

The Senate Finance Committee offered the following substitute to HB 504:

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 revise provisions relating to Georgia taxes; to provide that a claim for
3 refund may not be submitted by a taxpayer on behalf of a class of other taxpayers alleged to
4 be similarly situated; to provide that an action for refund may not be brought by a taxpayer
5 on behalf of such a class; to change certain provisions regarding definitions; to change
6 certain provisions regarding exemptions with respect to motor fuels; to change certain
7 provisions regarding dealers' sales and use tax returns; to provide for prepayments of certain
8 taxes with respect to motor fuels; to provide for procedures, conditions, and limitations; to
9 change certain provisions regarding penalties; to change certain provisions regarding taxation
10 of motor fuel; to change certain provisions regarding sales and use tax exemptions regarding
11 motor fuel; to repeal certain provisions regarding the second motor fuel tax; to provide for
12 effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended in Code Section 48-2-35, relating to refunds of taxes and fees that are erroneously
16 or illegally assessed and collected by the state revenue commissioner, by striking paragraph
17 (1) of subsection (b) and inserting in its place a new paragraph (1) to read as follows:

18 "(b)(1) A claim for refund of a tax or fee erroneously or illegally assessed and collected
19 may be made by the taxpayer at any time within three years after the date of the payment
20 of the tax or fee to the commissioner. Each claim shall be filed in writing in the form and
21 containing such information as the commissioner may reasonably require and shall
22 include a summary statement of the grounds upon which the taxpayer relies. Should any
23 person be prevented from filing such an application because of his own or his counsel's
24 service in the armed forces during such period, the period of limitation shall date from
25

1 his or his counsel's discharge from the service. A claim for refund may not be submitted
 2 by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be
 3 similarly situated."

4 SECTION 2.

5 Said title is further amended in Code Section 48-2-35, relating to refunds of taxes and fees
 6 that are erroneously or illegally assessed and collected by the state revenue commissioner,
 7 in subsection (b) by redesignating paragraph (5) as paragraph (6) and inserting a new
 8 paragraph (5) to read as follows:

9 "(5) An action for a refund pursuant to paragraph (4) of this subsection may not be brought
 10 by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be
 11 similarly situated."

12 SECTION 3.

13 Said title is further amended by striking Code Section 48-8-3.1, relating to sales and use tax
 14 exemptions regarding motor fuel, and inserting in its place a new Code Section 48-8-3.1 to
 15 read as follows:

16 "48-8-3.1.

17 (a) ~~Except as provided in subsection (b) of this Code section, sales~~ Sales of motor fuels as
 18 defined in paragraph (9) of Code Section 48-9-2 ~~shall be exempt from the first 3 percent~~
 19 ~~of the sales and use taxes levied or imposed by this article and shall be fully~~ subject to the
 20 ~~remaining 1 4 percent of the sales and use taxes levied or imposed by this article.~~

21 (b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is
 22 purchased for purposes other than propelling motor vehicles on public highways as defined
 23 in Article 1 of Chapter 9 of this title shall be fully subject to the 4 percent sales and use
 24 taxes levied or imposed by this article unless otherwise specifically exempted by this
 25 article.

26 (c) It is specifically declared to be the intent of the General Assembly that taxation
 27 imposed on sales of motor fuel wholly or partially subject to taxation under this Code
 28 section shall not constitute motor fuel taxes for purposes of any provision of the
 29 Constitution providing for the automatic or mandatory appropriation of any amount of
 30 funds equal to funds derived from motor fuel taxes."

31 SECTION 4.

32 Said title is further amended in Code Section 48-8-2, relating to definitions, by adding a new
 33 paragraph immediately following paragraph (5), to be designated paragraph (5.1), to read as
 34 follows:

1 provision of this title, including, but not limited to, ~~Code Section 48-9-14~~ and sales and
 2 use taxes on motor fuel imposed under any of the provisions described in subsection (f)
 3 of this Code section but not including Code Section 48-9-3.1."

