

House Bill 1078

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to change certain definitions regarding such taxes; to provide an effective
3 date; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
7 taxes, is amended by revising Code Section 48-8-2, relating to definitions regarding such
8 taxes, as follows:

9 "48-8-2.

10 As used in this article, the term:

11 (1) 'Business' means any activity engaged in by any person or caused to be engaged in
12 by any person with the object of direct or indirect gain, benefit, or advantage.

13 (2) 'Cost price' means the actual cost of articles of tangible personal property without any
14 deductions for the cost of materials used, labor costs, service costs, transportation
15 charges, or any other expenses of any kind.

16 (3) 'Dealer' means every person who:

17 (A) Has sold at retail, used, consumed, distributed, or stored for use or consumption
18 in this state tangible personal property and who cannot prove that the tax levied by this
19 article has been paid on the sale at retail or on the use, consumption, distribution, or
20 storage of the tangible personal property;

21 (B) Imports or causes to be imported tangible personal property from any state or
22 foreign country for sale at retail, or for use, consumption, distribution, or storage for use
23 or consumption in this state;

24 (C) Is the lessee or renter of tangible personal property and who pays to the owner of
25 the property a consideration for the use or possession of the property without acquiring
26 title to the property;

1 (D) Leases or rents tangible personal property for a consideration, permitting the use
2 or possession of the property without transferring title to the property;

3 (E) Maintains or has within this state, indirectly or by a subsidiary, an office,
4 distribution center, salesroom or sales office, warehouse, service enterprise, or any
5 other place of business;

6 (F) Manufactures or produces tangible personal property for sale at retail or for use,
7 consumption, distribution, or storage for use or consumption in this state;

8 (G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or
9 for use, consumption, distribution, or storage for use or consumption in this state
10 tangible personal property;

11 (H) Solicits business by an agent, employee, representative, or any other person;

12 (I) Engages in the regular or systematic solicitation of a consumer market in this state,
13 unless the dealer's only activity in this state is:

14 (i) Advertising or solicitation by:

15 (I) Direct mail, catalogs, periodicals, or advertising fliers;

16 (II) Means of print, radio, or television media; or

17 (III) Telephone, computer, the Internet, cable, microwave, or other communication
18 system; or

19 (ii) The delivery of tangible personal property within this state solely by common
20 carrier or United States mail.

21 The exceptions provided in divisions (i) and (ii) of this subparagraph shall not apply to
22 any requirements under Code Section 48-8-14;

23 (J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in
24 the regular or systematic solicitation of a consumer market in this state through a
25 related dealer located in this state unless:

26 (i) The in-state dealer to which the affiliate is related does not engage in any of the
27 following activities on behalf of the affiliate:

28 (I) Advertising;

29 (II) Marketing;

30 (III) Sales; or

31 (IV) Other services; and

32 (ii) The in-state dealer to which the affiliate is related accepts the return of tangible
33 personal property sold by the affiliate and also accepts the return of tangible personal
34 property sold by any person or dealer that is not an affiliate on the same terms and
35 conditions as an affiliate's return;

36 As used in this subparagraph, the term 'affiliate' means any person that is related
37 directly or indirectly through one or more intermediaries, controls, is controlled by, is

1 under common control with, or is subject to the control of a dealer described in
2 subparagraphs (A) through (I) of this paragraph or in this subparagraph; or

3 (K) Notwithstanding any of the provisions contained in this paragraph, with respect to
4 a person that is not a resident or domiciliary of Georgia, that does not engage in any
5 other business or activity in Georgia, and that has contracted with a commercial printer
6 for printing to be conducted in Georgia, such person shall not be deemed a 'dealer' in
7 Georgia merely because such person:

8 (i) Owns tangible or intangible property which is located at the Georgia premises of
9 a commercial printer for use by such printer in performing services for the owner;

10 (ii) Makes sales and distributions of printed material produced at and shipped or
11 distributed from the Georgia premises of the commercial printer;

12 (iii) Performs activities of any kind at the Georgia premises of the commercial printer
13 which are directly related to the services provided by the commercial printer; or

14 (iv) Has printing, including any printing related activities, and distribution related
15 activities performed by the commercial printer in Georgia for or on its behalf,

16 nor shall such person, absent any contact with Georgia other than with or through the
17 use of the commercial printer or the use of the United States Postal Service or a
18 common carrier, have an obligation to collect sales or use tax from any of its customers
19 located in Georgia based upon the activities described in divisions (i) through (iv) of
20 this subparagraph. In no event described in this subparagraph shall such person be
21 considered to have a fixed place of business in Georgia at either the commercial
22 printer's premises or at any place where the commercial printer performs services on
23 behalf of that person.

