

The House Committee on Ways and Means offers the following substitute to HB 488:

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 2005"; to provide for a short  
3 title; to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and  
4 thereby incorporate certain provisions of federal law into Georgia law; to provide for  
5 applicability; to provide for the authority to establish fees for offer in compromises; to clarify  
6 that electronic funds transfer applies to use tax; to provide for electronic funds transfer  
7 requirements for third-party payroll providers; to clarify that no interest shall be paid when  
8 a taxpayer fails to claim credits listed in Article 2 of Chapter 7; to provide for performance  
9 review of county boards of tax assessors; to provide for selection of members of performance  
10 review boards; to provide for powers, duties, and authority of the state revenue  
11 commissioner; to amend the definition of the term "taxable nonresident"; to clarify the  
12 requirements with respect to the subtraction from taxable income of interest or dividends on  
13 obligations of the United States; to amend the requirements with respect to the sale or  
14 exchange of real or tangible personal property when the gain or loss is not recognized due  
15 to the purchase of similar property; to clarify the requirements with respect to the filing of  
16 consolidated returns for Georgia income tax purposes; to provide for the treatment of  
17 Georgia net operating losses for corporations; to clarify the treatment of the distributive share  
18 received by a nonresident member of a resident limited partnership or other similar  
19 nontaxable entity which derives income exclusively from buying, selling, dealing in, and  
20 holding securities on its own behalf; to clarify the requirements with respect to the  
21 subtraction from taxable income of interest or dividends on obligations of the United States;  
22 to amend the requirements with respect to the sale or exchange of real or tangible personal  
23 property when the gain or loss is not recognized due to the purchase of similar property; to  
24 clarify when the tax imposed by Chapter 7 shall apply to a corporation; to clarify the  
25 limitations with respect to base year port traffic increases; to clarify the requirements with  
26 respect to the assignment of corporate income tax credits; to clarify the commissioner's  
27 authority with respect to adjustments which may be made when the taxpayer's activities  
28 distort true net income or the taxpayer engages in improper activities; to clarify the definition

1 of the term "nonresident" as defined in Article 5 of Chapter 7; to amend the definition of the  
 2 term "wages"; to clarify the requirements with respect to credit or refund of estimated tax  
 3 overpayment; to clarify the sales and use tax registration for vendors on certain state  
 4 contracts and their affiliates; to provide for entitlement of vendors compensation only when  
 5 a return and payment of sales and use tax is timely; to extend the sunset provision for  
 6 distribution of unidentifiable sales and use tax proceeds to December 31, 2007; to provide  
 7 for entitlement of vendors compensation only when a return and payment of motor fuel tax  
 8 is timely; to amend the provisions regarding estate taxes; to provide for effective dates and  
 9 applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "State and Local Tax Revision Act of  
 13 2005."

14 **SECTION 2.**

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

18 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years  
 19 beginning on or after January 1, ~~2004~~ 2005, the provisions of the United States Internal  
 20 Revenue Code of 1986 provided for in federal law enacted on or before January 1, ~~2004~~  
 21 2005, except Section 168(k), Section 199, and Section 1400L of the Internal Revenue  
 22 Code of 1986 shall be treated as if they were not in effect and ~~Section 179(b) of the~~  
 23 ~~Internal Revenue Code of 1986 shall be treated as it was in effect before the enactment~~  
 24 ~~of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27)~~. In  
 25 the event a reference is made in this title to the Internal Revenue Code or the Internal  
 26 Revenue Code of 1954 as it existed on a specific date prior to January 1, ~~2004~~ 2005, the  
 27 term means the provisions of the Internal Revenue Code or the Internal Revenue Code  
 28 of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term  
 29 used in this title shall have the same meaning as when used in a comparable provision or  
 30 context in the Internal Revenue Code of 1986. For taxable years beginning on or after  
 31 January 1, ~~2004~~ 2005, provisions of the Internal Revenue Code of 1986 which were as  
 32 of January 1, ~~2004~~ 2005, enacted into law but not yet effective shall become effective for

1 purposes of Georgia taxation on the same dates upon which they become effective for  
2 federal tax purposes."

