

The Senate Finance Committee offered the following substitute to HB 354:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 16, 36, and 48 of the Official Code of Georgia Annotated, relating,  
2 respectively, to crimes and offenses, local government, and revenue and taxation, so as to  
3 provide for the comprehensive revision of provisions relating to state and local taxation; to  
4 change certain determination letter requirements regarding raffle and bingo licensing  
5 procedures; to establish procedures and due dates for notification of homeowner tax relief  
6 grants; to provide for service of certain subpoenas; to change refund provisions regarding  
7 alcoholic beverages stamps; to provide for certain definitions regarding sales and use tax  
8 refunds; to provide for service of summons of garnishment; to provide for recording of tax  
9 executions; to change certain income requirements for taxpayers 62 years of age or older  
10 seeking a homestead exemption for school tax purposes; to change certain provisions  
11 regarding the collection of costs, commissions, interest, and penalties associated with  
12 administering the collection of tax executions; to change certain provisions regarding the  
13 transmission of resolutions setting the terms of members of boards of tax assessors; to  
14 provide for additional return filing requirements for public utilities; to change provisions  
15 regarding certain nonprofit organizations; to provide for a one-time consent agreement by  
16 nonresident members of Georgia Subchapter "S" corporations; to change certain provisions  
17 regarding the driver education credit; to add the federal government as a qualified recipient  
18 of Georgia conservation property for purposes of the conservation tax credit; to provide for  
19 the treatment of donations effected by sales at less than fair market value; to change the  
20 standard for determining the fair market value of certain donations; to provide for civil  
21 penalties on certain tax preparers; to change certain withholding requirements; to change the  
22 penalty provision for nonwithholding on certain taxpayers; to remove certain provisions  
23 regarding unidentifiable sales and use tax proceeds; to provide effective dates; to provide for  
24 applicability; to repeal conflicting laws; and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:



1 rates to the eligible assessed value of each qualified homestead in the county. The total  
 2 amount of actual tax credits, so calculated, given to all qualified homesteads in the  
 3 county shall be the amount of the grant to that county;

4 (B) Immediately following the actual preparation of ad valorem property tax bills, but  
 5 no later than one year after the date the final installment of taxes was due, each county  
 6 or independent school district's fiscal authority shall notify the Department of Revenue  
 7 of the total amount of tax revenue which would be generated by applying the school  
 8 millage rate to the eligible assessed value of each qualified homestead in the county or  
 9 independent school district. The total amount of actual tax credits, so calculated, given  
 10 to all qualified homesteads in the county or independent school district shall be the  
 11 amount of the grant to that county or independent school district; and

12 (C) Immediately following the actual preparation of ad valorem property tax bills, but  
 13 no later than one year after the date the final installment of taxes was due, each  
 14 municipality's fiscal authority shall notify the Department of Revenue of the total  
 15 amount of tax revenue which would be generated by applying the municipal millage  
 16 rate to the eligible assessed value of each qualified homestead in the municipality. The  
 17 total amount of actual tax credits, so calculated, given to all qualified homesteads in the  
 18 municipality shall be the amount of the grant to that municipality.

19 (2) Credit amounts computed under paragraph (1) of this subsection shall be applied to  
 20 reduce the otherwise applicable tax liability on a dollar-for-dollar basis, but the credit  
 21 granted shall not in any case exceed the amount of the otherwise applicable tax liability  
 22 after the granting of all applicable homestead exemptions except for any homestead  
 23 exemption under Article 2A of Chapter 8 of Title 48, the 'Homestead Option Sales and  
 24 Use Tax Act,' as amended, and after the granting of all applicable millage rollbacks.

25 (3) A county fiscal authority, county or independent school district fiscal authority, or  
 26 municipal fiscal authority that fails to notify the Department of Revenue of the total  
 27 amount of actual tax credits given to all qualified homesteads by the date specified in this  
 28 Code section shall forfeit its rights to the grant for such tax year. The state revenue  
 29 commissioner may waive the notification requirement and authorize issuance of the grant  
 30 whenever and to the extent that the state revenue commissioner reasonably determines  
 31 that the failure to timely notify the Department of Revenue was due to reasonable cause  
 32 and not due to willful neglect or disregard of the law or of regulations or instructions  
 33 issued pursuant to the law."



