

The House Committee on Ways and Means offers the following substitute to HB 385:

A BILL TO BE ENTITLED
AN ACT

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

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

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

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

SECTION 3.

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

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

SECTION 4.

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

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

SECTION 5.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions of terms, as follows:

"(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years beginning on or after January 1, ~~2006~~ 2007, the provisions of the United States Internal Revenue Code of 1986 provided for in federal law enacted on or before

1 January 1, ~~2006~~ 2007, except Section 168(k), (but not excepting Section
 2 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199,
 3 Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the
 4 Internal Revenue Code of 1986 shall be treated as if they were not in effect. In the
 5 event a reference is made in this title to the Internal Revenue Code or the Internal
 6 Revenue Code of 1954 as it existed on a specific date prior to January 1, ~~2006~~ 2007,
 7 the term means the provisions of the Internal Revenue Code or the Internal Revenue
 8 Code of 1954 as it existed on the prior date. Unless otherwise provided in this title,
 9 any term used in this title shall have the same meaning as when used in a comparable
 10 provision or context in the Internal Revenue Code of 1986. For taxable years
 11 beginning on or after January 1, ~~2006~~ 2007, provisions of the Internal Revenue Code
 12 of 1986 which were as of January 1, ~~2006~~ 2007, enacted into law but not yet effective
 13 shall become effective for purposes of Georgia taxation on the same dates upon which
 14 they become effective for federal tax purposes."

15 SECTION 6.

16 Said title is further amended by revising Code Section 48-2-35, relating to tax refunds, as
 17 follows:

18 "48-2-35.

19 (a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 20 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 21 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 22 as provided in subsection (b) of this Code section, on the amount of the taxes or fees at the
 23 rate of 1 percent per month from the date of payment of the tax or fee to the commissioner.
 24 For the purposes of this Code section, any period of less than one month shall be
 25 considered to be one month. Refunds shall be drawn from the treasury on warrants of the
 26 Governor issued upon itemized requisitions showing in each instance the person to whom
 27 the refund is to be made, the amount of the refund, and the reason for the refund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) In the event any taxpayer's claim for refund is approved by the commissioner or ~~his~~
 27 ~~or her~~ the commissioner's delegate and the taxpayer has not paid other state taxes which
 28 have become due, the commissioner or department may ~~set off the unpaid taxes~~ offset any
 29 existing liabilities against the refund. ~~When~~ Once the ~~setoff~~ offset authorized by this
 30 subsection ~~is exercised~~ occurs, the refund shall be deemed granted and the amount of the
 31 ~~setoff~~ offset shall be considered for all purposes as a payment toward the particular tax ~~debt~~
 32 ~~which is being set off~~ liabilities at issue. Any excess refund ~~remaining~~ amount after the
 33 ~~setoff~~ has any offsets have been applied shall be refunded to the taxpayer.

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

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

4 SECTION 7.

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

7 "48-2-35.1.

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

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

20 (A) Provide a letter or other information as may be requested by the commissioner that
 21 the dealer refused or was unable to refund the erroneously or illegally assessed and
 22 collected taxes;

23 (B) Provide a letter or other information as may be requested by the commissioner that
 24 the dealer did not act upon the person's written request for refund of the erroneously
 25 or illegally assessed and collected taxes within 90 days from the date of such request
 26 for refund; or

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

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

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

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

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

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

6 (c) A taxpayer who files a frivolous sales and use tax claim for refund under Code Section
 7 48-2-35 is subject to a penalty of 25 percent of the difference between the amount claimed
 8 and the amount that is eligible for refund. A claim is deemed to be frivolously filed when
 9 the amount claimed exceeds the amount eligible for refund by at least 50 percent and there
 10 is no legitimate legal or factual basis for requesting a refund of the tax on the disallowed
 11 transactions.

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

18 SECTION 8.

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

20 "48-2-85.

21 (a) The commissioner shall be authorized to appoint not more than eight certified law
 22 enforcement officers as special investigators or enforcement officers of the department who
 23 shall be authorized to enforce the laws of this state relating to this title and other laws of
 24 this state with respect to cases involving internal affairs of the department and cases
 25 involving fraud and theft as they relate to income, withholding, sales and use, excise, and
 26 property taxes. Such special investigators or enforcement officers shall be endowed with
 27 all the powers of a police officer of this state when engaged in the enforcement of said
 28 laws.

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

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

35 (d) Nothing in this title shall be construed so as to relieve any special investigator or
 36 enforcement officer, after making an arrest, from the duties imposed generally to obtain a

1 warrant promptly and, without undue delay, to return arrested persons before a person
2 authorized to examine, commit, or receive bail, as required by general law.

