

House Bill 385

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 14, 16, 40, and 48 of the Official Code of Georgia Annotated, relating,
2 respectively, to corporations, partnerships, and associations, crimes and offenses, motor
3 vehicles, and revenue and taxation, so as to provide for the comprehensive revision of
4 provisions relating to state and local taxation; to provide for a short title; to provide for the
5 disclosure of certain information to the Secretary of State; to change certain determination
6 letter requirements regarding raffle and bingo licensing procedures; to change certain
7 Department of Driver Services requirements and authority regarding the completion of
8 certain driver education courses; to define the terms "Internal Revenue Code" and "Internal
9 Revenue Code of 1986" and thereby incorporate certain provisions of the federal law into
10 Georgia law; to change protest provisions regarding refunds; to change refund provisions
11 regarding alcoholic beverages stamps; to provide for certain definitions regarding sales and
12 use tax refunds; to change refund provisions regarding sales and use tax refunds; to provide
13 for penalty provisions regarding certain sales and use tax refunds; to provide for additional
14 authority of the state revenue commissioner to appoint persons with law enforcement powers
15 with respect to matters within the jurisdiction of the Department of Revenue; to change
16 provisions regarding certain nonprofit organizations; to provide for a one-time consent
17 agreement by nonresident members of Georgia Subchapter "S" corporations; to change
18 certain provisions regarding notification of private driver training; to add the federal
19 government as a qualified recipient of Georgia conservation property for purposes of the
20 conservation tax credit; to provide for the treatment of donations effected by sales at less than
21 fair market value; to change the standard for determining the fair market value of certain
22 donations; to change provisions regarding the electronic filing requirement for certain
23 returns; to provide for civil penalties on certain tax preparers; to change certain withholding
24 requirements; to change the penalty provision for nonwithholding on certain taxpayers; to
25 remove certain provisions regarding unidentifiable sales and use tax proceeds; to clarify
26 certain definitions regarding motor fuel taxes; to clarify certain inspection authority
27 regarding motor fuel; to provide for a penalty provision regarding certain motor fuel taxes;

1 to provide effective dates; to provide for applicability; to repeal conflicting laws; and for
2 other purposes.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

4 **SECTION 1.**

5 This Act shall be known and may be cited as the "State and Local Tax Revision Act of
6 2007."

7 **SECTION 2.**

8 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
9 and associations, is amended by revising subsection (a) of Code Section 14-9-206.5, relating
10 to partnership registration, as follows:

11 "(a) Each domestic limited partnership and each foreign limited partnership authorized to
12 transact business in this state shall deliver to the Secretary of State for filing an annual
13 registration that sets forth:

- 14 (1) The name of the limited partnership and the state under whose law it is organized;
15 (2) The street address and county of its registered office and the name of its registered
16 agent at that office in this state;
17 (3) The mailing address of its principal office; ~~and~~
18 (4) The names and respective addresses of persons who have substantial responsibility
19 for managing the business of the limited partnership and whose positions are similar to
20 a chief executive officer, a chief financial officer, and secretary; and
21 ~~(4)~~(5) Any additional information that is necessary to enable the Secretary of State to
22 carry out the provisions of this chapter."

23 **SECTION 3.**

24 Said title is further amended by revising subsection (a) of Code Section 14-11-1103, relating
25 to limited liability company registration, as follows:

26 "(a) Each limited liability company and each foreign limited liability company authorized
27 to transact business in this state shall deliver to the Secretary of State for filing an annual
28 registration that sets forth:

- 29 (1) The name of the limited liability company or the foreign limited liability company
30 and the jurisdiction under whose law it is organized;
31 (2) The street address and county of its registered office and the name of its registered
32 agent at that office in this state;
33 (3) The mailing address of its principal place of business; ~~and~~

1 (4) The names and respective addresses of persons who have substantial responsibility
 2 for managing the business of the limited liability company and whose positions are
 3 similar to a chief executive officer, a chief financial officer, and secretary; and
 4 ~~(4)~~(5) Any additional information that is necessary to enable the Secretary of State to
 5 carry out the provisions of this chapter."

6 SECTION 4.

7 Title 16 of the Official Code of Georgia Annotated, related to crimes and offenses, is
 8 amended by revising subparagraph (d)(2)(E) of Code Section 16-12-22.1, relating to raffle
 9 licenses, as follows:

10 ~~"(E) A determination letter from the Georgia Department of Revenue certifying~~
 11 statement affirming that the applicant is exempt under the income tax laws of this state
 12 under Code Section 48-7-25;"

13 SECTION 5.

14 Said title is further amended by revising paragraph (3.1) of Code Section 16-12-51, relating
 15 to definitions pertaining to bingo, as follows:

16 "(3.1) 'Nonprofit, tax-exempt organization' means an organization, association,
 17 corporation, or other legal entity which has been determined by the federal Internal
 18 Revenue Service to be exempt from taxation under federal tax law and ~~has been~~
 19 ~~determined by the Georgia Department of Revenue to be~~ which is exempt from taxation
 20 under the income tax laws of this state under Code Section 48-7-25; which is organized
 21 or incorporated in this state or authorized to do business in this state; and which uses the
 22 proceeds from any bingo games conducted by such organization solely within this state."

