

House Bill 264 (AS PASSED HOUSE AND SENATE)

By: Representatives Millar of the 79th, Willard of the 49th, Geisinger of the 48th, and Wilkinson of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the homestead option sales and use tax, so as to change the manner and method
3 of disbursing the proceeds of such tax; to provide for definitions; to provide for legislative
4 intent; to provide for procedures, conditions, and limitations; to provide for powers and
5 duties of the state revenue commissioner; to provide an effective date; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 homestead option sales and use tax, is amended by revising Code Section 48-8-101, relating
11 to definitions, to read as follows:

12 "48-8-101.

13 As used in this article, the term:

14 (1) 'Ad valorem taxes for county purposes' means any and all ad valorem taxes for
15 county maintenance and operation purposes levied by, for, or on behalf of the county,
16 excluding taxes to retire general obligation bonded indebtedness of the county.

17 (2) 'Existing municipality' means a municipality created prior to January 1, 2007, lying
18 wholly within or partially within a county.

19 (3) 'Homestead' means homestead as defined and qualified in Code Section 48-5-40, with
20 the additional qualification that it shall include only the primary residence and not more
21 than five contiguous acres of land immediately surrounding such residence.

22 (4) 'Qualified municipality' means a municipality created on or after January 1, 2007,
23 lying wholly within or partially within a county."

24 **SECTION 2.**

25 Said article is further amended by adding a new Code section to read as follows:

1 "48-8-101.1.

2 It is the intent of the General Assembly that the proceeds of the homestead option sales and
 3 use tax be distributed equitably to the counties and qualified municipalities such that the
 4 residents of a new incorporated municipality will continue to receive a benefit from that
 5 tax substantially equal to the benefit they would have received if the area covered by the
 6 municipality had not incorporated. The provisions of this article shall be liberally
 7 construed to effectuate such intent."

8 **SECTION 3.**

9 Said article is further amended by revising Code Section 48-8-104, relating to administration
 10 and disbursement of homestead option sales and use tax proceeds, as follows:

11 "48-8-104.

12 (a) The sales and use tax levied pursuant to this article shall be exclusively administered
 13 and collected by the commissioner for the use and benefit of each county whose
 14 geographical boundary is conterminous with that of a special district. Such administration
 15 and collection shall be accomplished in the same manner and subject to the same applicable
 16 provisions, procedures, and penalties provided in Article 1 of this chapter; provided,
 17 however, that all moneys collected from each taxpayer by the commissioner shall be
 18 applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed
 19 a percentage of the amount of the sales and use tax due and accounted for and shall be
 20 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
 21 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
 22 and subject to the requirements specified under subsections (b) through (f) of Code Section
 23 48-8-50.

24 (b) Each sales and use tax return remitting sales and use taxes collected under this article
 25 shall separately identify the location of each retail establishment at which any of the sales
 26 and use taxes remitted were collected and shall specify the amount of sales and the amount
 27 of taxes collected at each establishment for the period covered by the return in order to
 28 facilitate the determination by the commissioner that all sales and use taxes imposed by this
 29 article are collected and distributed according to situs of sale.

30 (c) The proceeds of the sales and use tax collected by the commissioner in each special
 31 district under this article shall be disbursed as soon as practicable after collection as
 32 follows:

33 (1) One percent of the amount collected shall be paid into the general fund of the state
 34 treasury in order to defray the costs of administration;

35 (2) Except for the percentage provided in paragraph (1) of this subsection and the
 36 amount determined under subsections (d) and (e) of this Code section, the remaining

1 proceeds of the sales and use tax shall be distributed to the governing authority of the
 2 county whose geographical boundary is conterminous with that of the special district;
 3 provided, however, that a county and any qualified municipality shall be authorized by
 4 intergovernmental agreement to waive the equalization amount otherwise required under
 5 subsections (d) and (e) of this Code section and provide for a different distribution
 6 amount. In the event of such waiver, except for the percentage provided in paragraph (1)
 7 of this subsection, the remaining proceeds of the sales and use tax shall be distributed to
 8 the governing authority of the county whose geographical boundary is conterminous with
 9 that of the special district. As a condition precedent for the authority to levy the sales and
 10 use tax or to collect any proceeds from the tax authorized by this article for the year
 11 following the first complete calendar year in which it is levied and for all subsequent
 12 years except the year following the year in which the sales and use tax is terminated
 13 under Code Section 48-8-106, the county whose geographical boundary is conterminous
 14 with that of the special district shall, except as otherwise provided in subsection (c) of
 15 Code Section 48-8-102, expend such proceeds as follows:

16 (A) A portion of such proceeds shall be expended for the purpose of funding capital
 17 outlay projects as follows:

18 (i) The governing authority of the county whose geographical boundary is
 19 conterminous with that of the special district shall establish the capital factor which
 20 shall not exceed .200 and, for a county in which a qualified municipality is located,
 21 shall not be less than the level required by subsection (d) of this Code section;
 22 therefore, at a minimum, the county shall set the capital factor at a level that yields an
 23 amount of capital outlay proceeds that is equal to or greater than the sum of all
 24 equalization amounts due qualified municipalities and existing municipalities under
 25 subsection (e) of this Code section; and

26 (ii) Capital outlay projects shall be funded in an amount equal to the product of the
 27 capital factor multiplied by the net amount of the sales and use tax proceeds collected
 28 under this article during the previous calendar year, and this amount shall be referred
 29 to as capital outlay proceeds in subsections (d) and (e) of this Code section;

30 (B) A portion of such proceeds shall be expended for the purpose of funding services
 31 within the special district equal to the revenue lost to the homestead exemption as
 32 provided in ~~Code Section 48-8-104~~ this Code section as follows:

33 (i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus
 34 the capital factor times an amount equal to the net amount of sales and use tax
 35 collected in the special district pursuant to this article for the previous calendar year,
 36 and then dividing by the taxes levied for county purposes on only that portion of the
 37 county tax digest that represents net assessments on qualified homestead property

1 after all other homestead exemptions have been applied, rounding the result to three
2 decimal places;

3 (ii) If the homestead factor is less than or equal to 1.000, the amount of homestead
4 exemption created under this article on qualified homestead property shall be equal
5 to the product of the homestead factor multiplied times the net assessment of each
6 qualified homestead remaining after all other homestead exemptions have been
7 applied; and

8 (iii) If the homestead factor is greater than 1.000, the homestead exemption created
9 by this article on qualified homestead property shall be equal to the net assessment of
10 each homestead remaining after all other homestead exemptions have been applied;
11 and

12 (C) If any of such proceeds remain following the distribution provided for in
13 subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code
14 section:

15 (i) The millage rate levied for county purposes shall be rolled back in an amount
16 equal to such excess divided by the net taxable digest for county purposes after
17 deducting all homestead exemptions including the exemption under this article; and

18 (ii) In the event the rollback created by division (i) of this subparagraph exceeds the
19 millage rate for county purposes, the governing authority of the county whose
20 boundary is conterminous with the special district shall be authorized to expend the
21 surplus funds for funding all or any portion of those services which are to be provided
22 by such governing authorities pursuant to and in accordance with Article IX, Section
23 II, Paragraph III of the Constitution of this state.

24 (d)(1) The commissioner shall distribute to the governing authority of each qualified
25 municipality located in the special district a share of the capital outlay proceeds
26 calculated as provided in this subsection and subsection (e) of this Code section which
27 proceeds shall be expended for the purpose of funding capital outlay projects of such
28 municipality.

29 (2) Both the tax commissioner and the governing authority for the county in which a
30 qualified municipality is located shall cooperate with and assist the commissioner in the
31 calculation of the equalization amounts under subsection (e) of this Code section and
32 shall, on or before July 1 of each year, provide to the commissioner and the governing
33 authority of each qualified municipality written certification of the following:

34 (A) The capital factor set by the county for the current calendar year; provided,
35 however, that the capital factor may not exceed 0.200;

1 (B) The total amount, if any, due to be paid to existing municipalities from the capital
 2 outlay proceeds as required by any intergovernmental agreement between the county
 3 and such municipalities;

4 (C) The incorporated county millage rate in each qualified municipality;

5 (D) The net homestead digest for each qualified municipality;

6 (E) The total homestead digest; and

7 (F) The unincorporated county millage rate.

8 If the tax commissioner and the governing authority of the county fail to provide such
 9 certification on or before July 1, the commissioner shall not distribute to such county any
 10 additional proceeds of the sales and use tax collected after July 1 unless and until such
 11 certification is provided.

12 (3) The commissioner shall then calculate the equalization amount due each qualified
 13 municipality based on the certifications provided by the tax commissioner and the
 14 governing authority of the county and pay such amount to the governing authority of each
 15 qualified municipality in six equal monthly payments as soon as practicable during or
 16 after each of the last six months of the current calendar year. In the event an existing
 17 municipality that has entered into an intergovernmental agreement with a county at any
 18 time before January 1, 2007, to receive capital outlay proceeds of the homestead option
 19 sales and use tax and such intergovernmental agreement has become or does become null
 20 and void for any reason, such existing municipality shall be treated under this article the
 21 same as if it were a qualified municipality as defined in paragraph (4) of Code Section
 22 48-8-101 and therefore receive payment of equalization amounts under this article as
 23 provided for under this article. The commissioner shall distribute to the governing
 24 authority of the county each month the net sales and use tax remaining after payment of
 25 equalization amounts to the qualified municipalities.