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

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

14 SECTION 9.

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

18 "(a) The following organizations shall be exempt from taxation imposed by Code Section
19 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section as~~
20 indicated:

21 (1) Subject to subsections (b) and (c) of this Code section those ~~Those~~ organizations
22 described by which are exempt from federal income taxation pursuant to Section 501(c),
23 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986; are deemed to have
24 similar exempt status for purposes of Code Section 48-7-21 ~~Organizations described in~~
25 ~~this paragraph shall be exempt from taxation for state purposes in the same manner and~~
26 ~~to the same extent as for federal purposes; and~~

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

28 ~~"(b)(1) An organization requesting exemption under paragraph (1) of subsection (a) of~~
29 ~~this Code section shall file a written application with the commissioner. The~~
30 ~~commissioner shall issue a determination letter or ruling to an organization requesting the~~
31 ~~exemption and shall either grant or disallow the requested exempt status. Until a~~
32 ~~determination letter granting exempt status is issued by the commissioner, no exempt~~
33 ~~status shall exist. Those organizations which have an exempt status in effect under~~
34 ~~Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 on~~
35 ~~January 1, 1987, shall retain the exempt status unless revoked as provided by law. The~~
36 ~~commissioner may issue rules governing the filing of written applications and the~~

1 ~~issuance of determination letters.~~ An organization's exempt status under paragraph (1)
 2 of subsection (a) of this Code section is subject to review and revocation by the
 3 commissioner in accordance with the provisions of paragraph (2) of this subsection."

4 SECTION 10.

5 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section
 6 48-7-27, relating to computation of taxable net income, as follows:

7 "(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation must execute a
 8 consent agreement to pay Georgia income tax on their portion of the corporate income
 9 in order for the Subchapter 'S' corporation to be recognized for Georgia purposes. ~~This~~
 10 A consent agreement for each shareholder must be filed by the corporation with its
 11 corporate tax return in the year in which the Subchapter 'S' corporation is first required
 12 to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior
 13 to January 1, 2007, the consent agreement must be filed for each shareholder in the first
 14 Georgia tax return filed for a year beginning on or after January 1, 2007. A consent
 15 agreement must also be filed in any subsequent year in which any additional nonresident
 16 first becomes a shareholder of the Subchapter 'S' corporation. Shareholders of a federal
 17 Subchapter 'S' corporation which is not recognized for Georgia purposes may make an
 18 adjustment to federal adjusted gross income in order to avoid double taxation on this type
 19 of income. Adjustments will not be allowed unless tax was actually paid by the
 20 corporation."

21 SECTION 11.

22 Said title is further amended by revising subsection (d) of Code Section 48-7-29.5, relating
 23 to submission of written proof of course completion to claim the driver education credit, as
 24 follows:

25 "~~(d) No credit shall be allowed under this Code section unless the taxpayer submits with~~
 26 ~~the claim for such credit written proof of the successful completion of the course of driver~~
 27 ~~education by the dependent minor child and the amount expended by the taxpayer for such~~
 28 ~~course~~ completion is verified with the Department of Driver Services."

29 SECTION 12.

30 Said title is further amended by revising Code Section 48-7-29.12, relating to income tax
 31 credits for qualified donations of real property for conservation purposes, as follows:

32 "48-7-29.12.

33 (a) As used in this Code section, the term:

1 (1) 'Conservation purposes' means real property which is qualified as conservation land
2 pursuant to Chapter 22 of Title 36.

3 (2) 'Fair market value' means the value established by a property appraisal or appraisals
4 meeting the requirements of 26 U.S.C. Section 170 to be submitted in such manner as the
5 commissioner may by regulation require.

6 (3) 'Qualified donation' means the fee simple conveyance to the state; a county, a
7 municipality, or a consolidated government of this state; the federal government; or a
8 bona fide charitable nonprofit organization qualified under the Internal Revenue Code of
9 100 percent of all right, title, and interest in the entire parcel of donated real property
10 located in Georgia, which donation is accepted by such state, county, municipality,
11 consolidated government, federal government, or bona fide charitable nonprofit
12 organization. Such term shall also include the donation to and acceptance by the state;
13 a county, a municipality, or a consolidated government of this state; the federal
14 government; or a bona fide charitable nonprofit organization qualified under the Internal
15 Revenue Code of an interest in real property located in Georgia which qualifies as a
16 conservation easement under paragraph (4) of Code Section 36-22-2. If the donation is
17 effected by a sale of the property for less than fair market value, the qualified donation
18 shall be deemed to be that portion of the property which represents the difference
19 between the amount paid to the donor and the fair market value as established pursuant
20 to this Code section. Any real property which is otherwise required to be dedicated

21 pursuant to local government regulations or ordinances or to increase building density
22 levels shall not be eligible as a qualified donation under this Code section. Any real
23 property which is used for or associated with the playing of golf, or is planned to be so
24 used or associated shall not be eligible as a qualified donation under this Code section.

