

House Bill 441 (COMMITTEE SUBSTITUTE)

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 civil and criminal penalties regarding certain sales and use tax refund claims; to provide an
5 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 sales and use tax refunds, 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 sales and use tax claim for
18 refund may apply to the commissioner for such expedited refund; and as part of such
19 application the taxpayer shall file a bond that is satisfactory to the commissioner as security
20 for the repayment of such refund and any applicable tax, interest, penalties, fees, or costs
21 in the event that the commissioner determines within the applicable statute of limitations
22 that all or a portion of such refund was paid in error. The commissioner shall issue the
23 refund within 30 days of the date of the posting of the approved bond. Any assessment of
24 tax, interest, penalties, fees, or costs related to the payment of such refund claim shall be
25 made within three years after the date that such refund was paid by the commissioner.

- 26 (c)(1) As used in this subsection, the term:
- 27 (A) 'Disregard' means any careless, reckless, or intentional disregard.
- 28 (B) 'Excessive amount' means that portion of the claim for refund that exceeds the
- 29 amount that is eligible for refund and for which there is no reasonable basis.
- 30 (C) 'Frivolously filed' means a sales and use tax claim for refund in which the amount
- 31 claimed exceeds the amount eligible for refund by at least 50 percent.
- 32 (D) 'Negligence' includes any failure to make a reasonable attempt to comply with the
- 33 provisions of this title.
- 34 (E) 'Reasonable basis' means a position that is reasonably based on one or more of the
- 35 following authorities: applicable provisions of this title and other statutory provisions;
- 36 proposed and adopted regulations construing such statutes; court cases; official
- 37 opinions of the Attorney General; and letter rulings, policy statements, informational
- 38 bulletins, and other administrative pronouncements published by the commissioner.
- 39 Notwithstanding the preceding list of authorities, an authority shall not continue to be
- 40 an authority to the extent it is overruled or modified, implicitly or explicitly, by a body
- 41 with the power to overrule or modify the earlier authority.
- 42 (2) Any taxpayer who frivolously files a sales and use tax claim for refund shall be
- 43 subject to a penalty of 20 percent of the excessive amount. No penalty shall be assessed
- 44 pursuant to this subsection against any portion of an excessive amount for which a refund
- 45 is claimed in good faith and the filing of which was not due to negligence or disregard
- 46 of the law. The determination of whether a taxpayer acted in good faith shall be made
- 47 on a case-by-case basis, taking into account all pertinent facts and circumstances.
- 48 Generally, the most important factor in such determination is the extent of the taxpayer's
- 49 effort to assess the taxpayer's proper tax liability. Circumstances that may indicate good
- 50 faith shall include an honest misunderstanding of fact or law that is reasonable in light
- 51 of all the facts and circumstances, including the experience, knowledge, and education
- 52 of the taxpayer. An isolated computational or transcriptional error generally is not
- 53 inconsistent with good faith.
- 54 (3) In addition to the penalty imposed under paragraph (2) of this subsection, when all
- 55 or part of the excessive amount of the taxpayer's claim for refund is based on a position
- 56 which is knowingly and willfully advanced in bad faith and is patently improper, such
- 57 taxpayer shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished
- 58 by a fine of not more than \$1,000.00."

59 **SECTION 2.**

60 This Act shall become effective upon its approval by the Governor or upon its becoming law

61 without such approval.

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SECTION 3.

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