3 **SECTION 3.**

4 Said title is further amended by striking Code Section 48-2-18.1, relating to tax settlement  
5 and compromise procedures, and inserting in its place a new Code Section 48-2-18.1 to read  
6 as follows:

7 "48-2-18.1.

8 (a) The commissioner or his or her designee shall be authorized to settle and compromise  
9 any proposed tax assessment, any final tax assessment, or any tax fi. fa., where there is  
10 doubt as to liability or there is doubt as to collectability, and the settlement or compromise  
11 is in the best interests of the state. The commissioner shall develop procedures for the  
12 acceptance and rejection of offers in compromise. The commissioner shall keep a record  
13 of all settlements and compromises made and the reasons for each settlement and  
14 compromise.

15 (b) Each offer in compromise shall be accompanied by a \$100.00 nonrefundable  
16 application fee. If the offer is accepted by the commissioner, such application fee shall be  
17 treated as part of the offer. Such application fee shall not apply if the applicant's total  
18 monthly income is at or below levels based on the poverty guidelines established by the  
19 United States Department of Health and Human Services. If this is the case, the applicant  
20 shall certify as such with their offer."

21 **SECTION 4.**

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

24 "(f)(1) As used in this subsection, the term 'electronic funds transfer' means a method of  
25 making financial payments from one party to another through a series of instructions and  
26 messages communicated electronically, via computer, among financial institutions. Such  
27 term shall not include the electronic filing of tax returns.

28 (2) The commissioner may require that any person or business owing more than  
29 \$10,000.00 in connection with any return, report, or other document required to be filed  
30 with the department on or after July 1, 1992, shall pay any such sales tax, use tax,  
31 withholding tax, motor fuel distributor tax, corporate estimated income tax, or individual  
32 estimated income tax liability to the state by electronic funds transfer so that the state  
33 receives collectable funds on the date such payment is required to be made. In emergency  
34 situations, the commissioner may authorize alternative means of payment in funds  
35 immediately available to the state on the date of payment.

1 (3) In addition to the requirements contained in paragraph (2) of this subsection, every  
 2 employer whose tax withheld or required to be withheld under Code Section 48-7-103  
 3 exceeds \$50,000.00 in the aggregate for the lookback period as defined in paragraph (4)  
 4 of subsection (b) of Code Section 48-7-103 must pay the taxes by electronic funds  
 5 transfer as follows:

6 (A) For paydays occurring on Wednesday, Thursday, or Friday, the taxes must be  
 7 remitted on or before the following Wednesday or, in the case of a holiday, the next  
 8 banking day thereafter;

9 (B) For paydays occurring on Saturday, Sunday, Monday, or Tuesday, the taxes must  
 10 be remitted on or before the following Friday or, in the case of a holiday, the next  
 11 banking day thereafter; and

12 (C) Notwithstanding any other provision of this paragraph to the contrary, for  
 13 employers whose tax withheld or required to be withheld exceeds \$100,000.00 for the  
 14 payday, the taxes must be remitted by the next banking day.

15 (4) In addition to the requirements contained in paragraphs (2) and (3) of this subsection,  
 16 every third-party payroll provider who prepares or remits, or both, Georgia withholding  
 17 tax for more than 250 employers must pay the taxes by electronic funds transfer.

18 ~~(4)~~(5) The commissioner is specifically authorized to establish due dates and times for  
 19 the initiation of electronic payments, establish an implementation schedule, promulgate  
 20 regulations, and prescribe rules and procedures to implement this subsection.

21 ~~(5)~~(6) A penalty of 10 percent of the amount due shall be added to any payment which  
 22 is made in other than immediately available funds which are specified by regulation of  
 23 the commissioner unless the commissioner has authorized an alternate means of payment  
 24 in an emergency.

25 ~~(6)~~(7) In addition to authority granted in Code Section 48-2-41, the commissioner is  
 26 authorized to waive the collection of interest on electronic funds transfer payments, not  
 27 to exceed the first two scheduled payments, whenever and to the extent that the  
 28 commissioner reasonably determines that the default giving rise to the interest charge was  
 29 due to reasonable cause and not due to gross or willful neglect or disregard of this  
 30 subsection or regulations or instructions issued pursuant to this subsection.

