

House Bill 140

By: Representatives Willard of the 49th, Royal of the 171st, and Geisinger of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the joint county and municipal sales and use tax, so as to revise and change
3 procedures and requirements regarding the renegotiation of distribution certificates; to
4 change certain provisions regarding failure to file a new certificate; to change certain
5 provisions regarding discontinuation of the tax; to provide an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 joint county and municipal sales and use tax, is amended by revising subsection (d) of Code
11 Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution
12 certificates, as follows:

13 ~~"(d)(1) Except as otherwise provided in paragraph (7) of this subsection, a certificate~~
14 ~~providing for the distribution of the proceeds of the tax authorized by this article shall~~
15 ~~expire on December 31 of the second year following the year in which the decennial~~
16 ~~census is conducted.~~ No later than December 30 of the second year following the year
17 in which the census is conducted, a renegotiated certificate meeting the requirements for
18 certificates specified by subsection (b) of this Code section shall be filed with and
19 received by the commissioner. The General Assembly recognizes that the requirement
20 for government services is not always in direct correlation with population. Although a
21 renegotiated certificate is required within a time certain of the decennial census, this
22 requirement is not meant to convey an intent by the General Assembly that population
23 as a criterion should be more heavily weighted than other criteria. It is the express intent
24 of the General Assembly in requiring such renegotiation that eligible political
25 subdivisions shall analyze local service delivery responsibilities and the existing
26 allocation of proceeds made available to such governments under the provisions of this

1 article and make rational the allocation of such resources to meet such service delivery
2 responsibilities. Political subdivisions in their renegotiation of such distributions shall
3 at a minimum consider the criteria specified in subsection (b) of this Code section.

4 (2) The commissioner shall be notified in writing of the commencement of renegotiation
5 proceedings by the county governing authority ~~in~~ on behalf of all eligible political
6 subdivisions within the special district. The eligible political subdivisions shall
7 commence renegotiations at the call of the county governing authority ~~but no later than~~
8 before July 1 of the second year following the year in which the census is conducted. If
9 the county governing authority does not issue the call by that date, any eligible
10 municipality may issue the call and so notify the commissioner and all eligible political
11 subdivisions in the special district.

12 (3) Following the commencement of ~~such~~ renegotiation, if the parties necessary to an
13 agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit
14 the dispute to nonbinding arbitration, mediation, or such other means of resolving
15 conflicts in a manner which, ~~in the judgment of the commissioner,~~ reflects a good faith
16 effort to resolve the dispute. Any renegotiation agreement reached pursuant to this
17 paragraph shall be in accordance with the requirements specified in paragraph (1) of this
18 subsection. If the parties fail to reach an agreement within 60 days of submitting the
19 dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts,
20 any party necessary to an agreement may file a petition in superior court of the county
21 seeking resolution of the items remaining in dispute. Such petition shall be assigned to
22 a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in
23 which the county is located. The judge selected may also be a senior judge pursuant to
24 Code Section 15-1-9.2 who resides in another circuit. The county and qualified
25 municipalities representing at least one-half of the aggregate municipal population of all
26 qualified municipalities located wholly or partially within the special district shall
27 separately submit to the judge and the other parties a written best and final offer as to the
28 distribution of the tax proceeds. There shall be one such offer from the county and one
29 from qualified municipalities representing at least one-half of the aggregate municipal
30 population of all qualified municipalities located wholly or partially within the special
31 district. The offer from the county may be an offer representing the county and any
32 municipalities that are not represented in the offer from the qualified municipalities
33 representing at least one-half of the aggregate municipal population of all qualified
34 municipalities located wholly or partially within the special district. Each offer shall take
35 into account the allocation required for any absent municipalities in accordance with
36 subsection (b) of this Code section. The visiting or senior judge shall conduct such
37 hearings as the judge deems necessary and shall render a decision based on, but not

1 limited to, the criteria in subsection (b) of this Code section and in paragraph (1) of this
 2 subsection. The judge's decision as to the allocation of the tax proceeds shall adopt the
 3 best and final offer of one of the parties but shall also include findings of fact. The judge
 4 shall enter a final order containing a new distribution certificate and transmit a copy of
 5 it to the commissioner. Appeal shall be by application and the decision of the judge shall
 6 be disturbed only for the judge's disregard of the law, for partiality of the judge, or for
 7 corruption, fraud, or misconduct by the judge or a party.