23 SECTION 6.

24 Said title is further amended by revising paragraph (5) of subsection (b) of Code Section
 25 16-12-53, relating to bingo licensing procedure, as follows:

26 ~~"(5) A determination letter from the Georgia Department of Revenue certifying~~
 27 statement
 28 affirming that the applicant is exempt under the income tax laws of this state under Code
Section 48-7-25;"

29 SECTION 7.

30 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, is amended
 31 by adding a new paragraph in subsection (a) of Code Section 40-5-83, relating to driver
 32 improvement clinics, to read as follows:

1 Governor issued upon itemized requisitions showing in each instance the person to whom
2 the refund is to be made, the amount of the refund, and the reason for the refund.

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

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

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

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

13 (B) Each claim shall be filed in writing in the form and containing such information
14 as the commissioner may reasonably require and shall include a summary statement of
15 the grounds upon which the taxpayer relies and an identification of the subject
16 transactions.

17 (C) Should any person be prevented from filing such ~~an application~~ a claim because
18 of service of such person or such person's counsel in the armed forces during such
19 period, the period of limitation shall date from the discharge of such person or such
20 person's counsel from such service.

21 (D) A claim for refund may not be submitted by the taxpayer on behalf of a class
22 consisting of other taxpayers who are alleged to be similarly situated.

23 ~~(2) In the event the taxpayer desires a conference or hearing before the commissioner in~~
24 ~~connection with any claim for refund, he or she shall specify such desire in writing in the~~
25 ~~claim and, if the claim conforms with the requirements of this Code section, the~~
26 ~~commissioner shall grant a conference at a time he or she shall reasonably specify. A~~
27 ~~taxpayer may contest any claim for refund that is denied in whole or in part by filing with~~
28 ~~the commissioner a written protest at any time within 30 days from the date of notice of~~
29 ~~refund denial or partial payment. In the event the taxpayer wishes to request a~~
30 ~~conference, that request must be included in the written protest. All protests shall be~~
31 ~~prepared in the form and contain such information as the commissioner shall reasonably~~
32 ~~require and shall include a summary statement of the grounds upon which the taxpayer~~
33 ~~relies, an identification of the transactions being contested, and the reasons for disputing~~
34 ~~the findings of the commissioner. The commissioner shall grant a conference before the~~
35 ~~commissioner's designated officer or agent at a time specified and shall make reasonable~~
36 ~~rules governing the conduct of conferences. The discretion given in this Code section to~~
37 ~~the commissioner shall be reasonably exercised on all occasions.~~

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

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

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

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

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

23 (6)(A) No action or proceeding for the recovery of a refund under this Code section
 24 shall be commenced before the expiration of one year from the date of filing the claim
 25 for refund unless the commissioner or ~~his or her~~ the commissioner's delegate renders
 26 a decision on the claim within that time, nor shall any action or proceeding be
 27 commenced after the later of :

28 (i) The expiration of two years from the date the claim is denied; or

29 (ii) If a valid protest is filed under paragraph (2) of this subsection, 30 days after the
 30 date of the department's notice of decision on such protest.

31 (B) The ~~two-year~~ period prescribed in this paragraph for filing an action for refund
 32 shall be extended for such period as may be agreed upon in writing between the
 33 taxpayer and the commissioner ~~during the two-year~~ prior to the expiration of such
 34 period or any extension thereof.

35 (d) In the event any taxpayer's claim for refund is approved by the commissioner or ~~his~~
 36 ~~or her~~ the commissioner's delegate and the taxpayer has not paid other state taxes which
 37 have become due, the commissioner or department may ~~set off the unpaid taxes~~ offset any

1 existing liabilities against the refund. ~~When~~ Once the ~~setoff~~ offset authorized by this
 2 subsection ~~is exercised~~ occurs, the refund shall be deemed granted and the amount of the
 3 ~~setoff~~ offset shall be considered for all purposes as a payment toward the particular tax ~~debt~~
 4 ~~which is being set off~~ liabilities at issue. Any excess refund ~~remaining~~ amount after the
 5 ~~setoff~~ has any offsets have been applied shall be refunded to the taxpayer.

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

8 (f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
 9 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
 10 apply."

11 SECTION 10.

12 Said title is further amended by revising Code Section 48-2-35.1, relating to sales and use
 13 tax refunds, as follows:

14 "48-2-35.1.

15 (a)(1) Except as provided for under paragraph (2) of this subsection, for the purposes of
 16 all claims for refund of sales and use taxes erroneously or illegally assessed and collected,
 17 the term 'taxpayer' as used in Code Section 48-2-35 shall mean a dealer as defined in
 18 Code Section 48-8-2 that collected and remitted the erroneous or illegal sales and use
 19 taxes to the commissioner. If a person has erroneously or illegally paid sales taxes to a
 20 dealer that collected and remitted such taxes to the commissioner, such person must first
 21 attempt to obtain a refund of those taxes from such dealer.

