House Bill 488 (RULES COMMITTEE SUBSTITUTE)

By: Representatives O`Neal of the 146th and Knight of the 126th

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to enact the "State and Local Tax Revision Act of 2005"; to provide for a short title; to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and thereby incorporate certain provisions of federal law into Georgia law; to provide for applicability; to provide for the authority to establish fees for offer in compromises; to clarify that electronic funds transfer applies to use tax; to provide for electronic funds transfer requirements for third-party payroll providers; to clarify that no interest shall be paid when a taxpayer fails to claim credits listed in Article 2 of Chapter 7; to provide for performance review of county boards of tax assessors; to provide for selection of members of performance review boards; to provide for powers, duties, and authority of the state revenue commissioner; to amend the definition of the term "taxable nonresident"; to clarify the requirements with respect to the subtraction from taxable income of interest or dividends on obligations of the United States; to amend the requirements with respect to the sale or exchange of real or tangible personal property when the gain or loss is not recognized due to the purchase of similar property; to clarify the requirements with respect to the filing of consolidated returns for Georgia income tax purposes; to provide for the treatment of Georgia net operating losses for corporations; to clarify the treatment of the distributive share received by a nonresident member of a resident limited partnership or other similar nontaxable entity which derives income exclusively from buying, selling, dealing in, and holding securities on its own behalf; to clarify the requirements with respect to the subtraction from taxable income of interest or dividends on obligations of the United States; to amend the requirements with respect to the sale or exchange of real or tangible personal property when the gain or loss is not recognized due to the purchase of similar property; to clarify when the tax imposed by Chapter 7 shall apply to a corporation; to clarify the limitations with respect to base year port traffic increases; to clarify the requirements with respect to the assignment of corporate income tax credits; to clarify the commissioner´s authority with respect to adjustments which may be made when the taxpayer´s activities distort true net income or the taxpayer engages in improper activities; to clarify the definition

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

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

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

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

SECTION 3.

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

″48-2-18.1.

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

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

SECTION 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5.

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

"48-2-35.

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

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

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

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

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

(B) Each claim shall be filed in writing in the form and containing such information as the commissioner may reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies. Should any person be prevented from filing such an application because of service of such person or such person´s counsel in the armed forces during such period, the period of limitation shall date from the discharge of such person or such person´s counsel from such 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.

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

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

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

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

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

(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.

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

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

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

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

SECTION 6.

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

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

SECTION 7.

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

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

SECTION 8.

Said title is further amended by striking subparagraph (b)(1)(B) of Code Section 48-7-21, relating to taxation of corporations, and inserting in its place a new subparagraph (b)(1)(B) to read as follows:

"(B) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent such interest or dividends are includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. There shall also be subtracted from taxable income any income derived from the authorized activities of a domestic international banking facility operating pursuant to the provisions of Article 5A of Chapter 1 of Title 7, the 'Domestic International Banking Facility Act,' and any income arising from the conduct of a banking business with persons or entities located outside the United States, its territories, or possessions. Any amount subtracted pursuant to this subparagraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income. The direct and indirect interest expense shall be determined by multiplying the total interest expense by a fraction, the numerator of which is the taxpayer´s average adjusted bases of such United States obligations, and the denominator of which is the average adjusted bases for all assets of the taxpayer."

SECTION 9.

Said title is further amended by striking paragraph (5) of subsection (b) of Code Section 48-7-21, relating to taxation of corporations, and inserting in its place a new paragraph (5) to read as follows:

"~~(5) When on the sale or exchange of real or tangible personal property located in this state gain or loss is not recognized because the taxpayer receives or purchases similar property, the nonrecognition shall be allowed only when the property is replaced with property located in this state.~~ Reserved."

SECTION 10.

Said title is further amended by striking division (b)(7)(A)(i) of Code Section 48-7-21, relating to taxation of corporations, and inserting in its place a new division (b)(7)(A)(i) to read as follows:

"(A)(i) ~~If two or more corporations file federal income tax returns on a consolidated basis and all of the corporations derive all of their income from sources within this state, the corporations must file consolidated returns for Georgia income tax purposes.~~

Affiliated corporations which file a consolidated federal income tax return ~~but which derive income from sources outside this state~~ must file separate income tax returns with this state unless they have prior approval or have been requested to file a consolidated return by the department. The commissioner shall by regulation provide the time period within which the permission must be requested. A request for permission beyond such time period will not be considered and will result in the filing of separate income tax returns for the applicable year.″

SECTION 11.

