

House Bill 111 (COMMITTEE SUBSTITUTE)

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to change certain provisions regarding payment of sales and use tax by
3 contractors furnishing tangible personal property and services; to provide for a definition; to
4 provide for powers, duties, and authority of the state revenue commissioner; to provide an
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
9 taxes, is amended by striking Code Section 48-8-63, relating to payment of sales and use tax
10 by contractors furnishing tangible personal property and services, and inserting in its place
11 a new Code Section 48-8-63 to read as follows:

12 "48-8-63.

13 (a) As used in this Code section, the term 'nonresident subcontractor' means a person who
14 does not have a bona fide place of business in Georgia through the maintaining of a
15 permanent domicile or business facility engaged in contracting real property work and who
16 contracts with a prime or general contractor to perform all or any part of the contract of the
17 prime or general contractor or who contracts with a subcontractor who has contracted to
18 perform any part of the contract entered into by the prime or general contractor.

19 ~~(a)~~(b) Each person who orally, in writing, or by purchase order contracts to furnish
20 tangible personal property and to perform services under the contract within this state shall
21 be deemed to be the consumer of the tangible personal property and shall pay the sales tax
22 imposed by this article at the time of the purchase. Any person so contracting who fails to
23 pay the sales tax at the time of the purchase or at the time the sale is consummated outside
24 the limits of this state shall be liable for the payment of the sales or use tax. This Code
25 section shall not relieve the dealer who made the sale from such dealer's liability to collect
26 and pay the tax on purchases by a contractor.

1 ~~(b)~~(c) Each person who contracts to perform services in this state and who is furnished
2 tangible personal property for use under the contract by the person, or such person's agent
3 or representative, for whom the contract is to be performed, when a sales or use tax has not
4 been paid to this state by the person supplying the tangible personal property, shall be
5 deemed to be the consumer of the tangible personal property so used and shall pay a use
6 tax based on the fair market value of the tangible personal property so used irrespective of
7 whether any right, title, or interest in the tangible personal property becomes vested in the
8 contractors.

9 ~~(c)~~(d) Each person who orally, in writing, or by purchase order contracts to perform any
10 service the principal part of which is the furnishing of machinery which will not be under
11 the exclusive control of the contractor shall be liable to collect a sales tax on the rental
12 value of the machinery so used. If labor and other charges are not separated from the rental
13 charge, the person so contracting shall be liable to collect a sales tax on the entire contract
14 price.

15 ~~(d)~~(e)(1) Any subcontractor who enters into a construction contract with a general or
16 prime contractor shall be liable under this article as a general or prime contractor. Any
17 general or prime contractor who enters into any construction contract or contracts with
18 any nonresident subcontractor, where the total amount of such contract or contracts
19 between such general or prime contractor and any nonresident subcontractors on any
20 given project equals or exceeds \$250,000.00 shall withhold up to 4 percent of the
21 payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed
22 this state.

23 (2) The prime or general contractor shall withhold payments on all contracts that meet
24 the criteria specified in paragraph (1) of this subsection until the nonresident
25 subcontractor furnishes such prime or general contractor with a certificate issued by the
26 commissioner showing that all sales taxes accruing by reason of the contract between the
27 nonresident subcontractor and the general or prime contractor have been paid and
28 satisfied. If the prime or general contractor for any reason fails to withhold up to 4
29 percent of the payments due the nonresident subcontractor under their contract, such
30 prime or general contractor shall become liable for any sales or use taxes due or owed this
31 state by the nonresident subcontractor.

32 ~~(e)~~(f) Whenever a nonresident subcontractor holding a contract with a general or prime
33 contractor has posted with the commissioner either a good and valid bond with a surety
34 company authorized to do business in this state or legal securities in an amount of not less
35 than \$5,000.00 nor more than \$50,000.00, as determined by the commissioner, conditioned
36 that all sales and use taxes which may accrue to this state on account of the execution of
37 contracts that meet the criteria established in paragraph (1) of subsection (e) of this Code

1 section by nonresident subcontractors will be paid when due, no general or prime
 2 contractor shall withhold any sums due the nonresident subcontractor under their contract
 3 with respect to sales and use taxes.

4 ~~(f)~~(g) Nothing contained in this Code section shall be construed to impose any sales or use
 5 tax with respect to the use of tangible personal property owned by the United States in the
 6 performance of contracts with the United States when the property is not actually used up
 7 and consumed in the performance of the contract. Tangible personal property incorporated
 8 into real property construction which loses its identity as tangible personal property shall
 9 be deemed to be used up and consumed within the meaning of this subsection.

10 ~~(g)~~(h)(1) Nothing contained in this Code section shall be construed to impose any sales
 11 or use tax with respect to the use of tangible personal property owned by the State of
 12 Georgia, the University System of Georgia, or any county, municipality, local board of
 13 education, or other political subdivision of this state in the performance of contracts with
 14 such entities when the property is not actually used up and consumed in the performance
 15 of the contract. Tangible personal property incorporated into real property construction
 16 which loses its identity as tangible personal property shall be deemed to be used up and
 17 consumed within the meaning of this subsection. Any governmental entity which
 18 furnishes tangible personal property to a contractor for incorporation into a construction,
 19 renovation, or repair project conducted pursuant to a contract with such governmental
 20 entity shall issue advance written notice to such contractor of the amount of tax owed for
 21 such tangible personal property. The failure of the governmental entity to issue such
 22 advance written notice to the contractor of such tax liability shall render such
 23 governmental entity liable for such tax.

24 (2) This subsection shall not apply with respect to the use of tangible personal property
 25 owned by the United States.

26 (i) The commissioner is authorized to prescribe forms and promulgate rules and
 27 regulations deemed necessary in order to administer and effectuate this Code section."

28 SECTION 2.

29 This Act shall become effective July 1, 2006.

30 SECTION 3.

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