22 (2) In the event a person who erroneously or illegally paid sales and use taxes is unable
 23 to obtain a refund from the dealer that collected and remitted the tax, the commissioner
 24 may consider such person a taxpayer for the purposes of filing a claim for refund under
 25 Code Section 48-2-35. Any such person desiring to file a claim for refund of erroneously
 26 or illegally assessed and collected sales and use taxes must:

27 (A) Provide evidence that the dealer refused or was unable to refund the erroneously
 28 or illegally assessed and collected taxes;

29 (B) Provide evidence that the dealer did not act upon the person's written request for
 30 refund of the erroneously or illegally assessed and collected taxes within 90 days from
 31 the date of such request for refund; or

32 (C) Provide the department with a notarized form prescribed by the commissioner and
 33 executed by the dealer affirming that the dealer:

34 (i) Has not claimed or will not claim a refund of the same tax included in the person's
 35 request for refund;

1 (ii) Will provide to the person any information or documentation in the dealer's
 2 possession needed for submission to the department to support or prove the claim for
 3 refund;

4 (iii) Has remitted to the state the taxes being sought for refund; and

5 (iv) Has not taken or will not take a credit for taxes being sought for refund.

6 (b) If a certificate or exemption determination letter issued by the commissioner certifying
 7 that the purchaser is entitled to purchase tangible personal property or taxable services
 8 without the payment of sales and use tax has not been obtained and used prior to
 9 purchasing such tangible personal property or taxable services, a refund of sales and use
 10 taxes shall be made without interest.

11 (c) A taxpayer who files a frivolous sales and use tax claim for refund under Code Section
 12 48-2-35 is subject to a penalty of 25 percent of the difference between the amount claimed
 13 and the amount that is eligible for refund. A claim is deemed to be frivolously filed when
 14 the amount claimed exceeds the amount eligible for refund by at least 50 percent and there
 15 is no legitimate legal or factual basis for requesting a refund of the tax on the disallowed
 16 transactions.

17 (d) A taxpayer who files a fraudulent sales and use tax claim for refund under Code
 18 Section 48-2-35 is subject to a penalty of 100 percent of the difference between the amount
 19 claimed and the amount that is eligible for refund. A claim is deemed to be fraudulently
 20 filed when the amount claimed exceeds the amount eligible for refund and there is evidence
 21 that the taxpayer filed the claim with the knowledge that the transactions were not eligible
 22 for refund in an attempt to defraud the department."

23 SECTION 11.

24 Said title is further amended by adding a new Code section to read as follows:

25 "48-2-85.

26 (a) The commissioner shall have the authority to appoint and employ eight nonuniformed
 27 special investigators or enforcement officers of the department for the enforcement of this
 28 title and other laws of this state with respect to cases involving internal affairs of the
 29 department and cases involving fraud and theft as it relates to income, withholding, sales
 30 and use tax, excise tax, and property tax who shall have the authority throughout the state
 31 to:

32 (1) Obtain and execute warrants for arrest of persons charged with violations of such
 33 laws;

34 (2) Obtain and execute search warrants in the enforcement of such laws;

1 (3) Arrest without warrant any person violating such laws in the officer's presence or
2 within such officer's immediate knowledge when there is likely to be a failure of
3 enforcement of such laws for want of a judicial officer to issue a warrant;

4 (4) Make investigations in the enforcement of such laws and, in connection with the
5 investigations, to go upon any property outside of buildings, posted or otherwise, in the
6 performance of official duties;

7 (5) Seize and take possession of all property which is declared contraband under such
8 laws;

9 (6) Carry firearms while performing official duties; and

10 (7) Arrest any person violating the criminal laws of this state, while said agent or officer
11 is in the performance of the above listed duties.

12 (b) To serve as a special investigator or enforcement officer, an employee must be certified
13 as a peace officer pursuant to the provisions of Chapter 8 of Title 35, the 'Georgia Peace
14 Officer Standards and Training Act.'

15 (c) Each special investigator or enforcement officer shall file with the commissioner a
16 public official's bond in the amount of \$1,000.00, the cost of which shall be paid by the
17 department.

18 (d) Nothing in this title shall be construed so as to relieve any special investigator or
19 enforcement officer, after making an arrest, from the duties imposed generally to obtain a
20 warrant promptly and, without undue delay, to return arrested persons before a person
21 authorized to examine, commit, or receive bail, as required by general law.

22 (e) After a special investigator or enforcement officer has accumulated 25 years of service
23 with the department, upon leaving the department under honorable conditions, such special
24 investigator or enforcement officer shall be entitled as part of such officer's compensation
25 to retain his or her weapon and badge pursuant to regulations promulgated by the
26 commissioner.

27 (f) As used in this subsection the term 'disability' means a disability that prevents an
28 individual from working as a law enforcement officer. When a special investigator or
29 enforcement officer leaves the department as a result of a disability arising in the line of
30 duty, such special investigator or enforcement officer shall be entitled as part of such
31 officer's compensation to retain his or her weapon and badge in accordance with
32 regulations promulgated by the commissioner.

