

Senate Bill 444

By: Senator Adelman of the 42nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia
2 Annotated, relating to imposition, rate, collection, and assessment of sales and use taxes, so
3 as to provide for a credit for certain dealers who construct, lease, or purchase clean energy
4 properties in this state; to provide for procedures, conditions, and limitations; to provide for
5 definitions; to provide for rules and regulations; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
10 relating to imposition, rate, collection, and assessment of sales and use taxes, is amended by
11 adding a new Code section to read as follows:

12 "48-8-68.

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

14 (1) 'Clean energy property' includes any of the following:

15 (A) Solar energy equipment that uses solar radiation as a substitute for traditional
16 energy for water heating, active space heating and cooling, passive heating, daylighting,
17 generating electricity, distillation, desalinization, or the production of industrial or
18 commercial process heat, as well as related devices necessary for collecting, storing,
19 exchanging, conditioning, or converting solar energy to other useful forms of energy;

20 (B) Energy Star certified geothermal heat pump systems;

21 (C) Energy efficient projects as follows:

22 (i) Lighting retrofit projects. 'Lighting retrofit project' means a lighting retrofit
23 system that employs dual switching (ability to switch off roughly half the lights and
24 still have fairly uniform light distribution), delamping, daylighting, relamping, or
25 other controls or processes which reduce annual energy and power consumption by

26 30 percent compared to the American Society of Heating, Refrigerating, and Air
 27 Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

28 (ii) Energy efficient buildings. 'Energy efficient building' means for other than
 29 single-family residential property, new or retrofitted buildings that are designed,
 30 constructed, and certified to exceed the standards set forth in the American Society
 31 of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE
 32 90.1.2004) by 30 percent;

33 (D) Wind equipment required to capture and convert wind energy into electricity or
 34 mechanical power, as well as related devices that may be required for converting,
 35 conditioning, and storing the electricity produced by wind equipment; and

36 (E) Biomass equipment to convert wood residuals into electricity through gasification
 37 and pyrolysis.

38 (2) 'Cost' means:

39 (A) In the case of clean energy property owned by the qualifying dealer, the aggregate
 40 funds actually invested and expended by the qualifying dealer to put into service the
 41 clean energy property; and

42 (B) In the case of clean energy property a qualifying dealer leases from another, eight
 43 times the net annual rental rate, which is the annual rental rate paid by the qualifying
 44 dealer less any annual rental rate received by the qualifying dealer from subrentals.

45 (3) 'Installation' means the year in which the clean energy property is put into service and
 46 becomes eligible for a tax credit allowed by this Code section.

47 (4) 'Qualifying dealer' means a dealer as defined under Code Section 48-8-2 that is a
 48 nonprofit organization under Section 501(c)(3) of the federal Internal Revenue Code.

49 (5) 'Renewable biomass qualified facility' means a renewable biomass qualified facility
 50 as defined by the Federal Energy Regulatory Commission which meets the open loop
 51 biomass standards promulgated pursuant to Section 45 of the Internal Revenue Code.

52 (6) 'Wood residuals' means wood residuals that include land-clearing residue, urban
 53 wood residue, and pellets but do not include wood from any United States national forest.

54 (b) A tax credit under this Code section is subject to the following limits:

55 (1) A tax credit is allowed against the state sales and use taxes collected by a qualifying
 56 dealer under this article to a qualifying dealer for the construction, purchase, or lease of
 57 clean energy property that is placed into service in this state between July 1, 2010, and
 58 December 31, 2014; provided, however, this credit shall be further subject to the
 59 following conditions and limitations:

60 (A) A credit allowed by this Code section shall be taken for the taxable year in which
 61 the clean energy property is installed and may be taken against the sales and use taxes
 62 collected by the qualifying dealer to be remitted to the department allowing the

63 qualifying dealer to retain such collected sales and use taxes in an amount equal to the
64 credit provided under this Code section;

