

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:**

14 **SECTION 1.**

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

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

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

SECTION 2.

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

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

SECTION 3.

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

"48-8-3.1.

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

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

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

SECTION 4.

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

"(5.1) 'Prepaid state tax' means the sales and use tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-3.1 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-3.1. This shall not apply to any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; or by or pursuant to Article 3 of this chapter."

SECTION 5.

Said title is further amended by striking subsection (b) of Code Section 48-8-49, relating to dealers' sales and use tax returns, and inserting in its place a new subsection (b) to read as follows:

"(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on his the dealer's average monthly payments for the last fiscal year.

(2) If the estimated tax liability of a dealer for any taxable period exceeds \$2,500.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer unless during the previous fiscal year the dealer's monthly payments exceeded \$2,500.00 per month for three consecutive months or more nor shall this subsection apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under Code Section 48-9-3.1. No local sales taxes shall be included in determining any estimated tax liability."

SECTION 6.

Said title is further amended by striking paragraph (3) of subsection (b) of Code Section 48-8-50, relating to compensation of dealers, and inserting in its place a new paragraph (3) to read as follows:

"(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any

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~~

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

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

SECTION 9.

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

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

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

SECTION 10.

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

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

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

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

SECTION 11.

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