33 **SECTION 12.**

34 Said title is further amended by revising subsection (a) and paragraph (1) of subsection (b)
35 of Code Section 48-7-25, relating to organizations exempt from Georgia income tax, as
36 follows:

1 "(a) The following organizations shall be exempt from taxation imposed by Code Section
 2 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section as~~
 3 indicated:

4 (1) Subject to subsections (b) and (c) of this Code section those ~~Those~~ organizations
 5 described by which are exempt from federal income taxation pursuant to Section 501(c),
 6 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986; are deemed to have
 7 similar exempt status for purposes of Code Section 48-7-21 ~~Organizations described in~~
 8 ~~this paragraph shall be exempt from taxation for state purposes in the same manner and~~
 9 ~~to the same extent as for federal purposes; and~~

10 (2) Insurance companies which pay to the state a tax upon premium income."

11 ~~"(b)(1) An organization requesting exemption under paragraph (1) of subsection (a) of~~
 12 ~~this Code section shall file a written application with the commissioner. The~~
 13 ~~commissioner shall issue a determination letter or ruling to an organization requesting the~~
 14 ~~exemption and shall either grant or disallow the requested exempt status. Until a~~
 15 ~~determination letter granting exempt status is issued by the commissioner, no exempt~~
 16 ~~status shall exist. Those organizations which have an exempt status in effect under~~
 17 ~~Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 on~~
 18 ~~January 1, 1987, shall retain the exempt status unless revoked as provided by law. The~~
 19 ~~commissioner may issue rules governing the filing of written applications and the~~
 20 ~~issuance of determination letters. An organization's exempt status under paragraph (1)~~
 21 ~~of subsection (a) of this Code section is subject to review and revocation by the~~
 22 ~~commissioner in accordance with the provisions of paragraph (2) of this subsection."~~

23 SECTION 13.

24 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section
 25 48-7-27, relating to computation of taxable net income, as follows:

26 "(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation must execute a
 27 consent agreement to pay Georgia income tax on their portion of the corporate income
 28 in order for the Subchapter 'S' corporation to be recognized for Georgia purposes. ~~This~~
 29 A consent agreement for each shareholder must be filed by the corporation with its
 30 corporate tax return in the year in which the nonresident first becomes a shareholder of
 31 the Subchapter 'S' corporation. Shareholders of a federal Subchapter 'S' corporation which
 32 is not recognized for Georgia purposes may make an adjustment to federal adjusted gross
 33 income in order to avoid double taxation on this type of income. Adjustments will not
 34 be allowed unless tax was actually paid by the corporation."

1 property which is used for or associated with the playing of golf, or is planned to be so
2 used or associated shall not be eligible as a qualified donation under this Code section.

3 (b) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code
4 Section 48-7-20 or Code Section 48-7-21 for each qualified donation of real property for
5 conservation purposes. Except as otherwise provided in subsection (d) of this Code
6 section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00
7 or 25 percent of the fair market value of the donated real property as fair market value is
8 established pursuant to paragraph (3) of Code Section 48-5-2 for the year in which the
9 donation occurred.

10 (c) No tax credit shall be allowed under this Code section unless ~~the taxpayer files with~~
11 ~~the taxpayer's income tax return a copy of a certification by the Department of Natural~~
12 ~~Resources that the donated property is suitable for conservation purposes~~ is provided to the
13 commissioner by the Department of Natural Resources. The Board of Natural Resources
14 shall promulgate any rules and regulations necessary to implement and administer this
15 subsection, including, but not limited to, policies to guide the determination of whether or
16 not donated property is suitable for conservation purposes. A final determination by the
17 Department of Natural Resources with respect to the suitability of donated property for
18 conservation purposes shall be subject to review and appeal under Chapter 13 of Title 50,
19 the 'Georgia Administrative Procedure Act.'

20 (d) In no event shall the total amount of any tax credit under this Code section for a taxable
21 year exceed the taxpayer's income tax liability. In no event shall the total amount of the
22 tax credit allowed to a taxpayer under subsection (b) of this Code section exceed
23 \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or
24 \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any
25 unused tax credit shall be allowed to be carried forward to apply to the taxpayer's
26 succeeding five years' tax liability. However, the amount in excess of such annual dollar
27 limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability.
28 No such tax credit shall be allowed the taxpayer against prior years' tax liability.

29 (e) The commissioner shall promulgate any rules and regulations necessary to implement
30 and administer this Code section."

31 SECTION 16.

32 Said title is further amended by revising Code Section 48-7-54 as follows:

33 "48-7-54.

34 ~~Reserved~~ The commissioner may require any taxpayer to electronically file any return,
35 report, or other document required to be filed by this chapter when the federal counterpart
36 of such return, report, or other document is required to be filed electronically pursuant to

1 the Internal Revenue Code of 1986 or Internal Revenue Service regulations. The
 2 commissioner is authorized to prescribe forms and promulgate rules and regulations
 3 deemed necessary in order to effectuate this Code section."

