

House Bill 188

By: Representative Scott of the 153rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for prepaid state and local cigarette taxes; to change certain
3 provisions regarding definitions; to change certain provisions regarding exemptions with
4 respect to sales and use taxes on cigarettes; to change certain provisions regarding dealers'
5 sales and use tax returns; to provide for procedures, conditions, and limitations; to change
6 certain provisions regarding penalties; to provide an effective date; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended in Code Section 48-8-2, relating to definitions regarding sales and use taxes, by
12 adding new paragraphs to read as follows:

13 "(5.3) 'Prepaid state cigarette tax' means the tax levied under Code Section 48-8-30 on
14 the retail sale of cigarettes as defined in Code Section 48-11-1 collected prior to that retail
15 sale.

16 (5.4) 'Prepaid local cigarette tax' means any local sales and use tax which is levied on the
17 sale or use of cigarettes as defined in Code Section 48-11-1 and imposed in an area
18 consisting of less than the entire state, however authorized, including, but not limited to,
19 such taxes authorized by or pursuant to constitutional amendment; by or pursuant to
20 Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,
21 known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965' or by or
22 pursuant to Article 2, 2A, 3, or 4 of this chapter. The person collecting and reporting the
23 prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction
24 these collections relate. This determination shall be based upon the shipping papers of
25 the conveyance that delivered the cigarettes to the dealer or consumer in the local
26 jurisdiction. A distribution as defined in Code Section 48-11-1 may rely upon the

27 representation made by the purchaser as to which jurisdiction the shipment is bound and
 28 prepare shipping papers in accordance with those instructions."

29 **SECTION 2.**

30 Said title is further amended in Code Section 48-8-30, relating to imposition of sales and use
 31 taxes, by adding new subsections to read as follows:

32 "(l) In the event any distributor as defined in Code Section 48-11-1 purchases any
 33 cigarettes on which the prepaid state cigarette tax or prepaid local cigarette tax or both have
 34 been imposed pursuant to this Code section and resells the same to a governmental entity
 35 that is totally or partially exempt from such tax under paragraph (1) of Code Section
 36 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the
 37 credit or refund shall be the prepaid state cigarette tax or prepaid local cigarette tax or both
 38 rates for which such governmental entity is exempt. To be eligible for the credit or refund,
 39 the distributor shall reduce the amount such distributor charges for the fuel sold to such
 40 governmental entity by an amount equal to the tax from which such governmental entity
 41 is exempt. Should a distributor have a liability under this Code section, the distributor may
 42 elect to take a credit for those sales against such liability.

43 (m) The prepaid state and local cigarette taxes shall be imposed at the time tax is imposed
 44 under Code Section 48-11-2."

45 **SECTION 3.**

46 Said title is further amended by revising Code Section 48-8-82, relating to imposition of the
 47 joint county and municipal sales and use tax, as follows:

48 "48-8-82.

49 When the imposition of a joint county and municipal sales and use tax is authorized
 50 according to the procedures provided in this article within a special district, the county
 51 whose geographical boundary is conterminous with that of the special district and each
 52 qualified municipality located wholly or partially within the special district shall levy a
 53 joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall
 54 correspond to the tax imposed and administered by Article 1 of this chapter. No item or
 55 transaction which is not subject to taxation by Article 1 of this chapter shall be subject to
 56 the tax levied pursuant to this article; except that the joint tax provided in this article shall
 57 be applicable to sales of motor fuels as prepaid local tax as that term is defined by
 58 paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax
 59 as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable
 60 to the sale of food and beverages only to the extent provided for in paragraph (57) of Code
 61 Section 48-8-3."

62 **SECTION 4.**

63 Said title is further amended by revising Code Section 48-8-87, relating to the administration
64 and collection of the joint county and municipal sales and use tax, as follows:

65 "48-8-87.

66 The tax levied pursuant to this article shall be exclusively administered and collected by
67 the commissioner for the use and benefit of each county whose geographical boundary is
68 conterminous with that of a special district and of each qualified municipality located
69 wholly or partially therein. Such administration and collection shall be accomplished in
70 the same manner and subject to the same applicable provisions, procedures, and penalties
71 provided in Article 1 of this chapter; except that the joint tax provided in this article shall
72 be applicable to sales of motor fuels as prepaid local tax as that term is defined by
73 paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local cigarette
74 tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided, however,
75 that all moneys collected from each taxpayer by the commissioner shall be applied first to
76 such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of
77 the amount of the tax due and accounted for and shall be reimbursed in the form of a
78 deduction in submitting, reporting, and paying the amount due if such amount is not
79 delinquent at the time of payment. The deduction shall be at the rate and subject to the
80 requirements specified under subsections (b) through (f) of Code Section 48-8-50."

81 **SECTION 5.**

82 Said title is further amended by revising subsection (b) of Code Section 48-8-102, relating
83 to the imposition of the homestead option sales and use tax, as follows:

84 "(b) When the imposition of a local sales and use tax is authorized according to the
85 procedures provided in this article within a special district, the county whose geographical
86 boundary is conterminous with that of the special district shall levy a local sales and use
87 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond
88 to the tax imposed and administered by Article 1 of this chapter. No item or transaction
89 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and
90 use tax levied pursuant to this article; except that the sales and use tax provided in this
91 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined
92 by paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax
93 as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable
94 to the sale of food and beverages only to the extent provided for in paragraph (57) of Code
95 Section 48-8-3."

96

SECTION 6.

