

SENATE SUBSTITUTE TO HB 354

AS PASSED SENATEA BILL TO BE ENTITLED
AN ACT

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

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **SECTION .5.**

3 Article 4 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to
4 county taxation, is amended by repealing and reserving Code Section 48-5-237, relating to
5 payment of taxes where property lies in more than one county.

6 **SECTION 1.**

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

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

13 **SECTION 2.**

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

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

23 **SECTION 3.**

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

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

29 **SECTION 4.**

30 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
31 by revising subsection (a) of Code Section 36-89-4, relating to procedures and conditions for
32 homeowner tax relief grant allotment, as follows:

1 "(a)(1) When funds are appropriated as provided in Code Section 36-89-3, such grants
2 shall be allotted to each county, municipality, and county or independent school district in
3 ~~the~~ this state as follows:

4 (A) 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 fiscal authority shall notify the Department of Revenue of the total amount of tax
7 revenue which would be generated by applying the sum of the state and county millage
8 rates to the eligible assessed value of each qualified homestead in the county. The total
9 amount of actual tax credits, so calculated, given to all qualified homesteads in the
10 county shall be the amount of the grant to that county;

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

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

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

32 (3) A county fiscal authority, county or independent school district fiscal authority, or
33 municipal fiscal authority that fails to notify the Department of Revenue of the total
34 amount of actual tax credits given to all qualified homesteads by the date specified in this
35 Code section shall forfeit its rights to the grant for such tax year. The state revenue
36 commissioner may waive the notification requirement and authorize issuance of the grant
37 whenever and to the extent that the state revenue commissioner reasonably determines

1 that the failure to timely notify the Department of Revenue was due to reasonable cause
 2 and not due to willful neglect or disregard of the law or of regulations or instructions
 3 issued pursuant to the law."

4 SECTION 5.

5 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 6 amended by revising paragraph (4) of subsection (a) of Code Section 48-2-8, relating to the
 7 state revenue commissioner's authorization to issue subpoenas, as follows:

8 "(4) Subpoena the attendance of witnesses and require the production of books, papers,
 9 records, and documents and, subject to the rights of the taxpayer as to rights of privacy
 10 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine
 11 such items and the books, records, inventories, or business of any taxpayer or of any
 12 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer
 13 or knowledge pertinent to the investigation or inquiry. The subpoena may be served by
 14 the commissioner or the commissioner's authorized representative to a person at the
 15 person's last known address by registered or certified mail or statutory overnight
 16 delivery, return receipt requested. If a person refuses to accept service of a subpoena by
 17 registered or certified mail or statutory overnight delivery, the subpoena shall be served
 18 by the commissioner or the commissioner's authorized representative under any other
 19 method of lawful service and the person shall be personally liable to the commissioner
 20 for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be
 21 paid upon notice and demand by the commissioner or the commissioner's delegate and
 22 shall be assessed and collected in the same manner as other taxes administered by the
 23 commissioner."

24 SECTION 6.

25 Said title is further amended in Code Section 48-2-55, relating to attachment and
 26 garnishment, by revising paragraph (2) of subsection (b) as follows:

27 "(2) The commissioner or ~~his~~ the commissioner's authorized representative may use
 28 garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the
 29 state which are imposed by this title or which the commissioner or the department is
 30 responsible for collecting under any other law. Garnishment may be issued by the
 31 commissioner or ~~his~~ the commissioner's authorized representative against any person
 32 whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property,
 33 money, or effects in ~~his~~ such person's hands belonging to the defendant. The summons
 34 of garnishment shall be served by the commissioner or ~~his~~ the commissioner's authorized
 35 representative, shall be served at least 15 days before the sitting of the court to which the

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

26 SECTION 7.

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

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

1 days of issuance of the tax execution, the tax collector or tax commissioner shall void the
 2 tax execution and renotify the taxpayer of the delinquency as provided in subsection (c) of
 3 this Code section. The tax collector or tax commissioner shall issue a new execution for
 4 nonpayment of taxes collectable by the tax collector or tax commissioner at any time after
 5 30 days have elapsed since the renotification notice was issued."

6 SECTION 8.

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

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

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

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

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

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

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

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

32 (4) After the owner has filed the affidavit and has once been allowed the exemption
 33 provided for in this Code section, it shall not be necessary to make application and file
 34 the affidavit thereafter for any year and the exemption shall continue to be allowed to
 35 such owner; provided, however, that it shall be the duty of any such owner to notify the

1 tax commissioner or tax receiver in the event the owner becomes ineligible for any reason
2 for the exemption provided for in this Code section."

3 SECTION 9.

4 Said title is further amended in Code Section 48-5-161, relating to tax executions and
5 administration fees, by revising paragraph (2) of subsection (c) as follows:

6 "(2) Once a levy is made or posted on the property of a delinquent or defaulting taxpayer,
7 the sheriff or ex officio sheriff shall collect, in addition to any other costs, commissions,
8 interest, and penalties, the actual expenses incurred by the county in issuing the execution
9 and administering the levy by imposing a levy administration fee which shall be 5 percent
10 of the delinquent tax or \$250.00, whichever is the lesser. Regardless of any other
11 provision of this paragraph, however, no such levy administration fee shall be less than
12 \$50.00. Nothing in this paragraph shall require the completion of a sale by judicial
13 foreclosure in order to recover costs, commissions, interest, penalties, and the actual
14 expenses incurred by the county in issuing the execution and administering the levy."

15 SECTION 10.

16 Said title is further amended by revising subsection (a) of Code Section 48-5-295, relating
17 to terms of office, vacancies, and removal by county governing authority, as follows:

18 "(a) Each member of the county board of tax assessors appointed to such office on and
19 after July 1, 1996, shall be appointed by the county governing authority for a term of not
20 less than three nor more than six years. A county governing authority shall, by resolution,
21 within the range provided by this subsection, select the length of terms of office for
22 members of its county board of tax assessors. Following the adoption of such resolution,
23 all new appointments and reappointments to the county board of tax assessors shall be for
24 the term lengths specified in the resolution; however, such resolution shall not have the
25 effect of shortening or extending the terms of office of current members of the board of
26 assessors whose terms have not yet expired. The county governing authority shall not be
27 authorized to again change the term length until the expiration of the term of office of the
28 first appointment or reappointment following the resolution that last changed such terms
29 of office. If the resolution changing the terms of office of members of the board of tax
30 assessors would result in a voting majority of the board of tax assessors having their terms
31 expire in the same calendar year, the county governing authority shall provide in the
32 resolution for staggered initial appointments or reappointments of a duration of not less
33 than three nor more than six years that will prevent such an occurrence. The county
34 governing authority shall transmit to the ~~board of assessors~~ commissioner a copy of the
35 resolution setting the length of terms of members of the county board of tax assessors

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

13 SECTION 11.

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

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

27 SECTION 12.

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

31 "(a) The following organizations shall be exempt from taxation imposed by Code Section
 32 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section~~ as
 33 indicated:

34 (1) Subject to subsections (b) and (c) of this Code section those ~~Those~~ organizations
 35 ~~described by~~ which are exempt from federal income taxation pursuant to Section 501(c),

1 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986; are deemed to have
 2 similar exempt status for purposes of Code Section 48-7-21 Organizations described in
 3 this paragraph shall be exempt from taxation for state purposes in the same manner and
 4 to the same extent as for federal purposes; and

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

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

18 SECTION 13.

19 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section
 20 48-7-27, relating to computation of taxable net income, as follows:

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

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

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

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.