Said title is further amended by striking the "Reserved" designation of paragraph (10) of subsection (b) of Code Section 48-7-21, relating to taxation of corporations, and inserting in its place a new paragraph (10) to read as follows:

″(10) Net operating losses for corporations shall be treated as follows:

(A) For any taxable year in which the taxpayer takes a federal net operating loss deduction on its federal income tax return, the amount of such deduction shall be added back to federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer´s federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year;

(B) The Georgia net operating loss for such taxable year shall be computed by making the adjustments to federal taxable income required by this article and in the case of corporations doing business both within and outside Georgia, by apportioning and allocating to Georgia, as provided in Code Section 48-7-31, only the amount of the loss attributable to operations within Georgia. The term 'Georgia net operating loss' shall mean the loss computed as provided in this paragraph. In the event the net Georgia adjustments completely offset a federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the federal net operating loss shall constitute Georgia taxable net income after any such excess has been allocated and apportioned to Georgia as provided in Code Section 48-7-31. The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code. The terms 'Georgia net operating loss carryback' and 'Georgia net operating loss carryover" shall mean the Georgia net operating loss for the applicable year carried back or carried over in the manner and for the number of years as provided in this paragraph;

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

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

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

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

SECTION 12.

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

″(c) Notwithstanding any other provision of this chapter to the contrary, the distributive share of a nonresident member of a resident limited partnership or other similar nontaxable entity which derives income exclusively from buying, selling, dealing in, and holding securities on its own behalf and not as a broker shall not constitute taxable income under this chapter. For purposes of this subsection, a resident limited partnership <u>or similar</u>

nontaxable entity shall not include a family limited partnership or similar nontaxable entity the majority interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of reckoning according to the laws of descent and distribution. This subsection shall not apply to a person that participates in the management of the resident limited partnership or other similar nontaxable entity or that is engaged in a unitary business with another person that participates in the management of the resident limited partnership or other similar nontaxable entity."

SECTION 13.

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

"(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income. For all taxpayers except individuals, the direct and indirect interest expense shall be determined by multiplying the total interest expense by a fraction, the numerator of which is the taxpayer´s average adjusted bases of such United States obligations, and the denominator of which is the average adjusted bases for all assets of the taxpayer."

SECTION 14.

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

"~~(6) When, on the sale or exchange of real or tangible personal property located in this state, gain or loss is not recognized because the taxpayer receives or purchases similar property, the nonrecognition shall be allowed only when the property is replaced with property located in this state except for the sale or exchange of a personal residence in which case the nonrecognition shall apply if the taxpayer purchases another personal residence anywhere in the United States within the time allowed under the applicable provisions of the Internal Revenue Code of 1986.~~ Reserved."

SECTION 15.

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

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

(1) The corporation qualifies to do business in this state;

(2) The corporation maintains an office or place of doing business within this state; or

(3) Any such activity or transaction is connected with interstate or foreign commerce."

SECTION 16.

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

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

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

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

~~(C)~~(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer."

SECTION 17.

Said title is further amended by striking subsection (b) of Code Section 48-7-42, relating to affiliated entities and assignment of corporate income tax credits, and inserting in its place a new subsection (b) to read as follows:

"(b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is eligible for the taxable year (such eligibility being determined for this purpose without regard to any limitation imposed by reason of the taxpayer´s precredit income tax liability), the taxpayer may elect to assign such credit in whole or in part to one or more affiliated entities for such taxable year by attaching a statement to the taxpayer´s return for the taxable year; provided, however, that no carryover attributable to the unused portion of any previously claimed or assigned credit may be assigned or reassigned, except as provided in subsection (d) of this Code section. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted. In the case of any credit that must be claimed in installments in more than one taxable year, the election under this subsection may be made on an annual basis with respect to each such installment, provided that the taxpayer shall notify the commissioner with respect to the assignment of each such installment by filing a separate copy of the election statement for such installment no later than the ~~time of filing of the taxpayer´s state income tax return for such taxable year~~ due date for filing the applicable income tax return, including any extensions which have been granted. Once made, an election under this subsection shall be irrevocable."

SECTION 18.

Said title is further amended by striking Code Section 48-7-58, relating to taxpayer activities distorting true net income, and inserting in its place a new Code Section 48-7-58 to read as follows:

"48-7-58.

