

COMMITTEE OF CONFERENCE 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 and change provisions relative to the funding and amount of such grants for certain
 7 periods of time; to provide for service of certain subpoenas; to change refund provisions
 8 regarding alcoholic beverages stamps; to provide for certain definitions regarding sales and
 9 use tax refunds; to provide for service of summons of garnishment; to provide for recording
 10 of tax executions; to change certain income requirements for taxpayers 62 years of age or
 11 older seeking a homestead exemption for school tax purposes; to repeal certain provisions
 12 relating to payment of taxes where property lies in more than one county; to change certain
 13 provisions regarding the transmission of resolutions setting the terms of members of boards
 14 of tax assessors; to provide for additional return filing requirements for public utilities; to
 15 change provisions regarding certain nonprofit organizations; to provide for a one-time
 16 consent agreement by nonresident members of Georgia Subchapter "S" corporations; to
 17 change certain provisions regarding the driver education credit; to add the federal
 18 government as a qualified recipient of Georgia conservation property for purposes of the
 19 conservation tax credit; to provide for the treatment of donations effected by sales at less than
 20 fair market value; to change the standard for determining the fair market value of certain
 21 donations; to provide for civil penalties on certain tax preparers; to change certain
 22 withholding requirements; to change the penalty provision for nonwithholding on certain
 23 taxpayers; to remove certain provisions regarding unidentifiable sales and use tax proceeds;
 24 to provide effective dates; to provide for applicability; to repeal conflicting laws; and for
 25 other purposes.

26

27

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 VII, Section III, Paragraph III of the Constitution; Article VIII, Section I, Paragraph I of
2 the Constitution; and other provisions of the Constitution.

3 36-89-3.

4 In each year the General Assembly shall appropriate to the Department of Revenue funds
5 to provide homeowner tax relief grants to counties, municipalities, and county or
6 independent school districts. ~~When~~ Except as otherwise provided in Code section
7 36-89-3.1, when funds are so appropriated, the General Appropriations Act shall specify
8 the amount appropriated and the eligible assessed value of each qualified homestead in the
9 state for the specified tax year, which eligible assessed value shall, subject to annual
10 appropriation by the General Assembly, be not less than that specified in the Fiscal Year
11 2004 General Appropriations Act. If for any reason the amount appropriated in the
12 General Appropriations Act is insufficient to fund the eligible assessed value stated in the
13 General Appropriations Act, the amount appropriated may be adjusted in amendments to
14 the General Appropriations Act.

15 36-89-3.1.

16 (a) For the taxable year beginning January 1, 2006, the eligible assessed value of each
17 qualified homestead in the state shall be \$10,000.00. For the taxable year beginning
18 January 1, 2007, the eligible assessed value of each qualified homestead in the state shall
19 be \$12,750.00; and all additional funds appropriated to the Department of Revenue for
20 homeowner tax relief grants in the amended General Appropriations Act for the state fiscal
21 year beginning July 1, 2006, and ending June 30, 2007, which funds are in excess of those
22 originally appropriated in the original General Appropriations Act for that fiscal year, shall
23 be included in the grants distributed in calendar year 2007 under Code Section 36-89-4.
24 Such additional funds shall be immediately distributed to cities, counties, and school
25 districts for such purpose as partial payment of the grants to be distributed in calendar year
26 2007; and if for any reason such immediate distribution is impracticable such funds shall
27 be committed and encumbered for such purpose and shall not lapse.

28 (b) The provisions of this Code section shall control over any conflicting language in any
29 appropriations Act. However, the implementation of this Code section shall be contingent
30 upon the enactment of an amended general appropriations Act for the fiscal year beginning
31 July 11, 2006, and ending June 30, 2007, which appropriates funds sufficient to fund this
32 Code section; and in the absence of such an appropriation this Code section shall not be
33 implemented.

34 (c) For all other taxable years the eligible assessed value of each qualified homestead shall
35 be determined as provided in Code Section 36-89-3."

SECTION 5.

Said title is further amended by revising subsection (a) of Code Section 36-89-4, relating to procedures and conditions for homeowner tax relief grant allotment, as follows:

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

(A) Immediately following the actual preparation of ad valorem property tax bills, but no later than one year after the date the final installment of taxes was due, each county fiscal authority shall notify the Department of Revenue of the total amount of tax revenue which would be generated by applying the sum of the state and county millage rates to the eligible assessed value of each qualified homestead in the county. The total amount of actual tax credits, so calculated, given to all qualified homesteads in the county shall be the amount of the grant to that county;

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

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

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

(3) A county fiscal authority, county or independent school district fiscal authority, or municipal fiscal authority that fails to notify the Department of Revenue of the total amount of actual tax credits given to all qualified homesteads by the date specified in this

1 Code section shall forfeit its rights to the grant for such tax year. The state revenue
 2 commissioner may waive the notification requirement and authorize issuance of the grant
 3 whenever and to the extent that the state revenue commissioner reasonably determines
 4 that the failure to timely notify the Department of Revenue was due to reasonable cause
 5 and not due to willful neglect or disregard of the law or of regulations or instructions
 6 issued pursuant to the law."