97 Said title is further amended by revising subsection (a) of Code Section 48-8-104, relating
 98 to the administration and manner of distribution of the homestead option sales and use tax,
 99 as follows:

100 "(a) The sales and use tax levied pursuant to this article shall be exclusively administered
 101 and collected by the commissioner for the use and benefit of each county whose
 102 geographical boundary is conterminous with that of a special district. Such administration
 103 and collection shall be accomplished in the same manner and subject to the same applicable
 104 provisions, procedures, and penalties provided in Article 1 of this chapter; except that the
 105 sales and use tax provided in this article shall be applicable to sales of motor fuels as
 106 prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2 and
 107 shall be applicable to prepaid local cigarette tax as the term is defined in paragraph (5.4)
 108 of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer
 109 by the commissioner shall be applied first to such taxpayer's liability for taxes owed the
 110 state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and
 111 accounted for and shall be reimbursed in the form of a deduction in submitting, reporting,
 112 and paying the amount due if such amount is not delinquent at the time of payment. The
 113 deduction shall be at the rate and subject to the requirements specified under subsections
 114 (b) through (f) of Code Section 48-8-50."

115

SECTION 7.

116 Said title is further amended by revising subsection (c) of Code Section 48-8-110.1, relating
 117 to imposition of the county special purpose local option sales and use tax, as follows:

118 "(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a
 119 tax imposed under this part; shall correspond to the tax imposed by Article 1 of this
 120 chapter. No item or transaction which is not subject to taxation under Article 1 of this
 121 chapter shall be subject to a tax imposed under this part; except that a tax imposed under
 122 this part shall apply to sales of motor fuels as prepaid local tax as that term is defined by
 123 paragraph (5.2) of Code Section 48-8-2, shall be applicable to prepaid local cigarette tax
 124 as the term is defined in paragraph (5.4) of Code Section 48-8-2, and shall be applicable
 125 to the sale of food and beverages as provided for in division (57)(D)(i) of Code
 126 Section 48-8-3."

127

SECTION 8.

128 Said title is further amended by revising Code Section 48-8-113, relating to the
 129 administration of the county special purpose local option sales and use tax, as follows:

130 "48-8-113.
 131 A tax levied pursuant to this part shall be exclusively administered and collected by the
 132 commissioner for the use and benefit of the county and qualified municipalities within such
 133 special district imposing the tax. Such administration and collection shall be accomplished
 134 in the same manner and subject to the same applicable provisions, procedures, and
 135 penalties provided in Article 1 of this chapter; except that the sales and use tax provided
 136 in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is
 137 defined by paragraph (5.2) of Code Section 48-8-2 and shall be applicable to prepaid local
 138 cigarette tax as the term is defined in paragraph (5.4) of Code Section 48-8-2; provided,
 139 however, that all moneys collected from each taxpayer by the commissioner shall be
 140 applied first to such taxpayer's liability for taxes owed the state; and provided, further, that
 141 the commissioner may rely upon a representation by or in behalf of the county and
 142 qualified municipalities within the special district or the Secretary of State that such a tax
 143 has been validly imposed, and the commissioner and the commissioner's agents shall not
 144 be liable to any person for collecting any such tax which was not validly imposed. Dealers
 145 shall be allowed a percentage of the amount of the tax due and accounted for and shall be
 146 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
 147 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
 148 and subject to the requirements specified under subsections (b) through (f) of Code Section
 149 48-8-50."

150 **SECTION 9.**

151 Said title is further amended by revising paragraph (1) of subsection (c) of Code Section
 152 48-8-201, relating to imposition of the municipal water and sewer projects and costs tax, by
 153 adding a new subparagraph to read as follows:

154 "(A.1) Sales of cigarettes as prepaid local cigarette tax as that term is defined by
 155 paragraph (5.4) of Code Section 48-8-2;"

156 **SECTION 10.**

157 Said title is further amended by revising Code Section 48-8-204, relating to administration
 158 and collection of the municipal water and sewer projects and costs tax, as follows:

159 "48-8-204.

160 A tax levied pursuant to this article shall be exclusively administered and collected by the
 161 commissioner for the use and benefit of the municipality imposing the tax. Such
 162 administration and collection shall be accomplished in the same manner and subject to the
 163 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter;
 164 except that the sales and use tax provided in this article shall be applicable to sales of motor

165 fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2
166 and shall be applicable to prepaid local cigarette tax as the term is defined in paragraph
167 (5.4) of Code Section 48-8-2; provided, however, that all moneys collected from each
168 taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes
169 owed the state; and provided, further, that the commissioner may rely upon a representation
170 by or in behalf of the municipality or the Secretary of State that such a tax has been validly
171 imposed, and the commissioner and the commissioner's agents shall not be liable to any
172 person for collecting any such tax which was not validly imposed. Dealers shall be
173 allowed a percentage of the amount of the tax due and accounted for and shall be
174 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due
175 if such amount is not delinquent at the time of payment. The deduction shall be at the rate
176 and subject to the requirements specified under subsections (b) through (f) of Code Section
177 48-8-50."

178 **SECTION 11.**

179 Said title is further amended in Code Section 48-11-2, relating to excise taxes on tobacco
180 products, by adding a new subsection to read as follows:

181 "(h)(1) As used in this paragraph, the term 'prepaid state cigarette tax' shall have the same
182 meaning as provided in paragraph (5.3) of Code Section 48-8-2.

183 (2) At the time the excise tax imposed by this Code section attaches to cigarettes, a
184 prepaid state cigarette tax shall be collected. The same person remitting the excise tax
185 imposed under this Code section, but on a separate schedule, shall remit the prepaid
186 state cigarette tax to the state. The tax shall be separately invoiced throughout the chain
187 of distribution until it reaches the dealer who makes the retail sale and shall be at the
188 same rate as provided under Code Section 48-8-30."

189 **SECTION 12.**

190 This Act shall become effective on January 1, 2010.

191 **SECTION 13.**

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