1 proceedings shall be the same as provided by law regarding garnishments in other cases  
 2 when judgment has been obtained or execution issued. In addition to any other methods  
 3 of service, the summons of garnishment may be served by the commissioner or the  
 4 commissioner's authorized representative to the garnishee by registered or certified mail  
 5 or statutory overnight delivery, return receipt requested. Either the return receipt  
 6 indicating receipt by the garnishee or the envelope bearing the official notification from  
 7 the United States Postal Service of the garnishee's refusal to accept delivery of such  
 8 registered or certified mail or statutory overnight delivery shall be filed with the clerk of  
 9 the court in which the garnishment is pending. If statutory overnight delivery was  
 10 accomplished through a commercial firm as provided under paragraph (1) of subsection  
 11 (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the  
 12 envelope bearing the official notification of such commercial firm of the garnishee's  
 13 refusal to accept delivery shall be filed with the clerk of the court in which garnishment  
 14 is pending. If a garnishee refuses to accept service of a summons of garnishment by  
 15 registered or certified mail or statutory overnight delivery, the summons of garnishment  
 16 shall be served by the commissioner or the commissioner's authorized representative  
 17 under any other method of lawful service and the garnishee shall be personally liable to  
 18 the commissioner for a sum equal to the actual costs incurred to serve the summons of  
 19 garnishment. This liability shall be paid upon notice and demand by the commissioner  
 20 or the commissioner's delegate and shall be assessed and collected in the same manner  
 21 as other taxes administered by the commissioner."

## 22 SECTION 7.

23 Said title is further amended by revising subsection (b) of Code Section 48-3-3, relating to  
 24 executions by tax collectors and commissioners, as follows:

25 "(b) The tax collector or tax commissioner shall issue executions for nonpayment of taxes  
 26 collectable by the tax collector or tax commissioner at any time after 30 days have elapsed  
 27 since giving notice as provided in subsection (c) of this Code section. The executions shall  
 28 be directed to all and singular sheriffs and constables of ~~the~~ this state: and within 30 days  
 29 of issuance the tax collector or tax commissioner shall have the tax execution recorded in  
 30 the records of the clerk of the superior court of the county where the execution was issued.  
 31 If the tax collector or tax commissioner fails to have the execution recorded in the records  
 32 of the clerk of the superior court of the county where the execution was issued within 30  
 33 days of issuance of the tax execution, the tax collector or tax commissioner shall void the  
 34 tax execution and renotify the taxpayer of the delinquency as provided in subsection (c) of  
 35 this Code section. The tax collector or tax commissioner shall issue a new execution for

1 nonpayment of taxes collectable by the tax collector or tax commissioner at any time after  
 2 30 days have elapsed since the renotification notice was issued."

### 3 SECTION 8.

4 Said title is further amended by revising subsection (b) of Code Section 48-5-52, relating to  
 5 homestead exemptions from ad valorem taxation for educational purposes for qualified  
 6 individuals who are 62 years of age or older, as follows:

7 "(b)(1) The exemption provided for in subsection (a) of this Code section shall not be  
 8 granted unless an affidavit of the owner of the homestead, prepared upon forms  
 9 prescribed by the commissioner for that purpose, is filed with either the tax receiver or  
 10 tax commissioner, in the case of residents of county school districts, or with the  
 11 governing authority of the owner's city, in the case of residents of independent school  
 12 districts.

13 (2) The affidavit shall in the first year for which the exemption is sought be filed on or  
 14 before the last day for making a tax return and shall show the:

15 (A) Age of the owner on January 1 immediately preceding the filing of the affidavit;

16 (B) Total amount of net income received by the owner and spouse from all sources  
 17 during the immediately preceding calendar year; and

18 ~~(C) Total amount of income received from all sources by each individual member of~~  
 19 ~~the owner's family residing within the homestead; and~~

20 ~~(D) Such additional information as may be required by the commissioner.~~

21 (3) Copies of all affidavits received or extracts of the information contained in the  
 22 affidavits shall be forwarded to the commissioner by the various taxing authorities with  
 23 whom the affidavits are filed. The commissioner is authorized to compare such  
 24 information with information contained in any income tax return, sales tax return, or  
 25 other tax documents or records of the department and to report immediately to the  
 26 appropriate county or city taxing authority any apparent discrepancies between the  
 27 information contained in any affidavit and the information contained in any other tax  
 28 records of the department.