31 ~~(7)~~(8) Notwithstanding any provision of law to the contrary, the commissioner is  
 32 authorized to promulgate rules and regulations setting forth the requirements for  
 33 electronically transmitting all required returns, reports, or other documents required to  
 34 be filed with taxes paid by electronic funds transfer.

35 ~~(8)~~(9) Notwithstanding any provision of law to the contrary, the commissioner is  
 36 authorized to promulgate rules and regulations setting forth the procedure for satisfying  
 37 the signature requirement for returns whether by electronic signature, voice signature, or

1 other means, so long as appropriate security measures are implemented which assure  
2 security and verification of the signature procedure.

3 ~~(9)~~(10) Notwithstanding any provision of law to the contrary, the commissioner is  
4 authorized to pay all tax refunds by electronic funds transfer when requested by a  
5 taxpayer who has filed his or her return electronically with the department."

## 6 SECTION 5.

7 Said title is further amended by striking Code Section 48-2-35, relating to refunds, and  
8 inserting in its place a new Code Section 48-2-35 to read as follows:

9 "48-2-35.

10 (a) A taxpayer shall be refunded any and all taxes or fees which are determined to have  
11 been erroneously or illegally assessed and collected from such taxpayer under the laws of  
12 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except  
13 as provided in subsection (b) of this Code section, on the amount of the taxes or fees at the  
14 rate of 1 percent per month from the date of payment of the tax or fee to the commissioner.  
15 For the purposes of this Code section, any period of less than one month shall be  
16 considered to be one month. Refunds shall be drawn from the treasury on warrants of the  
17 Governor issued upon itemized requisitions showing in each instance the person to whom  
18 the refund is to be made, the amount of the refund, and the reason for the refund.

19 (b) No interest shall be paid if the taxes or fees were erroneously or illegally assessed and  
20 collected due to the taxpayer failing to claim any credits listed in Article 2 of Chapter 7 of  
21 this title on or before the due date for filing the applicable income tax return, including any  
22 extensions which have been granted.

23 ~~(b)~~(c)(1)(A) A claim for refund of a tax or fee erroneously or illegally assessed and  
24 collected may be made by the taxpayer at any time within three years after:

25 (i) The date of the payment of the tax or fee to the commissioner; or

26 (ii) In the case of income taxes, the later of the date of the payment of the tax or fee  
27 to the commissioner or the due date for filling the applicable income tax return,  
28 including any extensions which have been granted.

29 (B) Each claim shall be filed in writing in the form and containing such information  
30 as the commissioner may reasonably require and shall include a summary statement of  
31 the grounds upon which the taxpayer relies. Should any person be prevented from  
32 filing such an application because of service of such person or such person's counsel  
33 in the armed forces during such period, the period of limitation shall date from the  
34 discharge of such person or such person's counsel from such service. A claim for  
35 refund may not be submitted by the taxpayer on behalf of a class consisting of other  
36 taxpayers who are alleged to be similarly situated.

1 (2) In the event the taxpayer desires a conference or hearing before the commissioner in  
2 connection with any claim for refund, he or she shall specify such desire in writing in the  
3 claim and, if the claim conforms with the requirements of this Code section, the  
4 commissioner shall grant a conference at a time he or she shall reasonably specify.

5 (3) The commissioner or his or her delegate shall consider information contained in the  
6 taxpayer's claim for refund, together with such other information as may be available,  
7 and shall approve or disapprove the taxpayer's claim and notify the taxpayer of his or her  
8 action.

9 (4) Any taxpayer whose claim for refund is denied by the commissioner or his or her  
10 delegate or whose claim is not decided by the commissioner or his or her delegate within  
11 one year from the date of filing the claim shall have the right to bring an action for a  
12 refund in the superior court of the county of the residence of the taxpayer, except that:

13 (A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right  
14 to bring an action for a refund in the superior court of the county in which is located the  
15 taxpayer's principal place of doing business in this state or in which the taxpayer's  
16 chief or highest corporate officer or employee resident in this state maintains his or her  
17 office; or

18 (B) If the taxpayer is a nonresident individual or foreign corporation having no place  
19 of doing business and no officer or employee resident and maintaining his or her office  
20 in this state, the taxpayer shall have the right to bring an action for a refund in the  
21 Superior Court of Fulton County or in the superior court of the county in which the  
22 commissioner in office at the time the action is filed resides.

