

The House Committee on Ways and Means offers the following substitute to HB 219:

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 requirements regarding reports of motor fuel deliveries; to provide for an effective date; to
8 repeal 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) and
13 adding a new paragraph as follows:

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

25 (5.2) 'Prepaid local tax' means any local sales and use tax which is levied on the sale or
26 use of motor fuel and imposed in an area consisting of less than the entire state, however

1 authorized, including, but not limited to, such taxes authorized by or pursuant to
 2 constitutional amendment; by or pursuant to Section 25 of an Act approved March 10,
 3 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid
 4 Transit Authority Act of 1965' or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.
 5 Such tax is based on the same average retail sales price as set forth in subparagraph
 6 (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales
 7 tax rate for local jurisdictions by multiplying such retail price by the applicable rate
 8 imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for
 9 the local jurisdiction shall provide a schedule as to which jurisdiction these collections
 10 relate. This determination shall be based upon the shipping papers of the conveyance that
 11 delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may
 12 rely upon the representation made by the purchaser as to which jurisdiction the shipment
 13 is bound and prepare shipping papers in accordance with those instructions."

14 **SECTION 2.**

15 Said title is further amended in Code Section 48-8-30, relating to imposition of sales and use
 16 taxes, by adding new subsections (j) and (k) to read as follows:

17 "(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor
 18 fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant
 19 to this Code section and resells the same to a governmental entity that is totally or partially
 20 exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall
 21 be entitled to either a credit or refund. The amount of the credit or refund shall be the
 22 prepaid state tax or prepaid local tax or both rates for which such governmental entity is
 23 exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be
 24 eligible for the credit or refund, the distributor shall reduce the amount such distributor
 25 charges for the fuel sold to such governmental entity by an amount equal to the tax from
 26 which such governmental entity is exempt. Should a distributor have a liability under this
 27 Code section, the distributor may elect to take a credit for those sales against such liability.
 28 (k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph
 29 (b)(2)(B) of Code Section 48-9-14."

30 **SECTION 3.**

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

33 "(f) The deduction authorized under this Code section shall be combined with and
 34 calculated with the deductions authorized under Code Section 48-8-87, Code Section
 35 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved

1 March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid
 2 Transit Authority Act of 1965,' and any other sales tax, use tax, or sales and use tax which
 3 is levied and imposed in an area consisting of less than the entire state, however authorized,
 4 by applying the deduction rate specified in this Code section against the combined total of
 5 all such taxes reported due on the same return."

6 **SECTION 4.**

7 Said title is further amended by revising Code Section 48-8-82, relating to imposition of the
 8 joint county and municipal sales and use tax, as follows:

9 "48-8-82.

10 When the imposition of a joint county and municipal sales and use tax is authorized
 11 according to the procedures provided in this article within a special district, the county
 12 whose geographical boundary is conterminous with that of the special district and each
 13 qualified municipality located wholly or partially within the special district shall levy a
 14 joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall
 15 correspond to the tax imposed and administered by Article 1 of this chapter. No item or
 16 transaction which is not subject to taxation by Article 1 of this chapter shall be subject to
 17 the tax levied pursuant to this article, except that the joint tax provided in this article shall
 18 be applicable to sales of motor fuels as prepaid local tax as that term is defined by ~~Code~~
 19 ~~Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to the sale
 20 of food and beverages only to the extent provided for in paragraph (57) of Code Section
 21 48-8-3."

22 **SECTION 5.**

23 Said title is further amended by revising Code Section 48-8-87, relating to the administration
 24 and collection of the joint county and municipal sales and use tax, as follows:

25 "48-8-87.

26 The tax levied pursuant to this article shall be exclusively administered and collected by
 27 the commissioner for the use and benefit of each county whose geographical boundary is
 28 conterminous with that of a special district and of each qualified municipality located
 29 wholly or partially therein. Such administration and collection shall be accomplished in the
 30 same manner and subject to the same applicable provisions, procedures, and penalties
 31 provided in Article 1 of this chapter, except that the joint tax provided in this article shall
 32 be applicable to sales of motor fuels as prepaid local tax as that term is defined by
 33 paragraph (5.2) of Code Section 48-8-2; provided, however, that all moneys collected from
 34 each taxpayer by the commissioner shall be applied first to such taxpayer's liability for
 35 taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due

1 and accounted for and shall be reimbursed in the form of a deduction in submitting,
 2 reporting, and paying the amount due if such amount is not delinquent at the time of
 3 payment. The deduction shall be at the rate and subject to the requirements specified under
 4 subsections (b) through (f) of Code Section 48-8-50."

5 SECTION 6.

6 Said title is further amended by revising subsection (b) of Code Section 48-8-102, relating
 7 to the imposition of the homestead option sales and use tax, as follows:

8 "(b) When the imposition of a local sales and use tax is authorized according to the
 9 procedures provided in this article within a special district, the county whose geographical
 10 boundary is conterminous with that of the special district shall levy a local sales and use
 11 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond
 12 to the tax imposed and administered by Article 1 of this chapter. No item or transaction
 13 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and
 14 use tax levied pursuant to this article, except that the sales and use tax provided in this
 15 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined
 16 by ~~Code Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to
 17 the sale of food and beverages only to the extent provided for in paragraph (57) of Code
 18 Section 48-8-3."