29 (4) After the owner has filed the affidavit and has once been allowed the exemption  
 30 provided for in this Code section, it shall not be necessary to make application and file  
 31 the affidavit thereafter for any year and the exemption shall continue to be allowed to  
 32 such owner; provided, however, that it shall be the duty of any such owner to notify the  
 33 tax commissioner or tax receiver in the event the owner becomes ineligible for any reason  
 34 for the exemption provided for in this Code section."



1 information furnished by the commissioner. Any member of the county board of tax  
 2 assessors who fails to maintain the certification and qualifications specified pursuant to  
 3 Code Section 48-5-291 shall not be eligible for reappointment until all requirements have  
 4 been met. In case of a vacancy on the board at any time, whether caused by death,  
 5 resignation, removal, or otherwise, the vacancy shall be immediately filled by appointment  
 6 of the county governing authority. Any person appointed to fill a vacancy shall be  
 7 appointed only to serve for the remainder of the unexpired term of office and shall possess  
 8 the same qualifications required under this part for regular appointment to a full term of  
 9 office."

#### 10 SECTION 11.

11 Said title is further amended by revising subsection (b) of Code Section 48-5-511, relating  
 12 to returns of public utilities to commissioner, as follows:

13 "(b) The returns of each public utility shall be in writing and sworn to under oath by the  
 14 chief executive officer to be a just, true, and full return of the fair market value of the  
 15 property of the public utility without any deduction for indebtedness. Each class or species  
 16 of property shall be separately named and valued as far as practicable and shall be taxed  
 17 like all other property under the laws of this state. The returns shall also include the capital  
 18 stock, net annual profits, gross receipts, business, or income (gross, annual, net, or any  
 19 other kind) for which the public utility is subject to taxation by the laws of this state. Each  
 20 parcel of real estate included in the return shall be identified by its physical address and by  
 21 a description adequate for the commissioner to properly identify such parcel. Other  
 22 descriptive information includes, but is not limited to, the map or parcel identification  
 23 information of the real estate being returned."

#### 24 SECTION 12.

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

28 "(a) The following organizations shall be exempt from taxation imposed by Code Section  
 29 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section as~~  
 30 indicated:

31 (1) Subject to subsections (b) and (c) of this Code section those ~~Those~~ organizations  
 32 ~~described by~~ which are exempt from federal income taxation pursuant to Section 501(c),  
 33 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986; are deemed to have  
 34 similar exempt status for purposes of Code Section 48-7-21 ~~Organizations described in~~

1 ~~this paragraph shall be exempt from taxation for state purposes in the same manner and~~  
 2 ~~to the same extent as for federal purposes; and~~

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

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

### 16 SECTION 13.

17 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section  
 18 48-7-27, relating to computation of taxable net income, as follows:

19 "(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation must execute a  
 20 consent agreement to pay Georgia income tax on their portion of the corporate income  
 21 in order for the Subchapter 'S' corporation to be recognized for Georgia purposes. ~~This~~  
 22 A consent agreement for each shareholder must be filed by the corporation with its  
 23 corporate tax return in the year in which the Subchapter 'S' corporation is first required  
 24 to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior  
 25 to January 1, 2007, the consent agreement must be filed for each shareholder in the first  
 26 Georgia tax return filed for a year beginning on or after January 1, 2007. A consent  
 27 agreement must also be filed in any subsequent year in which any additional nonresident  
 28 first becomes a shareholder of the Subchapter 'S' corporation. Shareholders of a federal  
 29 Subchapter 'S' corporation which is not recognized for Georgia purposes may make an  
 30 adjustment to federal adjusted gross income in order to avoid double taxation on this type  
 31 of income. Adjustments will not be allowed unless tax was actually paid by the  
 32 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 adding a new Code section to read as follows:

33 "48-7-57.2.