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

26 (6) No action or proceeding for the recovery of a refund under this Code section shall be  
27 commenced before the expiration of one year from the date of filing the claim for refund  
28 unless the commissioner or his or her delegate renders a decision on the claim within that  
29 time, nor shall any action or proceeding be commenced after the expiration of two years  
30 from the date the claim is denied. The two-year period prescribed in this paragraph for  
31 filing an action for refund shall be extended for such period as may be agreed upon in  
32 writing between the taxpayer and the commissioner during the two-year period or any  
33 extension thereof.

34 ~~(c)~~(d) In the event any taxpayer's claim for refund is approved by the commissioner or his  
35 or her delegate and the taxpayer has not paid other state taxes which have become due, the  
36 commissioner or department may set off the unpaid taxes against the refund. When the  
37 setoff authorized by this subsection is exercised, the refund shall be deemed granted and

1 the amount of the setoff shall be considered for all purposes as a payment toward the  
 2 particular tax debt which is being set off. Any excess refund remaining after the setoff has  
 3 been applied shall be refunded to the taxpayer.

4 ~~(d)~~(e) This Code section shall not apply to taxes paid or stamps purchased for alcoholic  
 5 beverages pursuant to Title 3."

#### 6 SECTION 6.

7 Said title is further amended by striking subsection (a) of Code Section 48-5-295.1, relating  
 8 to the appointment of an independent performance review board, and inserting in its place  
 9 a new subsection (a) to read as follows:

10 "(a) The county governing authority may, upon adoption of a resolution, request that a  
 11 performance review of the county board of tax assessors be conducted. Such resolution  
 12 shall be transmitted to the commissioner who shall appoint an independent performance  
 13 review board within 30 days after receiving such resolution. The commissioner shall  
 14 appoint three competent persons to serve as members of the performance review board, one  
 15 of whom shall be an employee of the department and two of whom shall be assessors or  
 16 chief appraisers who are not members of the board or a chief appraiser for the county under  
 17 review."

#### 18 SECTION 7.

19 Said title is further amended by striking subparagraph (A) of paragraph (11) of Code Section  
 20 48-7-1, relating to definitions, and inserting in its place a new subparagraph (A) to read as  
 21 follows:

22 "(A) Every individual who is not otherwise a resident of this state for income tax  
 23 purposes and who regularly and not casually or intermittently engages within this state,  
 24 by himself or herself or by means of employees, agents, or partners, in employment,  
 25 trade, business, professional, or other activity for financial gain or profit including, but  
 26 not limited to, the rental of real or personal property located within this state or for use  
 27 within this state. 'Taxable nonresident' does not include a legal resident of another state  
 28 whose only activity for financial gain or profit in this state consists of performing  
 29 services in this state for an employer as an employee when the remuneration for the  
 30 services does not exceed the lesser of 5 percent of the income received by the person  
 31 for performing services in all places during any taxable year or \$5,000.00;"





1 net operating loss carryover" shall mean the Georgia net operating loss for the  
2 applicable year carried back or carried over in the manner and for the number of years  
3 as provided in this paragraph;

4 (C) In the event the taxpayer elects to forgo the carryback period for the federal net  
5 operating loss as allowed under the Internal Revenue Code, the taxpayer shall also  
6 forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo  
7 the carryback period for the federal net operating loss, the election to forgo the net  
8 operating loss period shall not be allowed for Georgia purposes. If the taxpayer does  
9 not have a federal net operating loss, the taxpayer may make an irrevocable election to  
10 forgo the carryback period for the Georgia net operating loss, provided that an  
11 affirmative statement is attached to the Georgia return for the year of the loss. Such  
12 election must be made on or before the due date for filing the income tax return for the  
13 taxable year wherein the loss was incurred, including any extensions which have been  
14 granted;

15 (D) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code  
16 of 1986, as amended, as they relate to net operating losses also apply for Georgia  
17 purposes. The commissioner shall by regulation provide the method of determining  
18 how such sections apply;