4 SECTION 7.

5 Said title is further amended by adding a new Code section immediately following Code
 6 Section 48-9-3, to be designated Code Section 48-9-3.1, to read as follows:

7 "48-9-3.1.

8 (a) As used in this Code section, the term 'prepaid state tax' shall have the same meaning
 9 as provided in paragraph (5.1) of Code Section 48-8-2.

10 (b) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer of
 11 motor fuels, a prepaid state tax shall be collected. The same person remitting the tax
 12 imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid
 13 state tax to the state. The tax shall be separately invoiced throughout the chain of
 14 distribution until it reaches the dealer who makes the retail sale. The commissioner shall
 15 issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest \$.001 per
 16 gallon for use in the following the semiannual period. The rate shall be calculated at 4
 17 percent of the state-wide average retail price by motor fuel type as compiled by the Energy
 18 Information Agency of the United States Department of Energy, the Oil Pricing
 19 Information Service, or a similar reliable published index less taxes imposed under Code
 20 Section 48-9-3, this subsection, and all local sales and use taxes. In the event that the retail
 21 price changes by 25 percent or more within a semiannual period, the commissioner shall
 22 issue a revised prepaid state tax rate for the remainder of that period.

23 (c) This tax shall be subject only to the exemptions provided in Code Section 48-9-3."

24 SECTION 8.

25 Said title is further amended by striking Code Section 48-9-14, relating to the second motor
 26 fuel tax, and inserting in its place a new Code Section 48-9-14 to read as follows:

27 "48-9-14.

28 ~~(a) In addition to the motor fuel tax imposed by Code Section 48-9-3, there is imposed a~~
 29 ~~second motor fuel tax.~~

30 ~~(b) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent of the~~
 31 ~~retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or~~
 32 ~~consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall~~
 33 ~~be subject only to the exemptions provided in Code Section 48-9-3.~~

34 ~~(c)(1) Except as otherwise provided in paragraph (2) of this subsection, in all other~~
 35 ~~respects, the tax imposed by this Code section shall be administered and collected and~~

1 ~~penalties and interest shall be imposed in the same manner as the sales and use tax~~
 2 ~~collected pursuant to Article 1 of Chapter 8 of this title.~~

3 ~~(2) Dealers shall be allowed a percentage of the amount of the tax due and accounted for~~
 4 ~~and shall be reimbursed in the form of a deduction in submitting, reporting, and paying~~
 5 ~~the amount due. The deduction shall be at the rate and subject to the requirements~~
 6 ~~specified under subsections (b) through (f) of Code Section 48-8-50. Reserved.~~

7 **SECTION 9.**

8 Said title is further amended by striking subsections (b) and (d) of Code Section 48-9-16,
 9 relating to penalties, and inserting in their place new subsections (b) and (d), respectively,
 10 to read as follows:

11 "(b) When any distributor fails to pay the tax or any part of the tax due under ~~paragraph~~
 12 ~~(1) of subsection (a) of Code Section 48-9-3 or 48-9-3.1, he~~ the distributor shall be subject
 13 to a penalty of 10 percent of the amount of unpaid taxes due."

14 "(d) When any distributor fails to pay the tax or any part of the tax due under ~~paragraph~~
 15 ~~(1) of subsection (a) of Code Section 48-9-3 or 48-9-3.1, he~~ the distributor shall pay
 16 interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the
 17 tax became due until paid."

18 **SECTION 10.**

19 (a) This section and Section 10 of this Act shall become effective upon its approval by the
 20 Governor or upon its becoming law without such approval.

21 (b) Sections 1 and 2 of this Act shall become effective upon its approval by the Governor
 22 or upon its becoming law without such approval and shall apply to all claims for refunds filed
 23 or actions for refunds brought pursuant to Code Section 48-2-35 before, on, or after such
 24 effective date.

25 (c) Sections 4, 5, 6, 7, and 9 of this Act shall become effective on January 1, 2004.

26 (d) Sections 3 and 8 of this Act shall become effective on July 1, 2003.

27 **SECTION 11.**

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