4 **SECTION 17.**

5 Said title is further amended by adding a new Code section to read as follows:

6 "48-7-57.2.

7 (a) For purposes of this Code section, the term:

8 (1) 'Tax return preparer' means a person who prepares for compensation, or who
 9 employs one or more persons who prepare for compensation, any return of tax imposed
 10 under this chapter or Chapter 7A of this title, or any claim for refund of such tax. The
 11 preparation of a substantial part of a return or claim for refund is treated as if it were the
 12 preparation of the entire return or claim for refund. A person is not considered a tax
 13 return preparer merely because the person does any of the following:

14 (A) Furnishes typing, reproducing, or other mechanical assistance;

15 (B) Prepares a return or claim for refund of the employer or an officer or employee of
 16 the employer by whom the person is regularly and continuously employed;

17 (C) Prepares a return or claim for refund of any person as a fiduciary for that person;
 18 or

19 (D) Prepares a claim for refund for a taxpayer in response to a notice of proposed
 20 assessment issued to the taxpayer.

21 (2) 'Understatement of liability' means an understatement of the net amount payable with
 22 respect to a tax imposed under this chapter or Chapter 7A of this title or an overstatement
 23 of the net amount creditable or refundable with respect to such tax. Except as provided
 24 in subsection (d) of this Code section, the determination of whether there is an
 25 understatement of liability shall be made without regard to any administrative or judicial
 26 action involving the taxpayer. For purposes of this paragraph, the amount determined as
 27 an underpayment of estimated income tax under the relevant provisions of this chapter
 28 is not considered an understatement of liability.

29 (b) A tax return preparer shall pay a penalty of \$250.00 with respect to such return or
 30 claim unless it is shown that there is reasonable cause for the understatement and such
 31 person acted in good faith if:

32 (1) Any part of any understatement of liability with respect to any return or claim for
 33 refund is due to a position which had no realistic possibility of being sustained on its
 34 merits;

35 (2) Any tax return preparer with respect to such return or claim knew or reasonably
 36 should have known of such position; and

1 (3) The relevant facts affecting the item's tax treatment were not adequately disclosed
2 in the return or in a statement attached to the return or such position was frivolous.

3 (c) If any part of any understatement of liability with respect to any return or claim for
4 refund is due to:

5 (1) A willful attempt in any manner to understate the liability for tax by a tax return
6 preparer with respect to such return or claim; or

7 (2) Any reckless or intentional disregard of rules or regulations by any such tax return
8 preparer,

9 such tax return preparer shall pay a penalty of \$1,000.00 with respect to such return or
10 claim. With respect to any return or claim, the amount of the penalty payable by any tax
11 return preparer by reason of this subsection shall be reduced by the amount of the penalty
12 paid by such tax return preparer by reason of subsection (b) of this Code section.

13 (d) If at any time there is a final administrative determination or a final judicial decision
14 that there was no understatement of liability in the case of any return or claim for refund
15 with respect to which a penalty under subsection (b) or (c) of this Code section has been
16 assessed, such assessment shall be waived, and if any portion of such penalty has been
17 paid, the amount so paid shall be refunded to the tax return preparer who made such
18 payment as an overpayment of tax without regard to any period of limitations which, but
19 for this subsection, would apply to the making of such refund.

20 (e) Other assessable penalties with respect to the preparation for other persons of returns
21 of tax imposed under this chapter or Chapter 7A of this title shall be as follows:

22 (1) Any tax return preparer with respect to any return or claim for refund who fails to
23 furnish a completed copy of such return or claim to the taxpayer, at a time no later than
24 the time such return or claim is presented for such taxpayer's signature, shall pay a
25 penalty of \$50.00 for such failure, unless it is shown that such failure is due to reasonable
26 cause and not due to willful neglect. The maximum penalty imposed under this
27 paragraph on any tax return preparer with respect to documents filed during any calendar
28 year shall not exceed \$25,000.00;

29 (2) Any tax return preparer with respect to any return or claim for refund who is required
30 by regulations prescribed by the commissioner to sign such return or claim and who fails
31 to comply with such regulations with respect to such return or claim shall pay a penalty
32 of \$50.00 for such failure, unless it is shown that such failure is due to reasonable cause
33 and not due to willful neglect. The maximum penalty imposed under this paragraph on
34 any tax return preparer with respect to documents filed during any calendar year shall not
35 exceed \$25,000.00;

36 (3) Any tax return preparer with respect to any return or claim for refund who fails to
37 furnish the preparer's identifying number with respect to such return or claim shall pay

1 a penalty of \$50.00 for such failure, unless it is shown that such failure is due to
2 reasonable cause and not due to willful neglect. The maximum penalty imposed under
3 this paragraph on any tax return preparer with respect to documents filed during any
4 calendar year shall not exceed \$25,000.00;

5 (4) Any tax return preparer with respect to any return or claim for refund who fails to
6 retain a completed copy of such return or claim for three years following the later of
7 either:

8 (A) The date on which the return was due to be filed with the department including any
9 extensions which have been granted; or

