

House Bill 441

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state administration of revenue and taxation, so as to provide for the expedited
3 payment of sales and use tax refund claims secured by a satisfactory bond; to provide for
4 frivolous or excessive sales and use tax refund claims; to provide for civil and criminal
5 penalties; to provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
9 administration of revenue and taxation, is amended by revising Code Section 48-2-35.1,
10 relating to refund of sales and use taxes, to read as follows:

11 "48-2-35.1.

12 (a) If a certificate or exemption determination letter issued by the commissioner certifying
13 that the purchaser is entitled to purchase tangible personal property or taxable services
14 without the payment of sales and use tax has not been obtained and used prior to
15 purchasing such tangible personal property or taxable services, a refund of sales and use
16 taxes shall be made without interest.

17 (b) Any taxpayer who wishes to expedite the payment of a claim for refund may apply to
18 the commissioner for such expedited refund, and as part of such application the taxpayer
19 shall file a bond that is satisfactory to the commissioner as security for the repayment of
20 such refund and any applicable tax, interest, penalties, fees, or costs in the event that the
21 commissioner determines within the applicable statute of limitations that all or a portion
22 of such refund was paid in error. Any assessment of tax, interest, penalties, fees, or costs
23 related to the payment of such refund claim shall be made within three years after the date
24 that such refund was paid by the commissioner.

25 (c)(1) As used in this subsection, the term:

26 (A) 'Excessive amount' means that portion of the claim for refund that exceeds the
 27 amount that is eligible for refund and for which there is no reasonable basis.

28 (B) 'Frivolously filed' means filing a sales and use tax claim for refund when the
 29 amount claimed exceeds the amount eligible for refund by at least 50 percent.

30 (C) 'Reasonable basis' means a position that is reasonably based on one or more of the
 31 following authorities: applicable provisions of this title and other statutory provisions;
 32 proposed and adopted regulations construing such statutes; court cases; official
 33 opinions of the Attorney General; and letter rulings, policy statements, informational
 34 bulletins, and other administrative pronouncements published by the commissioner.
 35 Conclusions reached in treatises, legal periodicals, legal opinions, or opinions rendered
 36 by tax professionals shall not constitute authority. Notwithstanding the preceding list
 37 of authorities, an authority shall not continue to be an authority to the extent it is
 38 overruled or modified, implicitly or explicitly, by a body with the power to overrule or
 39 modify the earlier authority.

40 (2) Any taxpayer who frivolously files a sales and use tax claim for refund for an
 41 excessive amount shall be subject to a penalty of 20 percent of such excessive amount.

42 No penalty shall be assessed pursuant to this subsection on any portion of an excessive
 43 amount for which a refund is claimed in good faith and the filing of which was not due
 44 to negligent disregard of the law or of regulations and instructions issued pursuant to the
 45 law.

46 (3)(A) In addition to the penalty imposed under paragraph (2) of this subsection, when
 47 a taxpayer is penalized under paragraph (2) of this subsection on a second or
 48 subsequent occasion, the commissioner shall require that the taxpayer, within 30 days,
 49 either provide a reasonable basis for that portion of the excessive amount of the claim
 50 for which the commissioner has determined that no reasonable basis exists or withdraw
 51 such portion from its refund claim. The failure of such taxpayer to provide a reasonable
 52 basis for or withdraw such portion of the refund claim within 30 days shall constitute
 53 a violation of this paragraph. Such 30 day period shall be extended for such additional
 54 periods as may be agreed upon in writing between the taxpayer and the commissioner
 55 during the initial 30 day period or any extension thereof.

56 (B) Any person who violates subparagraph (A) of this paragraph shall, upon conviction
 57 thereof, be guilty of a misdemeanor."

58 **SECTION 2.**

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

61

SECTION 3.

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