

House Bill 1437 (AS PASSED HOUSE AND SENATE)

By: Representatives Royal of the 140th, O`Neal of the 117th, Buck of the 112th, Richardson of the 26th, Skipper of the 116th, 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 enact the State and Local Tax Revision Act of 2004; to provide for a short
3 title; to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and
4 thereby to incorporate certain provisions of federal law into Georgia law; to provide for
5 applicability; to change certain provisions regarding fees and penalties with respect to
6 returned checks or money orders; to increase the penalty for filing of returns which are
7 frivolous or desire to impede the administration of state income tax laws; to change the
8 requirements with respect to liability on a joint income tax return; to provide for additional
9 limitations regarding the low income tax credit; to provide for the Streamlined Sales and Use
10 Tax Agreement; to provide for a short title; to provide for powers, duties, and authority of
11 the state revenue commissioner and Department of Revenue with respect to such agreement;
12 to provide for procedures, conditions, and limitations; to amend Title 50 of the Official Code
13 of Georgia Annotated, relating to state government, so as to provide that public disclosure
14 shall not be required for records that would reveal the home address or telephone number,
15 social security number, or insurance or medical information of employees of the Department
16 of Revenue; to provide for effective dates and applicability; to repeal conflicting laws; and
17 for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

20 This Act shall be known and may be cited as the "State and Local Tax Revision Act of
21 2004."

22 style="text-align:center">**SECTION 2.**

23 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation is
24 amended by striking paragraph (14) of Code Section 48-1-2, relating to definitions, and
25 inserting in its place a new paragraph (14) to read as follows:

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1 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
2 beginning on or after January 1, ~~2003~~ 2004, the provisions of the United States Internal
3 Revenue Code of 1986 provided for in federal law enacted on or before January 1, ~~2003~~
4 2004, except Section 168(k) and Section 1400L of the Internal Revenue Code of 1986
5 shall be treated as if they were not in effect and Section 179(b) of the Internal Revenue
6 Code of 1986 shall be treated as it was in effect before the enactment of the Jobs and
7 Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27). In the event a
8 reference is made in this title to the Internal Revenue Code or the Internal Revenue Code
9 of 1954 as it existed on a specific date prior to January 1, ~~2003~~ 2004, the term means the
10 provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it
11 existed on the prior date. Unless otherwise provided in this title, any term used in this title
12 shall have the same meaning as when used in a comparable provision or context in the
13 Internal Revenue Code of 1986. For taxable years beginning on or after January 1, ~~2003~~
14 2004, provisions of the Internal Revenue Code of 1986 which were as of January 1, ~~2003~~
15 2004, enacted into law but not yet effective shall become effective for purposes of
16 Georgia taxation on the same dates upon which they become effective for federal tax
17 purposes."

18 SECTION 3.

19 Said title is further amended by striking paragraph (1) of subsection (e) of Code Section
20 48-2-32, relating to forms of payment, and inserting in its place a new paragraph (1) to read
21 as follows:

22 "(e)(1) On and after July 1, ~~1991~~ 2004, if any check or money order tendered to the
23 commissioner in payment of any tax or license fee is not duly paid when presented to the
24 drawee or issuer for payment, there shall be paid by the person who tendered the check
25 or money order upon notice and demand of the commissioner or his delegate, in the same
26 manner as tax, a penalty in an amount equal to 2 percent of the amount of the check or
27 money order, unless the amount of the check or money order is less than ~~\$750.00~~
28 \$1,250.00, in which case the penalty under this Code section shall be ~~\$15.00 or the~~
29 ~~amount of the check or money order, whichever is less~~ \$25.00. This penalty shall be in
30 addition to any other penalties provided by law."

31 SECTION 4.

32 Said title is further amended by striking paragraph (5) of subsection (f) of Code Section
33 48-2-32, relating to forms of payment, and inserting in its place a new paragraph (5) to read
34 as follows:

1 "(5) A penalty of 10 percent of the amount due shall be added to any ~~timely~~ payment
 2 which is made in other than immediately available funds which are specified by
 3 regulation of the commissioner unless the commissioner has authorized an alternate
 4 means of payment in an emergency."

5 SECTION 5.

6 Said title is further amended by striking subsection (a) of Code Section 48-7-57.1, relating
 7 to filing of returns which are frivolous or desire to impede the administration of state income
 8 tax laws, and inserting in its place a new subsection (a) to read as follows:

9 "(a) A penalty of ~~\$500.00~~ \$1,000.00 may be assessed against any individual who files what
 10 purports to be a return of the tax imposed by Article 2 of this chapter if:

11 (1) The purported return:

12 (A) Does not contain information on which the substantial correctness of the amount
 13 of tax shown to be due may be judged; or

14 (B) Contains information that on its face indicates that the amount of tax shown to be
 15 due is substantially incorrect; and

16 (2) The conduct described in paragraph (1) of this subsection is due to:

17 (A) A position which is frivolous; or

18 (B) A desire which appears on the purported return to delay or impede the
 19 administration of state income tax laws."