(a) When the commissioner has reason to believe that any taxpayer conducts his or her trade or business so as to evade taxes, distort directly or indirectly his or her true net income, or distort directly or indirectly the net income properly attributable to this state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, as a result of which the net income is arbitrarily assigned to ~~one or another unit in a group of taxpayers conducting business under a substantially common control,~~ a person related to the taxpayer, the commissioner may require the facts as he or she deems necessary for the proper computation of the entire net income and the net income properly attributable to this state. In determining the computation, the commissioner shall consider

the fair profit which would normally arise from the conduct of the trade or business. The commissioner shall by regulation provide when to apply this subsection.

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

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

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

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

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

SECTION 19.

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

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

SECTION 20.

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

″(K) For services performed by a nonresident if the nonresident has been employed within this state for no more than 23 calendar days during the calendar quarter and the nonresident is not a taxable nonresident as defined in Code Section 48-7-1; or″

SECTION 21.

Said title is further amended by striking Code Section 48-7-121, relating to credit of estimated tax payment, and inserting in its place a new Code Section 48-7-121 to read as follows:

"48-7-121.

(a) As used in this Code section, the term:

(1) 'Final return' means the original income tax return filed by the taxpayer for the tax year or an amended return filed on or before the due date of the return without extensions. Such term does not include any other amended income tax return for the period or an estimated tax return.

(2) 'Income tax liability for a taxable year' means the taxpayer´s income tax liability as calculated under Code Section 48-7-20 or 48-7-21 for the taxable year reduced (but not below zero) by all nonrefundable credits to which the taxpayer is entitled. Nonrefundable credits include any credit that is limited by the taxpayer´s income tax liability or some percentage thereof.

(3) 'Other credits allowed by law' means only those income tax credits that are refundable, such as the credit for income tax withholding and the credit allowed by Code Section 48-7-28.1. Refundable credits do not include any credit that is limited by the taxpayer´s income tax liability or some percentage thereof.

~~(a)~~(b) The amount of estimated tax paid under this article for any taxable year shall be allowed as a credit to the taxpayer against the taxpayer´s income tax liability under Code Section 48-7-20 or 48-7-21 for the taxable year.

~~(b)~~(c) To the extent that the estimated tax credit, together with other credits allowed by law, is in excess of the taxpayer´s income tax liability for a taxable year as shown on ~~an income tax~~ a final return filed by the taxpayer for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this subsection. The overpayment shall be credited to the taxpayer´s estimated income tax liability for the succeeding taxable year unless the taxpayer claims a refund for the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment. Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or 90 days from the due date of the final return, whichever is later."

SECTION 22.

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

"48-8-14.

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

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

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

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

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

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

SECTION 23.

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

"(b) Each dealer required to file a return under this article shall include such dealer´s certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article,

each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

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

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

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

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

SECTION 24.

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

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

SECTION 25.

Said title is further amended by striking subsection (b) of Code Section 48-9-8, relating to tax reports of motor fuel distributors, and inserting in its place a new subsection (b) to read as follows:

"(b) At the time of submitting the report required by subsection (a) of this Code section, the distributor shall pay to the commissioner the tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3 on all gasoline, fuel oils, compressed petroleum gas, special fuel, and aviation gasoline sold or used in this state during the preceding calendar month, less an allowance of 1 percent of the tax as compensation to cover losses and expenses incurred in reporting the tax to the state. The allowance shall not be deductible unless the report and payment of tax ~~is~~ are made on or before the twentieth day of the month as required by this article."

SECTION 26.

Said title is further amended by adding a new Code section immediately following Code Section 48-12-1, to be designated Code Section 48-12-1.1, to read as follows:

"48-12-1.1.

This chapter shall not apply to any estate with a date of death which occurred in a year for which the Internal Revenue Code does not allow a credit for state death taxes."

SECTION 27.

(a) Section 2 of this Act shall become effective on its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2005. Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2005, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

(b) Section 4 of this Act shall become effective on its approval by the Governor or upon its becoming law without such approval and shall be applicable to all payments made on or after July 1, 2005.

(c) Sections 7, 8, 11, and 13 of this Act shall become effective on their approval by the Governor or upon their becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2005.

(d) Section 20 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all calendar quarters beginning on or after July 1, 2005.

(e) Sections 3, 6, 23, and 25 of this Act shall become effective on July 1, 2005.

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

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

SECTION 28.

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