65 (B) A qualifying dealer that claims a credit allowed under this subsection shall not be
66 eligible to claim any other credit under this subsection for the same clean energy
67 property;

68 (C) A qualifying dealer shall not take the credit allowed in this subsection for clean
69 energy property the qualifying dealer leases from another unless the qualifying dealer
70 obtains the lessor's written certification that the lessor will not claim a tax credit under
71 Code Section 48-7-29.14 for the same clean energy property; and

72 (D) In no event shall the amount of the tax credits allowed by this Code section for a
73 taxable year exceed the amount of sales and use taxes collected by the qualifying
74 dealer. Any unused credit amount shall be allowed to be carried forward for five years
75 from the close of the taxable year in which the installment of the clean energy property
76 occurred. No such credit shall be allowed the qualifying dealer against prior years'
77 sales and use tax liability.

78 To claim a credit allowed by this paragraph, the qualifying dealer shall provide any
79 information required by the department. Every qualifying dealer claiming a credit under
80 this Code section shall maintain and make available for inspection by the department any
81 records that the department considers necessary to determine and verify the amount of
82 the credit to which the qualifying dealer is entitled. The burden of proving eligibility for
83 a credit and the amount of the credit rests upon the qualifying dealer, and no credit may
84 be allowed to a qualifying dealer that fails to maintain adequate records or to make them
85 available for inspection;

86 (2) A qualifying dealer that transports or diverts wood residuals to a renewable biomass
87 qualified facility shall be allowed a credit against the state sales and use taxes collected
88 by such qualifying dealer under this article in an amount not to exceed the actual amount
89 certified by the Georgia Forestry Commission to the qualifying dealer. The value of such
90 credit shall be determined on a per tonnage basis. Such certification shall be based upon
91 vouchers provided to the qualifying dealer by the renewable biomass qualified facility to
92 which the wood residuals are provided for the purpose of providing bioelectric power to
93 a third party. The Georgia Forestry Commission shall calculate and attribute a dollar
94 value to such wood residuals;

95 (3) In no event shall the total, aggregate amount of tax credits allowed by this subsection
96 exceed \$2.5 million in any calendar year;

97 (4)(A) A qualifying dealer seeking to claim any tax credit provided for under this Code
98 section must submit an application to the commissioner for tentative approval of such
99 tax credit. The commissioner shall promulgate the rules and forms on which the

100 application is to be submitted. The commissioner shall review such application and
101 shall tentatively approve such application upon determining that it meets the
102 requirements of this Code section within 60 days after receiving such application.

103 (B) The commissioner shall allow the tax credits on a first come, first served basis. In
104 no event shall the aggregate amount of tax credits approved by the commissioner for
105 all taxpayers under this Code section in a calendar year exceed the limitations specified
106 in paragraph (3) of this subsection;

107 (5) The credit allowed by this subsection shall not exceed \$300,000.00 per year per
108 qualifying dealer; and

109 (6) Where the amount of any credits allowed by this Code section except for the credit
110 under paragraph (2) of this subsection exceeds the qualifying dealer's liability for
111 remitting such state sales and use taxes collected in a taxable year, the excess credits may
112 be taken as a credit against such qualifying dealer's collection of state sales and use taxes
113 for future taxable years as provided in this Code section. No such credit shall be allowed
114 the qualifying dealer against prior years' liability for the collection of sales and use taxes.

115 (c) The department shall be authorized to adopt rules and regulations to provide for the
116 administration of any tax credit provided by this Code section. Specifically, the department
117 shall create a mechanism to track and report the status and availability of credits for the
118 public to review at a minimum on a quarterly basis.

119 (d) The department shall provide an annual report of:

120 (1) The number of qualifying dealers that claimed the credits allowed in this Code
121 section;

122 (2) The cost of clean energy property for which credits were claimed;

123 (3) The type of clean energy property installed and the location;

124 (4) A determination of associated energy and economic benefits to the state; and

125 (5) The total amount of credits allowed."

126 **SECTION 2.**

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