10 (B) The date the return or claim was presented to the taxpayer for signature
11 shall pay a penalty of \$50.00 for each such failure, unless it is shown that such failure is
12 due to reasonable cause and not due to willful neglect. The maximum penalty imposed
13 under this paragraph on any tax return preparer with respect to any return period shall not
14 exceed \$25,000.00; and

15 (5) Any tax return preparer who fraudulently endorses or otherwise negotiates directly
16 or through an agent any check made in respect of the taxes imposed under this chapter
17 or Chapter 7A of this title which is issued to a taxpayer other than the tax return preparer
18 shall pay a penalty of \$500.00 with respect to each such check. This paragraph shall not
19 apply with respect to the deposit by a bank, within the meaning of Section 581 of the
20 Internal Revenue Code of 1986, of the full amount of the check in the taxpayer's account
21 in such bank for the benefit of the taxpayer.

22 (f)(1) Any person who:

23 (A)(i) Organizes or assists in the organization of:

24 (I) A partnership or other entity;

25 (II) Any investment plan or arrangement; or

26 (III) Any other plan or arrangement; or

27 (ii) Participates directly or indirectly in the sale of any interest in an entity or plan or
28 arrangement referred to in division (i) of this subparagraph; and

29 (B) Makes or furnishes or causes another person to make or furnish in connection with
30 such organization or sale:

31 (i) A statement with respect to the allowability of any deduction or credit, the
32 excludability of any income, or the securing of any other tax benefit by reason of
33 holding an interest in the entity or participating in the plan or arrangement which the
34 person knows or has reason to know is false or fraudulent as to any material matter;
35 or

36 (ii) A gross valuation overstatement as to any material matter

1 shall pay, with respect to each activity described in subparagraph (A) of this paragraph,
 2 a penalty equal to \$1,000.00 or, if the person establishes that it is less, 100 percent of the
 3 gross income derived or to be derived by such person from such activity. For purposes
 4 of this division, activities described in division (i) of subparagraph (A) of this paragraph
 5 with respect to each entity or arrangement shall be treated as a separate activity and
 6 participation in each sale described in division (ii) of subparagraph (A) of this paragraph
 7 shall be so treated. Notwithstanding subparagraph (A) of this paragraph, if an activity
 8 with respect to which a penalty imposed under this subsection involves a statement
 9 described in division (i) of this subparagraph, the amount of the penalty shall be equal to
 10 50 percent of the gross income derived or to be derived from such activity by the person
 11 on which the penalty is imposed.

12 (2)(A) For purposes of this paragraph, the term 'gross valuation overstatement' means
 13 any statement as to the value of any property or services if:

14 (i) The value so stated exceeds 200 percent of the amount determined to be the
 15 correct valuation; and

16 (ii) The value of such property or services is directly related to the amount of any
 17 deduction or credit allowable under this chapter or Chapter 7A of this title to any
 18 participant.

19 (B) The commissioner may waive all or any part of the penalty provided by
 20 paragraph (1) of this subsection with respect to any gross valuation overstatement on
 21 a showing that there was a reasonable basis for the valuation and that such valuation
 22 was made in good faith.

23 (g)(1) For purposes of this subsection, the term:

24 (A) 'Procures' includes:

25 (i) Ordering or otherwise causing a subordinate to do an act; and

26 (ii) Knowing of and not attempting to prevent participation by a subordinate in an act.

27 (B) 'Subordinate' means any other person whether or not a director, officer, employee,
 28 or agent of the taxpayer involved over whose activities the person has direction,
 29 supervision, or control.

30 (2) Notwithstanding any provision to the contrary, any person:

31 (A) Who aids or assists in, procures, or advises with respect to the preparation or
 32 presentation of any portion of a return, affidavit, claim, or other document;

33 (B) Who knows or has reason to believe that such portion of a return, affidavit, claim,
 34 or other document will be used in connection with any material matter arising under
 35 this chapter or Chapter 7A of this title; and

36 (C) Who knows that such portion of a return, affidavit, claim, or other document if so
 37 used would result in an understatement of the liability for tax of another person

1 shall pay a penalty with respect to each such document in the amount determined under
2 paragraph (3) of this subsection.

3 (3)(A) Except as provided in subparagraph (B) of this paragraph, the amount of the
4 penalty imposed by paragraph (2) of this subsection shall be \$1,000.00.

5 (B) If the return, affidavit, claim, or other document relates to the tax liability of a
6 corporation, the amount of the penalty imposed by paragraph (2) of this subsection shall
7 be \$10,000.00.

8 (C) If any person is subject to a penalty under paragraph (2) of this subsection with
9 respect to any document relating to any taxpayer for any taxable period or, where there
10 is no taxable period, any taxable event, such person shall not be subject to a penalty
11 under paragraph (2) of this subsection with respect to any other document relating to
12 such taxpayer for such taxable period or event.

13 (4) Paragraph (2) of this subsection shall apply whether or not the understatement is with
14 the knowledge or consent of the persons authorized or required to present the return,
15 affidavit, claim, or other document.