19 SECTION 7.

20 Said title is further amended by revising subsection (a) of Code Section 48-8-104, relating
 21 to the administration and manner of distribution of the homestead option sales and use tax,
 22 as follows:

23 "(a) The sales and use tax levied pursuant to this article shall be exclusively administered
 24 and collected by the commissioner for the use and benefit of each county whose
 25 geographical boundary is conterminous with that of a special district. Such administration
 26 and collection shall be accomplished in the same manner and subject to the same applicable
 27 provisions, procedures, and penalties provided in Article 1 of this chapter except that the
 28 sales and use tax provided in this article shall be applicable to sales of motor fuels as
 29 prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2;
 30 provided, however, that all moneys collected from each taxpayer by the commissioner shall
 31 be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be
 32 allowed a percentage of the amount of the sales and use tax due and accounted for and shall
 33 be reimbursed in the form of a deduction in submitting, reporting, and paying the amount
 34 due if such amount is not delinquent at the time of payment. The deduction shall be at the

1 rate and subject to the requirements specified under subsections (b) through (f) of Code
2 Section 48-8-50."

3 **SECTION 8.**

4 Said title is further amended by revising subsection (c) of Code Section 48-8-110.1, relating
5 to imposition of the county special purpose local option sales and use tax, as follows:

6 "(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a
7 tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter.
8 No item or transaction which is not subject to taxation under Article 1 of this chapter shall
9 be subject to a tax imposed under this part, except that a tax imposed under this part shall
10 apply to sales of motor fuels as prepaid local tax as that term is defined by ~~Code Section~~
11 ~~48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to the sale of food
12 and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3."

13 **SECTION 9.**

14 Said title is further amended by revising Code Section 48-8-113, relating to the
15 administration of the county special purpose local option sales and use tax, as follows:

16 "48-8-113.

17 A tax levied pursuant to this part shall be exclusively administered and collected by the
18 commissioner for the use and benefit of the county and qualified municipalities within such
19 special district imposing the tax. Such administration and collection shall be accomplished
20 in the same manner and subject to the same applicable provisions, procedures, and
21 penalties provided in Article 1 of this chapter except that the sales and use tax provided in
22 this article shall be applicable to sales of motor fuels as prepaid local tax as that term is
23 defined by paragraph (5.2) of Code Section 48-8-2; provided, however, that all moneys
24 collected from each taxpayer by the commissioner shall be applied first to such taxpayer's
25 liability for taxes owed the state; and provided, further, that the commissioner may rely
26 upon a representation by or in behalf of the county and qualified municipalities within the
27 special district or the Secretary of State that such a tax has been validly imposed, and the
28 commissioner and the commissioner's agents shall not be liable to any person for collecting
29 any such tax which was not validly imposed. Dealers shall be allowed a percentage of the
30 amount of the tax due and accounted for and shall be reimbursed in the form of a deduction
31 in submitting, reporting, and paying the amount due if such amount is not delinquent at the
32 time of payment. The deduction shall be at the rate and subject to the requirements
33 specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 10.

Said title is further amended by revising subparagraph (c)(1)(A) of Code Section 48-8-201, relating to imposition of the municipal water and sewer projects and costs tax, as follows:

"(A) Sales of motor fuels as prepaid local tax as that term is defined by ~~Code Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2;"

SECTION 11.

Said title is further amended by revising Code Section 48-8-204, relating to administration and collection of the municipal water and sewer projects and costs tax, as follows:

"48-8-204.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the municipality imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 12.

Said title is further amended by revising subsections (d), (e), and (f) of Code Section 48-9-9, relating to reports of motor fuel deliveries, as follows:

"(d)(1) Every person transporting motor fuel over the public highways or navigable waters of this state shall have in such person's possession an invoice, bill of sale, or other document which identifies:

- (A) The true name and address of the person from whom the motor fuel was received;
- (B) The number of gallons originally received;
- (C) The true name and address of every person who has received any part of the fuel;
- (D) The number of gallons delivered to such persons; and

1 (E) The city or county and state of destination as represented to the transporter by the
2 person who arranged the transportation.

3 (2) Failure to produce such invoice, bill of sale, or other document when demanded or
4 failure of a document produced upon demand to meet the requirements of this Code
5 section shall be prima-facie evidence of a violation of this article.

6 (3) The transporter shall leave a copy of the invoice, bill of lading, or other
7 documentation with each person who receives the fuel into bulk storage for resale.

8 (e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank
9 of any motor vehicle in this state is prohibited except in cases of emergency.

10 (f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale,
11 use, or other disposition in this state who is not required to be licensed as a distributor by
12 this article may be required to file by the twentieth day of each calendar month a report on
13 forms prescribed by the commissioner to account for all such motor fuel acquired during
14 the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk
15 for storage shall include on a report to the commissioner the names of all persons who are
16 storing fuel in the terminal and the quantity received, stored, and delivered during the
17 month on behalf of each such account. The report shall specify what portion of the
18 deliveries recorded for each account were within the terminal to others and what portion
19 was removed from the terminal facility via the loading rack. The report shall identify the
20 city or county and state ~~or country~~ of destination of the deliveries as reflected on the bills
21 of lading issued by the terminal operator."

22 SECTION 13.

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

24 SECTION 14.

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