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

32 (c) No tax credit shall be allowed under this Code section unless ~~the taxpayer files with~~
33 ~~the taxpayer's income tax return a copy of a certification by the Department of Natural~~
34 ~~Resources that the donated property is suitable for conservation purposes~~ is provided to the
35 commissioner by the Department of Natural Resources. The Board of Natural Resources
36 shall promulgate any rules and regulations necessary to implement and administer this
37 subsection, including, but not limited to, policies to guide the determination of whether or

1 not donated property is suitable for conservation purposes. A final determination by the
 2 Department of Natural Resources with respect to the suitability of donated property for
 3 conservation purposes shall be subject to review and appeal under Chapter 13 of Title 50,
 4 the 'Georgia Administrative Procedure Act.'

5 (d) In no event shall the total amount of any tax credit under this Code section for a taxable
 6 year exceed the taxpayer's income tax liability. In no event shall the total amount of the
 7 tax credit allowed to a taxpayer under subsection (b) of this Code section exceed
 8 \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or
 9 \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any
 10 unused tax credit shall be allowed to be carried forward to apply to the taxpayer's
 11 succeeding five years' tax liability. However, the amount in excess of such annual dollar
 12 limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability.
 13 No such tax credit shall be allowed the taxpayer against prior years' tax liability.

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

16 SECTION 13.

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

18 "48-7-54.

19 ~~Reserved~~ The commissioner may require any taxpayer to electronically file any return,
 20 report, or other document required to be filed by this chapter when the federal counterpart
 21 of such return, report, or other document is required to be filed electronically pursuant to
 22 the Internal Revenue Code of 1986 or Internal Revenue Service regulations. The
 23 commissioner is authorized to prescribe forms and promulgate rules and regulations
 24 deemed necessary in order to effectuate this Code section."

25 SECTION 14.

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

27 "48-7-57.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (d) If at any time there is a final administrative determination or a final judicial decision
36 that there was no understatement of liability in the case of any return or claim for refund
37 with respect to which a penalty under subsection (b) or (c) of this Code section has been

1 assessed, such assessment shall be waived, and if any portion of such penalty has been
2 paid, the amount so paid shall be refunded to the tax return preparer who made such
3 payment as an overpayment of tax without regard to any period of limitations which, but
4 for this subsection, would apply to the making of such refund.

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

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

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

21 (3) Any tax return preparer with respect to any return or claim for refund who fails to
22 furnish the preparer's identifying number with respect to such return or claim shall pay
23 a penalty of \$50.00 for such failure, unless it is shown that such failure is due to
24 reasonable cause and not due to willful neglect. The maximum penalty imposed under
25 this paragraph on any tax return preparer with respect to documents filed during any
26 calendar year shall not exceed \$25,000.00;

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

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

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

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

8 (f)(1) Any person who:

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

10 (I) A partnership or other entity;

11 (II) Any investment plan or arrangement; or

12 (III) Any other plan or arrangement; or

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

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

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

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

23 shall pay, with respect to each activity described in subparagraph (A) of this paragraph,
 24 a penalty equal to \$1,000.00 or, if the person establishes that it is less, 100 percent of the
 25 gross income derived or to be derived by such person from such activity. For purposes
 26 of this division, activities described in division (i) of subparagraph (A) of this paragraph
 27 with respect to each entity or arrangement shall be treated as a separate activity and
 28 participation in each sale described in division (ii) of subparagraph (A) of this paragraph
 29 shall be so treated. Notwithstanding subparagraph (A) of this paragraph, if an activity
 30 with respect to which a penalty imposed under this subsection involves a statement
 31 described in division (i) of this subparagraph, the amount of the penalty shall be equal to
 32 50 percent of the gross income derived or to be derived from such activity by the person
 33 on which the penalty is imposed.

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

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

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

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

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

9 (A) 'Procures' includes:

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

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

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

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

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

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

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

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

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

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

30 (C) If any person is subject to a penalty under paragraph (2) of this subsection with
31 respect to any document relating to any taxpayer for any taxable period or, where there
32 is no taxable period, any taxable event, such person shall not be subject to a penalty
33 under paragraph (2) of this subsection with respect to any other document relating to
34 such taxpayer for such taxable period or event.

