

House Bill 504 (AS PASSED HOUSE AND SENATE)

By: Representatives Royal of the 140<sup>th</sup>, Buck of the 112<sup>th</sup>, Parham of the 94<sup>th</sup>, Borders of the 142<sup>nd</sup>, Floyd of the 132<sup>nd</sup>, and others

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 dealers' sales and use tax returns; to change certain provisions  
7 regarding compensation of dealers; to provide for prepayments of certain taxes with respect  
8 to motor fuels; to provide for procedures, conditions, and limitations; to change certain  
9 provisions regarding penalties; to change certain provisions regarding taxation of motor fuel;  
10 to change certain provisions regarding sales and use tax exemptions regarding motor fuel;  
11 to repeal certain provisions regarding the second motor fuel tax; to provide for effective  
12 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

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

16 "(5.1) 'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction  
 17 with Code Section 48-8-3.1 and Code Section 48-9-14. This shall not apply to any local  
 18 sales and use tax which is levied on the sale or use of motor fuel and imposed in an area  
 19 consisting of less than the entire state, however authorized, including, but not limited to,  
 20 such taxes authorized by or pursuant to constitutional amendment; by or pursuant to  
 21 Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,  
 22 known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant  
 23 to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; or by or pursuant  
 24 to Article 3 of this chapter."

#### 25 SECTION 4.

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

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

32 (2) If the estimated tax liability of a dealer for any taxable period exceeds \$2,500.00, the  
 33 dealer shall file a return and remit to the commissioner not less than 50 percent of the  
 34 estimated tax liability for the taxable period on or before the twentieth day of the period.

1 The amount of the payment of the estimated tax liability shall be credited against the  
 2 amount to be due on the return required under subsection (a) of this Code section. This  
 3 subsection shall not apply to any dealer unless during the previous fiscal year the dealer's  
 4 monthly payments exceeded \$2,500.00 per month for three consecutive months or more  
 5 nor shall this subsection apply to any dealer whose primary business is the sale of motor  
 6 fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code  
 7 Section 48-9-14. No local sales taxes shall be included in determining any estimated tax  
 8 liability."

#### 9 SECTION 5.

10 Said title is further amended by striking paragraph (3) of subsection (b) of Code Section  
 11 48-8-50, relating to compensation of dealers, and inserting in its place a new paragraph (3)  
 12 to read as follows:

13 "(3) With respect to each certificate of registration number on such return, a deduction  
 14 of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as  
 15 defined under paragraph (9) of Code Section 48-9-2, which are imposed under any  
 16 provision of this title, including, but not limited to, ~~Code Section 48-9-14~~ and sales and  
 17 use taxes on motor fuel imposed under any of the provisions described in subsection (f)  
 18 of Code section but not including Code Section 48-9-14."

#### 19 SECTION 6.

20 Said title is further amended by striking subsection (b) of Code Section 48-9-14, relating to  
 21 the second motor fuel tax, and inserting in its place a new subsection (b) to read as follows:

22 "(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent  
 23 of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or  
 24 consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall  
 25 be subject only to the exemptions provided in Code Section 48-9-3.

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

28 (B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer  
 29 of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax  
 30 imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid  
 31 state tax to the state. The tax shall be separately invoiced throughout the chain of  
 32 distribution until it reaches the dealer who makes the retail sale. The commissioner  
 33 shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest  
 34 \$.001 per gallon for use in the following the semiannual period. The rate shall be  
 35 calculated at 4 percent of the state-wide average retail price by motor fuel type as

1 compiled by the Energy Information Agency of the United States Department of  
 2 Energy, the Oil Pricing Information Service, or a similar reliable published index less  
 3 taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use  
 4 taxes. In the event that the retail price changes by 25 percent or more within a  
 5 semiannual period, the commissioner shall issue a revised prepaid state tax rate for the  
 6 remainder of that period."

#### 7 **SECTION 7.**

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 48-9-14, he~~ the distributor shall be subject  
 13 to a penalty to 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 48-9-14, he~~ the distributor shall pay interest  
 16 on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the tax  
 17 became due until paid."

#### 18 **SECTION 8.**

19 (a) This section and Section 9 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 3, 4, 5, 6, and 7 of this Act shall become effective on January 1, 2004.

#### 26 **SECTION 9.**

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