19 (E) In the event a taxpayer is entitled to a refund of income taxes by reason of a net  
20 operating loss carryback, a claim for such refund must be filed within three years after  
21 the due date for filing the income tax return for the taxable year wherein the loss was  
22 incurred, including any extensions which have been granted. Such tax refund shall be  
23 deemed to have been erroneously assessed and collected, and shall be paid under the  
24 provisions of Code Section 48-2-35; provided, however, that no interest shall accrue or  
25 be paid for any period prior to the close of the taxable year in which such net operating  
26 loss arises and no interest shall be paid if the claim for refund is processed within 90  
27 days from the last day of the month in which the claim for such refund is filed; and

28 (F) The commissioner shall have the authority to promulgate regulations regarding net  
29 operating losses with respect to this paragraph and with respect to consolidated return  
30 net operating losses."

## 31 **SECTION 12.**

32 Said title is further amended by striking subsection (c) of Code Section 48-7-24, relating to  
33 nonresident members of resident partnerships and resident members of nonresident  
34 partnerships, and inserting in its place a new subsection (c) to read as follows:

35 "(c) Notwithstanding any other provision of this chapter to the contrary, the distributive  
36 share of a nonresident member of a resident limited partnership or other similar nontaxable

1 entity which derives income exclusively from buying, selling, dealing in, and holding  
 2 securities on its own behalf and not as a broker shall not constitute taxable income under  
 3 this chapter. For purposes of this subsection, a resident limited partnership or similar  
 4 nontaxable entity shall not include a family limited partnership or similar nontaxable entity  
 5 the majority interest of which is owned by one or more natural or naturalized citizens  
 6 related to each other within the fourth degree of reckoning according to the laws of descent  
 7 and distribution. This subsection shall not apply to a person that participates in the  
 8 management of the resident limited partnership or other similar nontaxable entity or that  
 9 is engaged in a unitary business with another person that participates in the management  
 10 of the resident limited partnership or other similar nontaxable entity."

### 11 SECTION 13.

12 Said title is further amended by striking paragraph (2) of subsection (b) of Code Section  
 13 48-7-27, relating to computation of taxable net income, and inserting in its place a new  
 14 paragraph (2) to read as follows:

15 "(2) There shall be subtracted from taxable income interest or dividends on obligations  
 16 of the United States and its territories and possessions or of any authority, commission,  
 17 or instrumentality of the United States to the extent includable in gross income for federal  
 18 income tax purposes but exempt from state income taxes under the laws of the United  
 19 States. Any amount subtracted under this paragraph shall be reduced by any expenses  
 20 directly or indirectly attributable to the production of the interest or dividend income. For  
 21 all taxpayers except individuals, the direct and indirect interest expense shall be  
 22 determined by multiplying the total interest expense by a fraction, the numerator of which  
 23 is the taxpayer's average adjusted bases of such United States obligations, and the  
 24 denominator of which is the average adjusted bases for all assets of the taxpayer. For all  
 25 taxpayers except individuals, the indirect noninterest expenses shall be assumed to be 5  
 26 percent of the amount of gross income excluded pursuant to this paragraph unless the  
 27 taxpayer shows to the commissioner's satisfaction that the amount is otherwise."

### 28 SECTION 14.

29 Said title is further amended by striking paragraph (6) of subsection (b) of Code Section  
 30 48-7-27, relating to computation of taxable net income, and inserting in its place a new  
 31 paragraph (6) to read as follows:

32 ~~"(6) When, on the sale or exchange of real or tangible personal property located in this~~  
 33 ~~state, gain or loss is not recognized because the taxpayer receives or purchases similar~~  
 34 ~~property, the nonrecognition shall be allowed only when the property is replaced with~~  
 35 ~~property located in this state except for the sale or exchange of a personal residence in~~

1 ~~which case the nonrecognition shall apply if the taxpayer purchases another personal~~  
 2 ~~residence anywhere in the United States within the time allowed under the applicable~~  
 3 ~~provisions of the Internal Revenue Code of 1986. Reserved.~~"

#### 4 **SECTION 15.**

5 Said title is further amended by striking subsection (a) of Code Section 48-7-31, relating to  
 6 taxation of corporations, the allocation and apportionment formula, and the formula for  
 7 apportionment, and inserting in its place a new subsection (a) to read as follows:

