

House Bill 219

By: Representatives Royal of the 171<sup>st</sup>, O'Neal of the 146<sup>th</sup>, Roberts of the 154<sup>th</sup>, and Black of the 174<sup>th</sup>

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 provide for prepayments of certain local sales and use taxes with respect  
3 to motor fuels; to provide for procedures, conditions, and limitations; to change certain  
4 provisions regarding penalties; to change certain provisions regarding taxation of motor fuel;  
5 to change certain provisions regarding sales and use tax exemptions regarding motor fuel;  
6 to change certain provisions regarding refunds of motor fuel taxes; to change certain  
7 provisions regarding the second motor fuel tax; to provide for an effective date; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
12 amended in Code Section 48-8-2, relating to definitions, by revising paragraph (5.1) as  
13 follows:

14 "(5.1) 'Prepaid ~~state~~ sales tax' means the tax levied under Code Section 48-8-30 in  
15 conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of  
16 motor fuels for highway use and collected prior to that retail sale. This tax is based upon  
17 the average retail sales price as set forth in Code Section 48-9-14. ~~This shall not apply~~  
18 ~~to~~ The term 'prepaid sales tax' also means any local sales and use tax which is levied on  
19 the sale or use of motor fuel and imposed in an area consisting of less than the entire  
20 state, however authorized, including, but not limited to, such taxes authorized by or  
21 pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved  
22 March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta  
23 Rapid Transit Authority Act of 1965'; or by or pursuant to Article 2 ~~of this chapter; by~~  
24 ~~or pursuant to Article 2~~, 2A ~~of this chapter; or by or pursuant to Article 3, 3, or 4~~ of this  
25 chapter."

**SECTION 2.**

Said title is further amended by revising subsection (b) of Code Section 48-8-49, relating to dealers' sales and use tax returns, as follows:

"(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer's average monthly payments for the last fiscal year.

(2) If the estimated tax liability of a dealer for any taxable period exceeds \$5,000.00, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period.

The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer unless during the previous fiscal year the dealer's monthly payments exceeded \$5,000.00 per month for three consecutive months or more nor shall this subsection apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state sales tax under paragraph (2) of subsection (b) of Code Section 48-9-14. No local sales taxes shall be included in determining any estimated tax liability."

**SECTION 3.**

Said title is further amended by revising paragraph (4) of subsection (b) of Code Section 48-8-50, relating to compensation of dealers, as follows:

"(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 sales tax reported due on such return, so long as the return and payment are timely, regardless of the classification of tax return upon which the remittance is made."

**SECTION 4.**

Said title is further amended in Code Section 48-9-10, relating to refunds of motor fuel taxes, by adding a new subsection to read as follows:

"(e) In the event any distributor licensed under this chapter purchases any motor fuel that the prepaid sales tax has been imposed on pursuant to paragraph (2) of subsection (b) of Code Section 48-9-14 and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid sales tax rate for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for their exclusive use. To be eligible for the credit

1 or refund, the distributor shall reduce the amount such distributor charges for the fuel sold  
 2 to such governmental entity by an amount equal to the tax from which such governmental  
 3 entity is exempt. Should a distributor have a liability under Code Section 48-9-8, the  
 4 distributor may elect to take a credit for those sales against such liability. The distributor  
 5 may obtain a refund for any amount not taken as a credit within 18 months from the date  
 6 of the sale to the governmental entity."

## 7 SECTION 5.

8 Said title is further amended by revising subsection (b) of Code Section 48-9-14, relating to  
 9 the second motor fuel tax, as follows:

10 "(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent  
 11 of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or  
 12 consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall  
 13 be subject only to the exemptions provided in Code Section 48-9-3.

14 (2)(A) As used in this paragraph, the term 'prepaid state sales tax' shall have the same  
 15 meaning as provided in paragraph (5.1) of Code Section 48-8-2.

16 (B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer  
 17 of motor fuels, a prepaid state sales tax shall be collected. The same person remitting  
 18 the tax imposed under Code Section 48-9-3, but on a separate schedule, shall remit the  
 19 prepaid state sales tax to the state. The tax shall be separately invoiced throughout the  
 20 chain of distribution until it reaches the dealer who makes the retail sale. The  
 21 commissioner shall issue the rate of prepaid state sales tax on a semiannual basis,  
 22 rounded to the nearest \$.001 per gallon for use in the following semiannual period. The  
 23 rate shall be calculated at 4 percent of the state-wide average retail price by motor fuel  
 24 type as compiled by the Energy Information Agency of the United States Department  
 25 of Energy, the Oil Pricing Information Service, or a similar reliable published index less  
 26 taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use  
 27 taxes. In the event that the retail price changes by 25 percent or more within a  
 28 semiannual period, the commissioner shall issue a revised prepaid state sales tax rate  
 29 for the remainder of that period.

30 (C) The same prices set out in subparagraph (B) of this paragraph shall be used to  
 31 compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price  
 32 by the applicable rate imposed by the jurisdiction. The person collecting and reporting  
 33 the prepaid sales tax for the local jurisdiction shall provide a schedule as to which  
 34 jurisdiction these collections relate. This determination shall be made based upon the  
 35 shipping papers of the conveyance that delivered the motor fuel to the dealer or  
 36 consumer in the local jurisdiction. A seller may rely upon the representation made by

1 the purchaser as to which jurisdiction the shipment is bound and prepare shipping  
2 papers in accordance with those instructions."

3 **SECTION 6.**

4 This Act shall become effective on January 1, 2008.

5 **SECTION 7.**

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