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

35 (1) 'Tax return preparer' means a person who prepares for compensation, or who  
36 employs one or more persons who prepare for compensation, any return of tax imposed

1 under this chapter or Chapter 7A of this title, or any claim for refund of such tax. The  
 2 preparation of a substantial part of a return or claim for refund is treated as if it were the  
 3 preparation of the entire return or claim for refund. A person is not considered a tax  
 4 return preparer merely because the person does any of the following:

- 5 (A) Furnishes typing, reproducing, or other mechanical assistance;
- 6 (B) Prepares a return or claim for refund of the employer or an officer or employee of  
 7 the employer by whom the person is regularly and continuously employed;
- 8 (C) Prepares a return or claim for refund of any person as a fiduciary for that person;
- 9 or
- 10 (D) Prepares a claim for refund for a taxpayer in response to a notice of proposed  
 11 assessment issued to the taxpayer.

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

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

- 23 (1) Any part of any understatement of liability with respect to any return or claim for  
 24 refund is due to a position which had no realistic possibility of being sustained on its  
 25 merits;
- 26 (2) Any tax return preparer with respect to such return or claim knew or reasonably  
 27 should have known of such position; and
- 28 (3) The relevant facts affecting the item's tax treatment were not adequately disclosed  
 29 in the return or in a statement attached to the return or such position was frivolous.

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

- 32 (1) A willful attempt in any manner to understate the liability for tax by a tax return  
 33 preparer with respect to such return or claim; or
- 34 (2) Any reckless or intentional disregard of rules or regulations by any such tax return  
 35 preparer,

36 such tax return preparer shall pay a penalty of \$1,000.00 with respect to such return or  
 37 claim. With respect to any return or claim, the amount of the penalty payable by any tax

1 return preparer by reason of this subsection shall be reduced by the amount of the penalty  
2 paid by such tax return preparer by reason of subsection (b) of this Code section.

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

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

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

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

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

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

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

37 (B) The date the return or claim was presented to the taxpayer for signature

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

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

12 (f)(1) Any person who:

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

14 (I) A partnership or other entity;

15 (II) Any investment plan or arrangement; or

16 (III) Any other plan or arrangement; or

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

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

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

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

27 shall pay, with respect to each activity described in subparagraph (A) of this paragraph,  
 28 a penalty equal to \$1,000.00 or, if the person establishes that it is less, 100 percent of the  
 29 gross income derived or to be derived by such person from such activity. For purposes  
 30 of this division, activities described in division (i) of subparagraph (A) of this paragraph  
 31 with respect to each entity or arrangement shall be treated as a separate activity and  
 32 participation in each sale described in division (ii) of subparagraph (A) of this paragraph  
 33 shall be so treated. Notwithstanding subparagraph (A) of this paragraph, if an activity  
 34 with respect to which a penalty imposed under this subsection involves a statement  
 35 described in division (i) of this subparagraph, the amount of the penalty shall be equal to  
 36 50 percent of the gross income derived or to be derived from such activity by the person  
 37 on which the penalty is imposed.

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

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

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

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

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

13 (A) 'Procures' includes:

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

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

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

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

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

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

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

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

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

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

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

1 under paragraph (2) of this subsection with respect to any other document relating to  
2 such taxpayer for such taxable period or event.

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

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

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

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

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

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

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

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

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

35 (i) Omissions of income;

36 (ii) Excessive or nonexistent deductions;

37 (iii) Claims of nonexistent dependents;

1 (iv) Fictitious business schedules;

2 (v) Excessive losses; or

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

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

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

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

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

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

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

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

## 29 SECTION 17.

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

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

35 (2) Upon such election by a payee stated in paragraph (1) of this subsection, the payor  
36 of any nonperiodic payment shall withhold from such payment the amount specified by

1 the payee, but in no event shall the amount withheld be less than the amount which would  
 2 be required to be withheld if such payment were a payment of wages by an employer to  
 3 an employee for the appropriate payroll period.

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

7 **SECTION 18.**

8 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section  
 9 48-7-129, relating to withholding tax on certain distributions, as follows:

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

17  
 18 **SECTION 19.**

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

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

24 **SECTION 20.**

25 (a) Sections 4, 13, and 15 of this Act shall become effective upon this Act's approval by  
 26 the Governor or upon its becoming law without such approval and shall be applicable to  
 27 all taxable years beginning on or after January 1, 2007.

28 (b) This section and Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, and 21 of  
 29 this Act shall become effective upon this Act's approval by the Governor or upon its  
 30 becoming law without such approval.

31 **SECTION 21.**

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