20 SECTION 6.

21 Said title is further amended by striking paragraph (1) of subsection (g) of Code Section
 22 48-7-86, relating to relieving individuals of liability on joint returns, and inserting in its place
 23 a new paragraph (1) to read as follows:

24 "(g)(1) Notwithstanding any other provision of this Code section to the contrary, if:

25 (A)(i) A joint return has been made for a taxable year;

26 ~~(B)~~(ii) On such return there is an understatement of tax attributable to erroneous
 27 items of one individual filing the joint return;

28 ~~(C)~~(iii) The other individual filing the joint return establishes that in signing the
 29 return he or she did not know, and had no reason to know, that there was such
 30 understatement; and

31 ~~(D)~~(iv) Taking into account all the facts and circumstances, it is inequitable to hold
 32 the other individual liable for the deficiency in tax for such taxable year attributable
 33 to such understatement; ~~and~~ or

34 ~~(E)~~(B) The other individual has made the proper election pursuant to Section 6015 of
 35 the Internal Revenue Code, if applicable

1 then the other individual shall be relieved of liability for tax, including interest, penalties,
 2 and other amounts, for such taxable year to the extent such liability is attributable to such
 3 understatement, if such other individual has been relieved of liability for federal income
 4 taxes pursuant to Section 6015 of the Internal Revenue Code, if applicable."

5 **SECTION 7.**

6 Said title is further amended in Code Section 48-7A-3, relating to the low income tax credit,
 7 by adding a new subsection immediately following subsection (e), to be designated
 8 subsection (e.1), to read as follows:

9 "(e.1) Any individual incarcerated or confined in any city, county, municipal, state, or
 10 federal penal or correctional institution for all or any part of a taxable year shall not be
 11 entitled to claim a credit under this Code section for that taxable year."

12 **SECTION 8.**

13 Said title is further amended by adding a new article at the end of Chapter 8, relating to sales
 14 and use taxes, to be designated Article 4, to read as follows:

15 "ARTICLE 4

16 48-8-160.

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

19 48-8-161.

20 As used in this article, the term:

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

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

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

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

30 (5) 'Sales tax' means the taxes levied under this chapter.

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

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

1 (8) 'Use tax' means the taxes levied under this chapter.

2 48-8-162.

3 The department is authorized to enter into the Streamlined Sales and Use Tax Agreement
4 with one or more states to simplify and modernize sales and use tax administration in order
5 to substantially reduce the burden of tax compliance for all sellers and for all types of
6 commerce. In furtherance of the agreement, the department is authorized to act jointly with
7 other states that are members of the agreement to establish standards for certification of a
8 certified service provider and certified automated system and establish performance
9 standards for multistate sellers. The department is further authorized to take other actions
10 reasonably required to implement the provisions set forth in this article. Other actions
11 authorized by this Code section include, but are not limited to, the adoption of rules and
12 regulations and the joint procurement, with other member states, of goods and services in
13 furtherance of the cooperative agreement. The department, or its designee, is authorized
14 to represent this state before the other states that are signatories to the agreement.

15 48-8-163.

16 No provision of the agreement authorized by this article in whole or part invalidates or
17 amends any provision of the law of this state. Adoption of the agreement by this state does
18 not amend or modify any law of this state. Implementation of any condition of the
19 agreement in this state, whether adopted before, at, or after membership of this state in the
20 agreement, must be by the action of this state.

21 48-8-164.

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

27 48-8-165.

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

32 (b) Consistent with subsection (a) of this Code section, no person shall have any cause of
33 action or defense under the agreement or by virtue of this state's approval of the agreement.

1 No person may challenge, in any action brought under any provision of law, any action or
2 inaction by any department, agency, or other instrumentality of this state, or any political
3 subdivision of this state on the ground that the action or inaction is inconsistent with the
4 agreement.

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

8 48-8-166.

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

23 (b) A person that provides a certified automated system is responsible for the proper
24 functioning of that system and is liable to the state for underpayments of taxes attributable
25 to errors in the functioning of the certified automated system. A seller that uses a certified
26 automated system remains responsible and is liable to the state for reporting and remitting
27 tax.

28 (c) A seller that has a proprietary system for determining the amount of taxes due on
29 transactions and has signed an agreement establishing a performance standard for that
30 system is liable to the state for the failure of the system to meet the performance standard."

SECTION 9.

1
2 Title 50 of the Official Code of Georgia Annotated, relating to access to state government,
3 is amended by striking paragraph (13) of subsection (a) of Code Section 50-18-72, relating
4 to when public disclosure is not required, and inserting in its place a new paragraph (13) to
5 read as follows:

6 "(13) Records that would reveal the home address or telephone number, social security
7 number, or insurance or medical information of employees of the Department of
8 Revenue, law enforcement officers, judges, scientists employed by the Division of
9 Forensic Sciences of the Georgia Bureau of Investigation, correctional employees, and
10 prosecutors or identification of immediate family members or dependents thereof;"

SECTION 10.

11
12 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become
13 effective upon its approval by the Governor or upon its becoming law without such approval.

14 (b) Section 2 of this Act shall become effective upon its approval by the Governor or upon
15 its becoming law without such approval and shall be applicable to all taxable years beginning
16 on or after January 1, 2004. Provisions of the Internal Revenue Code of 1986 which were
17 as of January 1, 2004, enacted into law but not yet effective shall become effective for
18 purposes of Georgia taxation on the same dates upon which they become effective for federal
19 tax purposes.

SECTION 11.

20
21 All laws and parts of laws in conflict with this Act are repealed.