8 "(a) The tax imposed by this chapter shall apply to the entire net income, as defined in this  
 9 article, received by every foreign or domestic corporation owning property ~~or~~ within this  
 10 state, doing business within this state, or deriving income from sources within this state to  
 11 the extent permitted by the United States Constitution. A corporation shall be deemed to  
 12 be doing business within this state if it engages within this state in any activities or  
 13 transactions for the purpose of financial profit or gain whether or not:

- 14 (1) The corporation qualifies to do business in this state;  
 15 (2) The corporation maintains an office or place of doing business within this state; or  
 16 (3) Any such activity or transaction is connected with interstate or foreign commerce."

#### 17 **SECTION 16.**

18 Said title is further amended by striking paragraph (3) of subsection (e) of Code Section  
 19 48-7-40.15, relating to alternative tax credits for base year port traffic increases, and inserting  
 20 in its place a new paragraph (3) to read as follows:

21 "(3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code  
 22 Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable  
 23 years following the taxable year the qualified investment property was first placed in  
 24 service, provided that the increase in port traffic remains above the minimum level  
 25 established in this Code section and the qualified investment property remains in  
 26 service.

27 (B) The tax credit established by this Code section in lieu of Code Section ~~48-7-40,~~  
 28 48-7-40.2, 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited  
 29 to an amount not greater than 50 percent of the taxpayer's state income tax liability  
 30 which is attributable to income derived from operations in this state for that taxable  
 31 year.

32 (C) The tax credit established by this Code section in addition to that pursuant to Code  
 33 Section 48-7-40 and taken in any one taxable year shall be limited to an amount not  
 34 greater than 50 percent of the taxpayer's state income tax liability which is attributable  
 35 to income derived from operations in this state for that taxable year.



1 person related to the taxpayer, the commissioner may require the facts as he or she deems  
 2 necessary for the proper computation of the entire net income and the net income properly  
 3 attributable to this state. In determining the computation, the commissioner shall consider  
 4 the fair profit which would normally arise from the conduct of the trade or business. The  
 5 commissioner shall by regulation provide when to apply this subsection.

6 (b)(1) ~~The~~ Additionally, the commissioner may determine the amount of taxable income  
 7 of any one or more corporations for a calendar or fiscal year when a corporation:

8 (A) Subject to taxation under this chapter conducts its business in such manner as to  
 9 benefit either directly or indirectly the members or stockholders of the corporation or  
 10 any person interested in the business of the corporation by selling its products or the  
 11 goods or commodities in which it deals at less than the fair price which might be  
 12 obtained for the goods or commodities;

13 (B) A substantial portion of whose capital stock is directly or indirectly owned by  
 14 another corporation acquires and disposes of the products of the corporation so owning  
 15 a substantial portion of its stock in such a manner as to create a loss or improper net  
 16 income for either of the corporations; or

17 (C) Directly or indirectly owning a substantial portion of the stock of another  
 18 corporation acquires and disposes of the products of the corporation of which it so owns  
 19 a substantial portion of the stock in such a manner as to create a loss or improper net  
 20 income for either of the corporations.

21 (2) In his or her determination, the commissioner shall consider the reasonable profits  
 22 which, but for the arrangement or understanding, might or could have been obtained by  
 23 the corporation or corporations subject to taxation under this chapter from dealing in such  
 24 products, goods, or commodities."

## 25 SECTION 19.

26 Said title is further amended by striking paragraph (6.2) of Code Section 48-7-100, relating  
 27 to definitions, and inserting in its place a new paragraph (6.2) to read as follows:

28 "(6.2) 'Nonresident' shall mean an individual or fiduciary member who resides outside  
 29 this state and ~~a foreign or domestic corporate member~~ all other members whose  
 30 headquarters or principal place of business is located outside this state."

## 31 SECTION 20.

32 Said title is further amended by striking subparagraph (K) of paragraph (10) of Code Section  
 33 48-7-100, relating to definitions, and inserting in its place a new subparagraph (K) to read  
 34 as follows:



1 showing the overpayment or 90 days from the due date of the final return, whichever is  
2 later."