7 **SECTION 6.**

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

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

27 **SECTION 7.**

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

30 "(2) The commissioner or ~~his~~ the commissioner's authorized representative may use
 31 garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the
 32 state which are imposed by this title or which the commissioner or the department is
 33 responsible for collecting under any other law. Garnishment may be issued by the
 34 commissioner or ~~his~~ the commissioner's authorized representative against any person
 35 whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property,

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

29 SECTION 8.

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

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

1 the records of the clerk of the superior court of the county where the execution was issued.
 2 If the tax collector or tax commissioner fails to have the execution recorded in the records
 3 of the clerk of the superior court of the county where the execution was issued within 30
 4 days of issuance of the tax execution, the tax collector or tax commissioner shall void the
 5 tax execution and renotify the taxpayer of the delinquency as provided in subsection (c) of
 6 this Code section. The tax collector or tax commissioner shall issue a new execution for
 7 nonpayment of taxes collectable by the tax collector or tax commissioner at any time after
 8 30 days have elapsed since the renotification notice was issued."

9 SECTION 9.

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

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

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

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

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

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

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

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

35 (4) After the owner has filed the affidavit and has once been allowed the exemption
 36 provided for in this Code section, it shall not be necessary to make application and file

1 the affidavit thereafter for any year and the exemption shall continue to be allowed to
 2 such owner; provided, however, that it shall be the duty of any such owner to notify the
 3 tax commissioner or tax receiver in the event the owner becomes ineligible for any reason
 4 for the exemption provided for in this Code section."

5 **SECTION 10.**

6 Said title is further amended by repealing and reserving Code Section 48-5-237, relating to
 7 payment of taxes where property lies in more than one county.

8 **SECTION 11.**

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

11 "(a) Each member of the county board of tax assessors appointed to such office on and
 12 after July 1, 1996, shall be appointed by the county governing authority for a term of not
 13 less than three nor more than six years. A county governing authority shall, by resolution,
 14 within the range provided by this subsection, select the length of terms of office for
 15 members of its county board of tax assessors. Following the adoption of such resolution,
 16 all new appointments and reappointments to the county board of tax assessors shall be for
 17 the term lengths specified in the resolution; however, such resolution shall not have the
 18 effect of shortening or extending the terms of office of current members of the board of
 19 assessors whose terms have not yet expired. The county governing authority shall not be
 20 authorized to again change the term length until the expiration of the term of office of the
 21 first appointment or reappointment following the resolution that last changed such terms
 22 of office. If the resolution changing the terms of office of members of the board of tax
 23 assessors would result in a voting majority of the board of tax assessors having their terms
 24 expire in the same calendar year, the county governing authority shall provide in the
 25 resolution for staggered initial appointments or reappointments of a duration of not less
 26 than three nor more than six years that will prevent such an occurrence. The county
 27 governing authority shall transmit to the ~~board of assessors~~ commissioner a copy of the
 28 resolution setting the length of terms of members of the county board of tax assessors
 29 within ten days of the date the resolution is adopted. Any member of the county board of
 30 tax assessors shall be eligible for reappointment after review of his or her service on the
 31 board by the appointing authority. Such review shall include education and certification
 32 information furnished by the commissioner. Any member of the county board of tax
 33 assessors who fails to maintain the certification and qualifications specified pursuant to
 34 Code Section 48-5-291 shall not be eligible for reappointment until all requirements have
 35 been met. In case of a vacancy on the board at any time, whether caused by death,

1 resignation, removal, or otherwise, the vacancy shall be immediately filled by appointment
 2 of the county governing authority. Any person appointed to fill a vacancy shall be
 3 appointed only to serve for the remainder of the unexpired term of office and shall possess
 4 the same qualifications required under this part for regular appointment to a full term of
 5 office."

6 SECTION 12.

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

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

20 SECTION 13.

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

24 "(a) The following organizations shall be exempt from taxation imposed by Code Section
 25 48-7-21 ~~unless the exemption is denied under subsection (b) or (c) of this Code section as~~
 26 indicated:

27 (1) Subject to subsections (b) and (c) of this Code section those ~~Those~~ organizations
 28 described by which are exempt from federal income taxation pursuant to Section 501(c),
 29 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986; are deemed to have
 30 similar exempt status for purposes of Code Section 48-7-21 ~~Organizations described in~~
 31 ~~this paragraph shall be exempt from taxation for state purposes in the same manner and~~
 32 ~~to the same extent as for federal purposes; and~~

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

34 ~~"(b)(1) An organization requesting exemption under paragraph (1) of subsection (a) of~~
 35 ~~this Code section shall file a written application with the commissioner. The~~

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

11 SECTION 14.

12 Said title is further amended by revising paragraph (2) of subsection (d) of Code Section
 13 48-7-27, relating to computation of taxable net income, as follows:

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

28 SECTION 15.

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

32 "(d) No credit shall be allowed under this Code section unless the taxpayer ~~submits with~~
 33 ~~the claim for such credit~~ has obtained written proof of the successful completion of the
 34 course of driver education by the dependent minor child and the amount expended by the
 35 taxpayer for such course."