16 (5) For purposes of subparagraph (A) of paragraph (2) of this subsection, a person
17 furnishing typing, reproducing, or other mechanical assistance with respect to a document
18 shall not be treated as having aided or assisted in the preparation of such document by
19 reason of such assistance.

20 (6)(A) No penalty shall be assessed under subsection (b) or (c) of this Code section on
21 any person with respect to any document for which a penalty is assessed on such person
22 under paragraph (2) of this subsection.

23 (B) No penalty shall be assessed under subsection (f) of this Code section on any
24 person with respect to any document for which a penalty is assessed on such person
25 under paragraph (2) of this subsection.

26 (h)(1) A civil action in the name of the State of Georgia may be commenced at the
27 request of the commissioner to enjoin any person who is a tax return preparer or an
28 employer having knowledge of an employee tax return preparer who is doing business
29 in this state and engaging in conduct described in this subsection from further engaging
30 in preparing tax returns. This action may be brought by the department in the superior
31 court of the county of the tax return preparer's residence or principal place of business,
32 or in which the taxpayer with respect to whose tax return the action is brought resides.
33 The court may exercise its jurisdiction over the action separate and apart from any other
34 action brought by the State of Georgia against the tax return preparer or any taxpayer.

35 (2) In an action under this subsection, the court may issue an injunction prohibiting a
36 person from acting as a tax return preparer if the court finds that the individual has done
37 any of the following:

- 1 (A) Engaged in any pattern of conduct subject to a civil penalty under subsection (b),
2 (c), or (e) of this Code section;
- 3 (B) Guaranteed the payment of any tax refund or the allowance of any tax credit; or
4 (C) Aided or assisted in, counseled, or advised the preparation or presentation under
5 or in connection with any matter arising under the state revenue laws of any returns,
6 affidavits, claims, or other documents, which may constitute a significant congruous
7 pattern of any of the following:
- 8 (i) Omissions of income;
 - 9 (ii) Excessive or nonexistent deductions;
 - 10 (iii) Claims of nonexistent dependents;
 - 11 (iv) Fictitious business schedules;
 - 12 (v) Excessive losses; or
 - 13 (vi) Documents that are fraudulent or false as to any material matter, whether or not
14 such falsity or fraud is with the knowledge or consent of the person authorized or
15 required to present the return, affidavit, claim, or document.
- 16 (i)(1) A civil action in the name of the State of Georgia to enjoin any person from further
17 engaging in conduct subject to penalty under subsection (f) of this Code section, relating
18 to penalty for promoting abusive tax shelters, or subsection (g) of this Code section,
19 relating to penalties for aiding and abetting understatement of tax liability, may be
20 commenced at the request of the commissioner. Any action under this subsection shall
21 be brought in the superior court for the county in which that person resides, has his or her
22 principal place of business, or in which that person has engaged in conduct subject to
23 penalty under subsection (f) or (g) of this Code section. The court may exercise its
24 jurisdiction over such action separate and apart from any other action brought by the State
25 of Georgia against that person.
- 26 (2) In any action under paragraph (1) of this subsection, the court may enjoin a person
27 from engaging in conduct or in any other activity subject to penalty under subsection (f)
28 or (g) of this Code section if the court finds both of the following:
- 29 (A) The person has engaged in any conduct subject to penalty under subsection (f) or
30 (g) of this Code section; and
 - 31 (B) Injunctive relief is appropriate to prevent recurrence of such conduct.
- 32 (3) If any citizen or resident of the United States does not reside in Georgia, and does not
33 have his or her principal place of business in Georgia, that citizen or resident shall be
34 treated for purposes of this Code section as residing in Fulton County.
- 35 (j) Except as otherwise provided, the penalties provided by this Code section shall be in
36 addition to any other penalties provided by law.

1 (k) Any claim for credit or refund of any penalty paid under this Code section shall be
2 filed in accordance with rules and regulations promulgated by the commissioner."

3 SECTION 18.

4 Said title is further amended by adding a new subsection in Code Section 48-7-101, relating
5 to withholding requirements for income tax, to read as follows:

6 "(j)(1) The payee of any nonperiodic payment may elect to have withholding made on
7 distributions from a pension, annuity, or similar fund. Such an election shall remain in
8 effect until revoked by the payee.

9 (2) Upon such election by a payee stated in paragraph (1) of this subsection, the payor
10 of any nonperiodic payment shall withhold from such payment the amount specified by
11 the payee, but in no event shall the amount withheld be less than the amount which would
12 be required to be withheld if such payment were a payment of wages by an employer to
13 an employee for the appropriate payroll period.

14 (3) The commissioner is authorized to prescribe forms and to promulgate rules and
15 regulations setting forth the requirements for withholding from such nonperiodic
16 payments and the requirements for making elections to withhold."