### 3 **SECTION 22.**

4 Said title is further amended by adding a new Code section immediately following Code  
5 Section 48-8-13 to be designated Code Section 48-8-14, to read as follows:

6 "48-8-14.

7 (a) As used in this Code section, the term 'state agency' means any authority, board,  
8 department, instrumentality, institution, agency, or other unit of state government. The term  
9 'state agency' shall not include any county, municipality, or local or regional governmental  
10 authority.

11 (b) On or after the effective date of this Code section, the Department of Administrative  
12 Services and any other state agency shall not enter into a state-wide contract or agency  
13 contract for goods or services, or both, in an amount exceeding \$100,000.00 with a  
14 nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined  
15 in paragraph (3) of Code Section 48-8-2, or meets one or more of the conditions  
16 thereunder, but fails or refuses to collect sales or use taxes levied under this chapter on its  
17 sales delivered to Georgia.

18 (c) The Department of Administrative Services and any other state agency may contract  
19 for goods or services, or both, with a source prohibited under subsection (b) of this Code  
20 section in the event of an emergency or where the nongovernmental vendor is the sole  
21 source of such goods or services or both.

22 (d) The determination of whether a vendor is a prohibited source shall be made by the  
23 Department of Revenue, which shall notify the Department of Administrative Services and  
24 any other state agency of its determination within three business days of a request for such  
25 determination.

26 (e) Prior to awarding a contract, the Department of Administrative Services and any other  
27 state agency to which this article applies shall provide the Department of Revenue the  
28 name of the nongovernmental vendor awarded the contract, the name of the vendor's  
29 affiliate, and the certificate of registration number as provided for under Code Section  
30 48-8-59 for the vendor and affiliate of the vendor.

31 (f) The commissioner is specifically authorized to promulgate regulations to implement  
32 this Code section."

### 33 **SECTION 23.**

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

1 "(b) Each dealer required to file a return under this article shall include such dealer's  
 2 certificate of registration number or numbers for each sales location or affiliated entity of  
 3 such dealer on such return. In reporting and paying the amount of tax due under this article,  
 4 each dealer shall be allowed the following deduction, but only if the return was timely filed  
 5 and the amount due was not delinquent at the time of payment; and that deduction shall be  
 6 subject to the provisions of subsection (f) of this Code section pertaining to calculation of  
 7 the deduction when more than one tax is reported on the same return:

8 (1) With respect to each certificate of registration number on such return, a deduction of  
 9 3 percent of the first \$3,000.00 of the combined total amount of all sales and use taxes  
 10 reported due on such return for each location other than the taxes specified in  
 11 paragraph (3) of this subsection;

12 (2) With respect to each certificate of registration number on such return, a deduction of  
 13 one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount  
 14 of all sales and use taxes reported due on such return for each location other than the  
 15 taxes specified in paragraph (3) of this subsection;

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

22 (4) A deduction with respect to Code Section 48-9-14, as defined in paragraph (5.1) of  
 23 Code Section 48-8-2, shall be at the rate of one-half of 1 percent of the total amount due  
 24 of the prepaid state tax reported due on such return, so long as the return and payment is  
 25 are timely, regardless of the classification of tax return upon which the remittance is  
 26 made."

#### 27 **SECTION 24.**

28 Said title is further amended by striking subsection (h) of Code Section 48-8-67, relating to  
 29 distribution of unidentifiable proceeds, and inserting in its place a new subsection (h) to read  
 30 as follows:

31 "(h) The authority of the commissioner to make distributions pursuant to this Code section  
 32 shall cease on December 31, ~~2005~~ 2007, unless such authority is extended by a subsequent  
 33 general Act of the General Assembly."



1 (f) This section and Sections 1, 5, 9, 10, 12, 14, 15, 16, 17, 18, 19, 21, 22, 24, and 28 of this  
2 Act shall become effective on their approval by the Governor or upon their becoming law  
3 without such approval.

4 (g) Section 26 of this Act shall become effective upon its approval by the Governor or upon  
5 its becoming law without such approval and shall be applicable to estates of decedents with  
6 a date of death after December 31, 2004.

7 **SECTION 28.**

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