 taxes, is amended in Code Section 48-8-3, relating to exemptions from state sales and use
17 tax, by striking "or" at the end of paragraph (74), by striking the period at the end of
18 paragraph (75) and inserting in its place "; or", and by adding a new paragraph immediately
19 following paragraph (75) to be designated paragraph (76) to read as follows:

20 "(76) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from the
21 effective date of this paragraph until January 1, 2007, sales of tangible personal property
22 to, or used in the construction of, an aquarium owned or operated by an organization
23 which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code."

SECTION 2.

Said chapter is further amended by adding a new article at the end thereof, to be designated Article 4, to read as follows:

"ARTICLE 4

48-8-160.

This article shall be known and may be cited as the 'Uniform Sales and Use Tax Administration Act.'

48-8-161.

As used in this article, the term:

(1) 'Agreement' means the Streamlined Sales and Use Tax Agreement.

(2) 'Certified automated system' means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) 'Certified service provider' means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) 'Person' means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) 'Sales tax' means the tax levied under this article.

(6) 'Seller' means any person making sales, leases, or rentals of personal property or services.

(7) 'State' means any state of the United States and the District of Columbia.

(8) 'Use tax' means the tax levied under this article.

48-8-162.

The General Assembly finds that entering into an agreement with one or more states to simplify and modernize sales and use tax administration will substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

48-8-163.

The department is authorized to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with

1 other states that are members of the agreement to establish standards for certification of a
2 certified service provider and certified automated system and establish performance
3 standards for multistate sellers. The department is further authorized to take other actions
4 reasonably required to implement the provisions set forth in this article. Other actions
5 authorized by this article include, but are not limited to, the adoption of rules and
6 regulations and the joint procurement, with other member states, of goods and services in
7 furtherance of the cooperative agreement. The department, or its designee, is authorized
8 to represent this state before the other states that are signatories to the agreement.

9 48-8-164.

10 No provision of the agreement authorized by this article in whole or part invalidates or
11 amends any provision of the law of this state. Adoption of the agreement by this state does
12 not amend or modify any law of this state. Implementation of any condition of the
13 agreement in this state, whether adopted before, at, or after membership of this state in the
14 agreement, must be by the action of this state.

15 48-8-165.

16 The agreement authorized by this article is an accord among individual cooperating
17 sovereigns in furtherance of their governmental functions. The agreement provides a
18 mechanism among the member states to establish and maintain a cooperative, simplified
19 system for the application and administration of sales and use taxes under the duly adopted
20 law of each member state.

21 48-8-166.

22 (a) The agreement authorized by this article binds and inures only to the benefit of this
23 state and the other member states. No person, other than a member state, is an intended
24 beneficiary of the agreement. Any benefit to a person other than a state is established by
25 the law of this state and the other member states and not by the terms of the agreement.

26 (b) Consistent with subsection (a) of this Code section, no person shall have any cause of
27 action or defense under the agreement or by virtue of this state's approval of the agreement.
28 No person may challenge, in any action brought under any provision of law, any action or
29 inaction by any department, agency, or other instrumentality of this state or any political
30 subdivision of this state on the ground that the action or inaction is inconsistent with the
31 agreement.

32 (c) No law of this state, or the application thereof, may be declared invalid as to any
33 person or circumstance on the ground that the provision or application is inconsistent with
34 the agreement.

1 48-8-167.

2 (a) A certified service provider is the agent of a seller with whom the certified service
3 provider has contracted for the collection and remittance of sales and use taxes. As the
4 seller's agent, the certified service provider is liable for sales and use tax due each member
5 state on all sales transactions it processes for the seller except as set out in this Code
6 section. A seller that contracts with a certified service provider is not liable to the state for
7 sales or use tax due on transactions processed by the certified service provider unless the
8 seller misrepresents the type of items it sells or commits fraud. In the absence of probable
9 cause to believe that the seller has committed fraud or made a material misrepresentation,
10 the seller is not subject to audit on the transactions processed by the certified service
11 provider. A seller is subject to audit for transactions not processed by the certified service
12 provider. The member states acting jointly may perform a system check of the seller and
13 review the seller's procedures to determine if the certified service provider's system is
14 functioning properly and the extent to which the seller's transactions are being processed
15 by the certified service provider.

16 (b) A person that provides a certified automated system is responsible for the proper
17 functioning of that system and is liable to the state for underpayments of tax attributable
18 to errors in the functioning of the certified automated system. A seller that uses a certified
19 automated system remains responsible and is liable to the state for reporting and remitting
20 tax.

21 (c) A seller that has a proprietary system for determining the amount of tax due on
22 transactions and has signed an agreement establishing a performance standard for that
23 system is liable for the failure of the system to meet the performance standard."

24 **SECTION 3.**

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

27 **SECTION 4.**

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