17 SECTION 19.

18 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
19 48-7-129, relating to withholding tax on certain distributions, as follows:

20 "(3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails
21 to withhold and pay over to the commissioner any amount required to be withheld under
22 this Code section may be liable for a penalty equal to 25 percent of the amount not
23 withheld and paid over. Any penalty imposed under this subsection shall be paid upon
24 notice and demand by the commissioner or the commissioner's delegate and shall be
25 assessed and collected in the same manner as the withholding taxes imposed by this
26 article."

27 SECTION 20.

28 Said title is further amended by repealing subsection (h) of Code Section 48-8-67, relating
29 to distributions of unidentifiable sales and use tax proceeds, which reads as follows:

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

1 used to make, store, or transport motor fuel, diesel dyes, or diesel markers. The
 2 commissioner or the commissioner's agents may take a sample of any product from such
 3 vehicle, container, or equipment in a quantity sufficient to determine the sample's
 4 composition. The commissioner or the commissioner's agents may stop a vehicle for
 5 purposes of inspecting and taking a sample of motor fuel from the vehicle.

6 ~~(5)~~(6) Every person who sells or delivers dyed fuel oil shall put on the face of the
 7 delivery document or invoice, or both if both are used, a notice that the product is dyed
 8 and is not for highway use. The commissioner may by regulation provide that any notice
 9 conforming to regulations promulgated by either the United States Environmental
 10 Protection Agency or Internal Revenue Service will be sufficient notice for purposes of
 11 this Code section."

12 SECTION 23.

13 Said title is further amended in Code Section 48-9-16, relating to enforcement, by revising
 14 subsections (e) and (f) and by adding new subsections (g) and (h) as follows:

15 "(e) When any person:

16 (1) Sells or delivers any dyed fuel oil when such person knows or has reason to know
 17 that the fuel will be consumed in a highway use; or

18 (2) Consumes any dyed fuel oil for a highway use when such consumer knows or has
 19 reason to know that the fuel oil was dyed or when any person refuses to allow the taking
 20 of a motor fuel sample, such person shall be subject to a penalty of ~~\$1,000.00~~ \$2,000.00
 21 or \$10.00 \$20.00 per gallon of dyed fuel oil involved in such sale, delivery, or
 22 consumption, whichever amount is greater, and such amount shall be multiplied by the
 23 number of prior penalties imposed on such violator under this subsection and the
 24 resulting product shall be the penalty to be imposed.

25 (3) The penalty for any refusal for a sample to be taken from a vehicle is payable by the
 26 person in whose name the vehicle is registered. The penalty for any refusal for a sample
 27 to be taken from any other storage tank or container is payable by the owner of the
 28 container.

29 (f) When any person sells or delivers any dyed fuel oil without the notices required under
 30 paragraph ~~(5)~~ (6) of subsection (c) of Code Section 48-9-8, such person shall be subject to
 31 a penalty which shall be the greater of the following:

32 (1) One hundred dollars per month for each month or part of a month in which such sale
 33 or delivery occurred; or

34 (2) One dollar per gallon of dyed fuel oil involved in such sale or delivery.

35 Upon a showing of no highway use and reasonable cause, at the commissioner's discretion
 36 the penalty under this subsection may be reduced to 10 percent of the amount which

1 ordinarily would have been due or payment of the tax may be accepted in lieu of such
2 penalty.

3 (g) All dyed fuel oil storage tanks, pumps, and dispensing devices shall be marked with
4 a legible and conspicuous notice stating 'Dyed Fuel Oil, Nontaxable Use Only: Penalty for
5 Taxable Use.' Any person, licensee, or consumer who fails to post the required notice with
6 respect to any dyed fuel oil shall be subject to a penalty of \$2,000.00 or \$20.00 for each
7 gallon of dyed fuel oil involved, whichever is greater.

8 (h) Vehicles on public highways within this state operating on nontax paid dyed fuel oils
9 intended for off-road use in a concentration of 0.7 parts per million or greater shall
10 immediately cease operating on public highways until such vehicle's fuel oil is in
11 compliance with this Code section. The owner of such vehicle shall be responsible for all
12 costs and liabilities incurred by the state to detain the vehicle. The commissioner shall
13 promulgate all rules and regulations necessary to ensure enforcement of this subsection."

14 SECTION 24.

15 (a) Sections 2 and 3 of this Act shall become effective upon this Act's approval by the
16 Governor or upon its becoming law without such approval and shall be applicable to annual
17 reports that are due to the Secretary of State beginning on or after January 1, 2008.

18 (b) Sections 8, 13, and 15 of this Act shall become effective upon this Act's approval by
19 the Governor or upon its becoming law without such approval and shall be applicable to
20 all taxable years beginning on or after January 1, 2007.

21 (c) Sections 22 and 23 of this Act shall become effective July 1, 2007.

22 (d) Sections 9 and 10 of this Act shall become effective on July 1, 2007, and shall be
23 applicable to any claim for refund filed on or after July 1, 2007.

24 (e) This section and Sections 1, 4, 5, 6, 7, 11, 12, 14, 16, 17, 18, 19, 20, 21, and 25 of this
25 Act shall become effective upon this Act's approval by the Governor or upon its becoming
26 law without such approval.

27 SECTION 25.

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