24 (L) Each dealer shall collect the tax imposed by this article from the purchaser, lessee,
25 or renter, as applicable, and no action seeking either legal or equitable relief on a sale,
26 lease, rental, or other transaction may be had in this state by the dealer unless the dealer
27 has fully complied with this article.

28 (M) The commissioner shall promulgate such rules and regulations necessary to
29 administer this paragraph, including other such information, applications, forms, or
30 statements as the commissioner may reasonably require.

31 (4) 'Gross sales' means the:

32 (A) Sum total of all retail sales of tangible personal property or services without any
33 deduction of any kind other than as provided in this article; or

34 (B)(i) Charges, when applied to sales of telephone service, made for local exchange
35 telephone service, except local messages which are paid for by inserting coins in coin
36 operated telephones, but including the total amount of the guaranteed charge for

1 semipublic coin box telephone services; except as otherwise provided in division (ii)
2 of this subparagraph.

3 (ii)(I) If a telephone service is not subject to the tax levied by this chapter, and if
4 the amount charged for such telephone service is aggregated with and not separately
5 stated from the amount paid or charged for any service that is subject to such tax,
6 then the nontaxable telephone service shall be treated as being subject to such tax
7 unless the telephone service provider can reasonably identify the amount paid or
8 charged for the telephone service not subject to such tax from its books and records
9 kept in the regular course of business.

10 (II) If a telephone service is not subject to the tax levied by this chapter, a customer
11 may not rely upon the nontaxability of such telephone service unless the telephone
12 service provider separately states the amount charged for such nontaxable telephone
13 service or the telephone service provider elects, after receiving a written request
14 from the customer in the form required by the provider, to provide verifiable data
15 based upon the provider's books and records that are kept in the regular course of
16 business that reasonably identifies the amount charged for such nontaxable
17 telephone service.

18 (5) 'Lease or rental' means the leasing or renting of tangible personal property and the
19 possession or use of the property by the lessee or renter for a consideration without
20 transfer of the title to the property.

21 (5.1) 'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction
22 with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels
23 for highway use and collected prior to that retail sale. This tax is based upon the average
24 retail sales price as set forth in Code Section 48-9-14.

25 (5.2) 'Prepaid local tax' means any local sales and use tax which is levied on the sale or
26 use of motor fuel and imposed in an area consisting of less than the entire state, however
27 authorized, including, but not limited to, such taxes authorized by or pursuant to
28 constitutional amendment; by or pursuant to Section 25 of an Act approved March 10,
29 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid
30 Transit Authority Act of 1965' or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.
31 Such tax is based on the same average retail sales price as set forth in subparagraph
32 (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales
33 tax rate for local jurisdictions by multiplying such retail price by the applicable rate
34 imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for
35 the local jurisdiction shall provide a schedule as to which jurisdiction these collections
36 relate. This determination shall be based upon the shipping papers of the conveyance that
37 delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may

1 rely upon the representation made by the purchaser as to which jurisdiction the shipment
2 is bound and prepare shipping papers in accordance with those instructions.

3 (6) 'Retail sale' or a 'sale at retail' means:

4 (A) A sale to a consumer or to any person for any purpose other than for resale of
5 tangible personal property or services taxable under this article including, but not
6 limited to, any such transactions which the commissioner upon investigation finds to
7 be in lieu of sales. Sales for resale must be made in strict compliance with the
8 commissioner's rules and regulations. Any dealer making a sale for resale which is not
9 in strict compliance with the commissioner's rules and regulations shall himself be
10 liable for and shall pay the tax;

11 (B)(i) Except as otherwise provided in division (ii) of this subparagraph, the sale of
12 natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone
13 services, beverages, and tobacco products, when made to any purchaser for purposes
14 other than resale.

15 (ii) The sale of electricity used directly in the manufacture of a product shall not
16 constitute a retail sale for purposes of this article if the direct cost of such electricity
17 exceeds 50 percent of the cost of all materials, including electricity, used directly in
18 the product and shall be exempt from taxation under this article. Such exemption
19 shall be applied to manufacturers located in this state as follows:

20 (I) For calendar years beginning on or after January 1, 1995, and prior to January
21 1, 1996, 20 percent of the direct cost of such electricity shall be exempt;

22 (II) For calendar years beginning on or after January 1, 1996, and prior to January
23 1, 1997, 40 percent of the direct cost of such electricity shall be exempt;

24 (III) For calendar years beginning on or after January 1, 1997, and prior to January
25 1, 1998, 60 percent of the direct cost of such electricity shall be exempt;

26 (IV) For calendar years beginning on or after January 1, 1998, and prior to January
27 1, 1999, 80 percent of the direct cost of such electricity shall be exempt; and

28 (V) For calendar years beginning on or after January 1, 1999, 100 percent of the
29 direct cost of such electricity shall be exempt;