SECTION 16.

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

"48-7-29.12.

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

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

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

(3) 'Qualified donation' means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of 100 percent of all right, title, and interest in the entire parcel of donated real property located in Georgia, which donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of an interest in real property located in Georgia which qualifies as a conservation easement under paragraph (4) of Code Section 36-22-2. If the donation is effected by a sale of the property for less than fair market value, the qualified donation shall be deemed to be that portion of the property which represents the difference between the amount paid to the donor and the fair market value as established pursuant to this Code section. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf, or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

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

1 (c) No tax credit shall be allowed under this Code section unless ~~the taxpayer files with~~
 2 ~~the taxpayer's income tax return a copy of a certification by the Department of Natural~~
 3 ~~Resources~~ that the donated property is suitable for conservation purposes is provided to the
 4 commissioner by the Department of Natural Resources. The Board of Natural Resources
 5 shall promulgate any rules and regulations necessary to implement and administer this
 6 subsection, including, but not limited to, policies to guide the determination of whether or
 7 not donated property is suitable for conservation purposes. A final determination by the
 8 Department of Natural Resources with respect to the suitability of donated property for
 9 conservation purposes shall be subject to review and appeal under Chapter 13 of Title 50,
 10 the 'Georgia Administrative Procedure Act.'

11 (d) In no event shall the total amount of any tax credit under this Code section for a taxable
 12 year exceed the taxpayer's income tax liability. In no event shall the total amount of the
 13 tax credit allowed to a taxpayer under subsection (b) of this Code section exceed
 14 \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or
 15 \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any
 16 unused tax credit shall be allowed to be carried forward to apply to the taxpayer's
 17 succeeding five years' tax liability. However, the amount in excess of such annual dollar
 18 limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability.
 19 No such tax credit shall be allowed the taxpayer against prior years' tax liability.

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

22 SECTION 17

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

24 "48-7-57.2.

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

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

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

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

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

36 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (5) Any tax return preparer who fraudulently endorses or otherwise negotiates directly
34 or through an agent any check made in respect of the taxes imposed under this chapter
35 or Chapter 7A of this title which is issued to a taxpayer other than the tax return preparer
36 shall pay a penalty of \$500.00 with respect to each such check. This paragraph shall not
37 apply with respect to the deposit by a bank, within the meaning of Section 581 of the

1 Internal Revenue Code of 1986, of the full amount of the check in the taxpayer's account
2 in such bank for the benefit of the taxpayer.

3 (f)(1) Any person who:

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

5 (I) A partnership or other entity;

6 (II) Any investment plan or arrangement; or

7 (III) Any other plan or arrangement; or

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

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

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

16 or

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

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

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

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

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

36 (B) The commissioner may waive all or any part of the penalty provided by
37 paragraph (1) of this subsection with respect to any gross valuation overstatement on

1 a showing that there was a reasonable basis for the valuation and that such valuation
2 was made in good faith.

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

4 (A) 'Procures' includes:

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

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

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

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

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

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

16 (C) Who knows that such portion of a return, affidavit, claim, or other document if so
17 used would result in an understatement of the liability for tax of another person
18 shall pay a penalty with respect to each such document in the amount determined under
19 paragraph (3) of this subsection.

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

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

25 (C) If any person is subject to a penalty under paragraph (2) of this subsection with
26 respect to any document relating to any taxpayer for any taxable period or, where there
27 is no taxable period, any taxable event, such person shall not be subject to a penalty
28 under paragraph (2) of this subsection with respect to any other document relating to
29 such taxpayer for such taxable period or event.

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

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

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

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

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

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

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

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

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

26 (i) Omissions of income;

27 (ii) Excessive or nonexistent deductions;

28 (iii) Claims of nonexistent dependents;

29 (iv) Fictitious business schedules;

30 (v) Excessive losses; or

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

34 (i)(1) A civil action in the name of the State of Georgia to enjoin any person from further
35 engaging in conduct subject to penalty under subsection (f) of this Code section, relating
36 to penalty for promoting abusive tax shelters, or subsection (g) of this Code section,
37 relating to penalties for aiding and abetting understatement of tax liability, may be

1 commenced at the request of the commissioner. Any action under this subsection shall
 2 be brought in the superior court for the county in which that person resides, has his or her
 3 principal place of business, or in which that person has engaged in conduct subject to
 4 penalty under subsection (f) or (g) of this Code section. The court may exercise its
 5 jurisdiction over such action separate and apart from any other action brought by the State
 6 of Georgia against that person.

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

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

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

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

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

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

20 SECTION 18.

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

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

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

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

SECTION 19.

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

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

SECTION 20.

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

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

SECTION 21.

(a) Sections 5, 14, and 16 of this Act shall become effective upon this Act's approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2007.

(b) This section and Sections 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20 and 22 of this Act shall become effective upon this Act's approval by the Governor or upon its becoming law without such approval.

SECTION 22.

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