8 (4) If the renegotiated certificate provided for in paragraph (1) of this subsection is not
 9 received by the commissioner by the required date, ~~the authority to impose the tax~~
 10 ~~authorized by Code Section 48-8-82 shall cease on December 31 of the second year~~
 11 ~~following the year in which the decennial census is conducted and the tax shall not be~~
 12 ~~levied in the special district after such date unless the reimposition of the tax is~~
 13 ~~subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the~~
 14 ~~tax is so terminated, the commissioner shall retain the proceeds of the tax which were to~~
 15 ~~be distributed to the governing authorities of the county and qualified municipalities~~
 16 ~~within the special district until the commissioner receives a certificate in behalf of each~~
 17 ~~such governing authority specifying the percentage of the proceeds which each such~~
 18 ~~governing authority shall receive. If no such certificate is received by the commissioner~~
 19 ~~within 120 days of the date on which the authority to levy the tax was terminated, the~~
 20 ~~proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the~~
 21 ~~state's general fund~~ the commissioner shall continue to distribute the sales tax proceeds
 22 according to the percentages specified in the existing certificate or in accordance with
 23 subsection (f) of Code Section 48-8-89.1, as applicable, until a new certificate is properly
 24 filed.

25 (5) If the commissioner receives ~~the~~ a renegotiated certificate by the required date, the
 26 commissioner shall distribute the proceeds of the tax in accordance with the directions
 27 of the renegotiated certificate commencing on January 1 of the year immediately
 28 following the year in which such certificate was renegotiated or the first day of the
 29 second calendar month following the month such certificate was renegotiated, whichever
 30 is sooner.

31 (6) Costs of any conflict resolution under paragraph (3) of this subsection shall be borne
 32 proportionately by the affected political subdivisions in accordance with the final
 33 percentage distributions of the proceeds of the tax as reflected by the renegotiated
 34 certificate or as otherwise ordered by the court.

35 (7) ~~All distribution certificates on file with the commissioner on July 1, 1994, which~~
 36 ~~were not renegotiated in accordance with the 1990 decennial census figures or~~
 37 ~~renegotiated on or after January 1, 1992, shall expire on December 31, 1995.~~

1 Renegotiations with respect to such certificates shall be commenced in accordance with
 2 the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate
 3 is not received by the commissioner by July 1, 1995, the authority to impose the tax
 4 authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall
 5 not be levied in the special district after that date unless reimposition of the tax is
 6 subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall
 7 retain and distribute the proceeds of such terminated tax in accordance with paragraph
 8 (4) of this subsection.

9 (8) No qualified municipality within the special district whose population is less than 5
 10 percent of the population in the special district according to the United States decennial
 11 census of 1990 shall receive a reduced percentage of distribution than presently being
 12 received under the existing certificate prior to renegotiations required in paragraph (7) of
 13 this subsection unless the new agreement is executed by the qualified municipality. This
 14 paragraph shall apply only to the negotiations required by paragraph (7) of this subsection
 15 and shall not apply to any subsequent renegotiations required by this subsection.

16 ~~(9)~~(7) Political subdivisions shall be authorized, at their option, to renegotiate
 17 distribution certificates on a more frequent basis than is otherwise required under this
 18 subsection.

19 (8) Notwithstanding any other provision of this article to the contrary, the imposition of
 20 this tax shall not terminate based on a failure to file a new or renegotiated certificate.

21 ~~(10)~~(9) No provision of this subsection shall apply to any county which is authorized to
 22 levy or which levies a local sales tax, local use tax, or local sales and use tax for
 23 educational purposes pursuant to a local constitutional amendment or to any county
 24 which is authorized to expend all or any portion of the proceeds of any sales tax, use tax,
 25 or sales and use tax for educational purposes pursuant to a local constitutional
 26 amendment."

27 SECTION 2.

28 Said article is further amended by revising subsection (d) of Code Section 48-8-89.1, relating
 29 to lapsing of the tax due to failure to file a new certificate, as follows:

30 "(d) If a new certificate is not filed for any special district as required by this Code section,
 31 the authority to impose the tax authorized by Code Section 48-8-82 within that special
 32 district shall cease on the first day of January of the year following the year in which the
 33 required distribution certificate could last have been timely filed. In any special district in
 34 which the authority to impose the tax is terminated pursuant to this subsection, the tax may
 35 thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84
 36 through 48-8-86 Reserved."

1 **SECTION 4.**

2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

4 **SECTION 5.**

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