30 (C) The sale or charges for any room, lodging, or accommodation furnished to
31 transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which
32 rooms, lodgings, or accommodations are regularly furnished to transients for a
33 consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied
34 for a period of 90 continuous days or more;

35 (D) Sales of tickets, fees, or charges made for admission to, or voluntary contributions
36 made to places of, amusement, sports, or entertainment including, but not limited to:

37 (i) Billiard and pool rooms;

- 1 (ii) Bowling alleys;
 2 (iii) Amusement devices;
 3 (iv) Musical devices;
 4 (v) Theaters;
 5 (vi) Opera houses;
 6 (vii) Moving picture shows;
 7 (viii) Vaudeville;
 8 (ix) Amusement parks;
 9 (x) Athletic contests including, but not limited to, wrestling matches, prize fights,
 10 boxing and wrestling exhibitions, football games, and baseball games;
 11 (xi) Skating rinks;
 12 (xii) Race tracks;
 13 (xiii) Public bathing places;
 14 (xiv) Public dance halls; and
 15 (xv) Any other place at which any exhibition, display, amusement, or entertainment
 16 is offered to the public or any other place where an admission fee is charged;
- 17 (E) Reserved;
- 18 (F) Charges made for participation in games and amusement activities; or
- 19 (G) Sales of tangible personal property to persons for resale when there is a likelihood
 20 that the state will lose tax funds due to the difficulty of policing the business operations
 21 because:
- 22 (i) Of the operation of the business;
 23 (ii) Of the very nature of the business;
 24 (iii) Of the turnover of so-called independent contractors;
 25 (iv) Of the lack of a place of business in which to display a certificate of registration;
 26 (v) Of the lack of a place of business in which to keep records;
 27 (vi) Of the lack of adequate records;
 28 (vii) The persons are minors or transients;
 29 (viii) The persons are engaged in essentially service businesses; or
 30 (ix) Of any other reasonable reason.

31 The commissioner may promulgate rules and regulations requiring vendors of persons
 32 described in this subparagraph to collect the tax imposed by this article on the retail
 33 price of the tangible personal property. The commissioner shall refuse to issue
 34 certificates of registration and may revoke certificates of registration issued in violation
 35 of his rules and regulations.

36 (7) 'Retailer' means every person making sales at retail or for distribution, use,
 37 consumption, or storage for use or consumption in this state.

1 (8)(A) 'Sale' means any transfer of title or possession, transfer of title and possession,
2 exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any
3 means of any kind of tangible personal property for a consideration except as otherwise
4 provided in subparagraph (B) of this paragraph and includes, but is not limited to:

5 (i) The fabrication of tangible personal property for consumers who directly or
6 indirectly furnish the materials used in such fabrication;

7 (ii) The furnishing, repairing, or serving for a consideration of any tangible personal
8 property consumed on the premises of the person furnishing, repairing, or serving the
9 tangible personal property; or

10 (iii) A transaction by which the possession of property is transferred but the seller
11 retains title as security for the payment of the price.

12 (B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail
13 sale or a motor vehicle lease or rental when the lease or rental period exceeds 30 days
14 and when the purchaser or lessee is a resident of this state, the taxable situs of the
15 transaction for the purposes of collecting local sales and use taxes shall be the county
16 of motor vehicle registration of the purchaser or lessee.

17 (9)(A) 'Sales price' means the total amount valued in money, whether paid in money
18 or otherwise, for which tangible personal property or services are sold including, but
19 not limited to, any services that are a part of the sale and any amount for which credit
20 is given to the purchaser by the seller without any deduction from the total amount for
21 the cost of the property sold, the cost of materials used, labor or service costs, losses,
22 or any other expenses of any kind.

23 (B) 'Sales price' does not include:

24 (i) Cash discounts allowed and taken on sales;

25 (ii) The amount charged for labor or services rendered in installing, applying,
26 remodeling, or repairing property sold; or

27 (iii) Finance charges, carrying charges, service charges, or interest from credit
28 extended on sales of tangible personal property under conditional sale contracts or
29 other conditional contracts providing for deferred payments of the purchase price.

30 (10) 'Storage' means any keeping or retention in this state of tangible personal property
31 for use or consumption in this state or for any purpose other than sale at retail in the
32 regular course of business.

33 (11) 'Tangible personal property' means personal property which may be seen, weighed,
34 measured, felt, or touched or is in any other manner perceptible to the senses. 'Tangible
35 personal property' does not mean stocks, bonds, notes, insurance, or other obligations or
36 securities.

1 (12) 'Use' means the exercise of any right or power over tangible personal property
2 incident to the ownership of the property including, but not limited to, the sale at retail
3 of the property in the regular course of business.

4 (13) 'Use tax' includes the use, consumption, distribution, and storage of tangible
5 personal property as defined in this article."

6 **SECTION 2.**

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

9 **SECTION 3.**

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