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

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

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

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

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

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

23 (A) Engaged in any pattern of conduct subject to a civil penalty under subsection (b),
24 (c), or (e) of this Code section;

25 (B) Guaranteed the payment of any tax refund or the allowance of any tax credit; or

26 (C) Aided or assisted in, counseled, or advised the preparation or presentation under
27 or in connection with any matter arising under the state revenue laws of any returns,
28 affidavits, claims, or other documents, which may constitute a significant congruous
29 pattern of any of the following:

30 (i) Omissions of income;

31 (ii) Excessive or nonexistent deductions;

32 (iii) Claims of nonexistent dependents;

33 (iv) Fictitious business schedules;

34 (v) Excessive losses; or

35 (vi) Documents that are fraudulent or false as to any material matter, whether or not
36 such falsity or fraud is with the knowledge or consent of the person authorized or
37 required to present the return, affidavit, claim, or document.

1 (i)(1) A civil action in the name of the State of Georgia to enjoin any person from further
 2 engaging in conduct subject to penalty under subsection (f) of this Code section, relating
 3 to penalty for promoting abusive tax shelters, or subsection (g) of this Code section,
 4 relating to penalties for aiding and abetting understatement of tax liability, may be
 5 commenced at the request of the commissioner. Any action under this subsection shall
 6 be brought in the superior court for the county in which that person resides, has his or her
 7 principal place of business, or in which that person has engaged in conduct subject to
 8 penalty under subsection (f) or (g) of this Code section. The court may exercise its
 9 jurisdiction over such action separate and apart from any other action brought by the State
 10 of Georgia against that person.

11 (2) In any action under paragraph (1) of this subsection, the court may enjoin a person
 12 from engaging in conduct or in any other activity subject to penalty under subsection (f)
 13 or (g) of this Code section if the court finds both of the following:

14 (A) The person has engaged in any conduct subject to penalty under subsection (f) or
 15 (g) of this Code section; and

16 (B) Injunctive relief is appropriate to prevent recurrence of such conduct.

17 (3) If any citizen or resident of the United States does not reside in Georgia, and does not
 18 have his or her principal place of business in Georgia, that citizen or resident shall be
 19 treated for purposes of this Code section as residing in Fulton County.

20 (j) Except as otherwise provided, the penalties provided by this Code section shall be in
 21 addition to any other penalties provided by law.

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

24 SECTION 15.

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

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

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

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

4 **SECTION 16.**

5 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
 6 48-7-129, relating to withholding tax on certain distributions, as follows:

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

14 **SECTION 17.**

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

17 "(h) The authority of the commissioner to make distributions pursuant to this Code section
 18 shall cease on December 31, 2007, unless such authority is extended by a subsequent
 19 general Act of the General Assembly."
 20

21 **SECTION 18.**

22 Said title is further amended by revising paragraphs (6) and (7) of Code Section 48-9-2,
 23 relating to definitions relative to motor fuel taxes, as follows:

24 "(6) 'Fuel oils' means all liquid petroleum and similar products including, but not limited
 25 to, kerosene, diesel, and biodiesel, but does not mean gasoline, compressed petroleum
 26 gas, or special fuel.

27 (7) 'Gasoline' means all products commonly or commercially known or sold as gasoline,
 28 and includes but is not limited to gasohol and gasoline blend stocks."

29 **SECTION 19.**

30 Said title is further amended by revising subsection (c) of Code Section 48-9-8, relating to
 31 quarterly or annual tax reports from distributors, business records of distributors, resellers,
 32 and retailers, inspection, and dyed fuel oil notices, as follows:

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

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

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

7 Upon a showing of no highway use and reasonable cause, at the commissioner's discretion
8 the penalty under this subsection may be reduced to 10 percent of the amount which
9 ordinarily would have been due or payment of the tax may be accepted in lieu of such
10 penalty."

11 **SECTION 21.**

12 (a) Sections 5, 10, and 12 of this Act shall become effective upon this Act's approval by
13 the Governor or upon its becoming law without such approval and shall be applicable to
14 all taxable years beginning on or after January 1, 2007.

15 (c) Sections 19 and 20 of this Act shall become effective July 1, 2007.

16 (d) Sections 6 and 7 of this Act shall become effective on July 1, 2007, and shall be
17 applicable to any claim for refund filed on or after July 1, 2007.

18 (e) This section and Sections 1, 2, 3, 4, 8, 9, 11, 13, 14, 15, 16, 17, 18, and 22 of this Act
19 shall become effective upon this Act's approval by the Governor or upon its becoming law
20 without such approval.

21 **SECTION 22.**

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