26 (e)(1) As used in this subsection, the term:

27 (A) 'Equalization amount' means for a qualified municipality the product of the
 28 equalization millage times the net homestead digest for that qualified municipality.

29 (B) 'Equalization millage' means for each qualified municipality the product of the
 30 homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section
 31 times the difference between the unincorporated county millage rate and the
 32 incorporated county millage rate for that qualified municipality.

33 (C) 'Incorporated county millage rate' means the millage rate for all ad valorem taxes
 34 for county purposes levied by the county in each of the qualified municipalities in the
 35 county.

36 (D) 'Net homestead digest' means for each qualified municipality the total net
 37 assessed value of all qualified homestead property located in that portion of the

1 qualified municipality located in the county remaining after all other homestead
 2 exemptions are applied.

3 (E) 'Total homestead digest' means the total net assessed value of all qualified
 4 homestead property located in the county remaining after all other homestead
 5 exemptions are applied.

6 (F) 'Unincorporated county millage rate' means the millage rate for all ad valorem
 7 taxes for county purposes levied by the county in the unincorporated areas of the
 8 county.

9 (2) For illustration purposes, a hypothetical example of the calculation of the
 10 equalization amount is provided below.

11 First, calculate the homestead factor in accordance with
 12 division (c)(2)(B)(i) of this Code section as follows:

13 (A) Capital factor certified by county as required by 0.150
 14 subsection (d) of this Code section

15 (B) Net amount of sales and use tax collected in the \$ 50 million
 16 special district pursuant to this article for the previous
 17 calendar year

18 (C) Taxes levied for county purposes on only that portion \$100 million
 19 of the county tax digest that represents net assessments on
 20 qualified homestead property after all other homestead
 21 exemptions have been applied

22 (D) Calculation of homestead factor using figures above .425
 23 = [(1-.0150)(\$50 million/\$100 million)]

24 Next, calculate the equalization amount in accordance with
 25 paragraph (1) of this subsection as follows:

27 (E) Unincorporated county millage rate 15.0 mills

28 (F) Minus the incorporated county millage rate for (10.0 mills)
 29 qualified municipality 'Y'

30 Difference: = 5.0 mills

31 (G) Times homestead factor (calculated above) x .425

32 (H) Equals the equalization millage: = 2.125 mills

33 (I) Times net homestead digest for qualified \$200 million
 34 municipality 'Y'

1 (J) Equals the equalization amount payable to \$ 425,000.00
2 municipality 'Y'

3 (3) In the event the total amount payable in a calendar year to all existing municipalities
4 as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus
5 the total equalization amount payable to all qualified municipalities in the special district
6 exceeds the capital outlay proceeds calculated based on a maximum capital factor of
7 0.200, the commissioner shall pay to the governing authority of each qualified
8 municipality a share of such proceeds calculated as follows:

9 (A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200;

10 (B) Subtract the amount certified by the county as payable to existing municipalities
11 pursuant to subparagraph (d)(2)(B) of this Code section;

12 (C) The remaining amount equals the portion of the capital outlay proceeds that may
13 be used by the commissioner to pay equalization amounts to qualified municipalities.

14 The commissioner shall calculate each qualified municipality's share of such remaining
15 amount by dividing the net homestead digest for each qualified municipality by the total
16 homestead digest for all municipalities.

17 (4) In the event the incorporated county millage rate for a qualified municipality is
18 greater than the unincorporated county millage rate, no payment shall be due from the
19 governing authority of the qualified municipality to the governing authority of the county.

20 (5) In the event the amount of capital outlay proceeds exceeds the sum of the
21 equalization amounts due all qualified municipalities plus the total amount certified under
22 subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the
23 commissioner shall distribute to each qualified municipality a portion of such excess
24 equal to the net homestead digest for such municipality divided by the total homestead
25 digest.

26 (6) If any qualified municipality is located partially in the county then only that portion
27 so located shall be considered in the calculations contained in this subsection."

28 **SECTION 4.**

29 This Act shall become effective upon its approval by the Governor or upon its becoming law
30 without such approval.

31 **SECTION 5.**

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