

House Bill 335 (COMMITTEE SUBSTITUTE)

By: Representatives Knight of the 126th, Peake of the 137th, Mosby of the 90th, and O`Neal of the 146th

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 the comprehensive revision of provisions regarding revenue and
3 taxation; to provide for the service of subpoenas by certified mail; to expand the right to an
4 administrative hearing with respect to claims for sales and use tax refunds; to provide for
5 certain definitions and change certain provisions regarding sales and use tax refunds; to
6 provide for the service of summons of garnishment by certified mail; to enable individual
7 taxpayers who take the qualified education tax credit to file electronically by changing the
8 provisions regarding when the letter of confirmation of donation shall be attached to the
9 return; to provide an effective date; to provide for applicability; to repeal conflicting laws;
10 and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 This Act shall be known and may be cited as the "Improved Taxpayer Customer Service Act
14 of 2009."

15 style="text-align:center">**SECTION 2.**

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
17 amended by revising paragraph (4) of subsection (a) of Code Section 48-2-8, relating to
18 powers of the state revenue commissioner, as follows:

19 "(4) Subpoena the attendance of witnesses and require the production of books, papers,
20 records, and documents and, subject to the rights of the taxpayer as to rights of privacy
21 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine
22 such items and the books, records, inventories, or business of any taxpayer or of any
23 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer
24 or knowledge pertinent to the investigation or inquiry. The subpoena may be served by
25 the commissioner or the commissioner's authorized representative to such person at the

26 person's last known address by registered or certified mail or statutory overnight delivery,
 27 return receipt requested. If such person refuses to accept service of a subpoena by
 28 registered or certified mail or statutory overnight delivery, the subpoena shall be served
 29 by the commissioner or the commissioner's authorized representative under any other
 30 method of lawful service, and the person shall be personally liable to the commissioner
 31 for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be
 32 paid upon notice and demand by the commissioner or the commissioner's delegate and
 33 shall be assessed and collected in the same manner as other taxes administered by the
 34 commissioner."

35 **SECTION 3.**

36 Said title is further amended by revising Code Section 48-2-35, relating to tax refunds, as
 37 follows:

38 "48-2-35.

39 (a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 40 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 41 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 42 as provided in subsection (b) of this Code section, on the amount of the taxes or fees at the
 43 rate of 1 percent per month from the date of payment of the tax or fee to the commissioner.
 44 For the purposes of this Code section, any period of less than one month shall be
 45 considered to be one month. Refunds shall be drawn from the treasury on warrants of the
 46 Governor issued upon itemized requisitions showing in each instance the person to whom
 47 the refund is to be made, the amount of the refund, and the reason for the refund.

48 (b) No interest shall be paid if the taxes or fees were erroneously or illegally assessed and
 49 collected due to the taxpayer failing to claim any credits listed in Article 2 of Chapter 7 of
 50 this title on or before the due date for filing the applicable income tax return, including any
 51 extensions which have been granted.

52 (c)(1)(A) A claim for refund of a tax or fee erroneously or illegally assessed and
 53 collected may be made by the taxpayer at any time within three years after:

54 (i) The date of the payment of the tax or fee to the commissioner; or

55 (ii) In the case of income taxes, the later of the date of the payment of the tax or fee
 56 to the commissioner or the due date for filing the applicable income tax return,
 57 including any extensions which have been granted.

58 (B) Each claim shall be filed in writing in the form and containing such information
 59 as the commissioner may reasonably require and shall include a summary statement of
 60 the grounds upon which the taxpayer relies and an identification of the transactions
 61 being contested.

62 (C) Should any person be prevented from filing such ~~an application~~ a claim because
 63 of service of such person or such person's counsel in the armed forces during such
 64 period, the period of limitation shall date from the discharge of such person or such
 65 person's counsel from such service.

66 (D) A claim for refund may not be submitted by the taxpayer on behalf of a class
 67 consisting of other taxpayers who are alleged to be similarly situated.

68 (2) In the event the taxpayer desires a conference or hearing before the commissioner or
 69 the commissioner's delegate in connection with any claim for refund, he or she shall
 70 specify such desire in writing in the claim and, if the claim conforms with the
 71 requirements of this Code section, the commissioner shall grant a conference at a time
 72 he or she shall reasonably specify. A taxpayer may contest any claim for refund that is
 73 denied in whole or in part by filing with the commissioner a written protest at any time
 74 within 30 days from the date of notice of refund denial or partial payment. Such 30 day
 75 period shall be extended for such additional period as may be agreed upon in writing
 76 between the taxpayer and the commissioner during the initial 30 day period or any
 77 extension thereof. In the event the taxpayer wishes to request a conference, that request
 78 shall be included in the written protest. All protests shall be prepared in the form and
 79 contain such information as the commissioner shall reasonably require and shall include
 80 a summary statement of the grounds upon which the taxpayer relies, an identification of
 81 the transactions being contested, and the reasons for disputing the findings of the
 82 commissioner. The commissioner shall grant a conference before the commissioner's
 83 designated officer or agent at a time specified and shall make reasonable rules governing
 84 the conduct of conferences. The discretion given in this Code section to the
 85 commissioner shall be reasonably exercised on all occasions.

86 (3) The commissioner or ~~his or her~~ the commissioner's delegate shall consider
 87 information contained in the taxpayer's claim for refund, together with such other
 88 information as may be available, and shall approve or ~~disapprove~~ deny the taxpayer's
 89 claim and notify the taxpayer of ~~his or her~~ the action.

90 (4) Any taxpayer whose claim for refund is denied by the commissioner or ~~his or her~~ the
 91 commissioner's delegate or whose claim is not decided by the commissioner or ~~his or her~~
 92 the commissioner's delegate within one year from the date of filing the claim shall have
 93 the right to bring an action for a refund in the superior court of the county of the residence
 94 of the taxpayer, except that:

95 (A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right
 96 to bring an action for a refund in the superior court of the county in which is located the
 97 taxpayer's principal place of doing business in this state or in which the taxpayer's chief

98 or highest corporate officer or employee resident in this state maintains ~~his or her~~ an
 99 office; or

100 (B) If the taxpayer is a nonresident individual or foreign corporation having no place
 101 of doing business and no officer or employee resident and maintaining ~~his or her~~ an
 102 office in this state, the taxpayer shall have the right to bring an action for a refund in the
 103 Superior Court of Fulton County or in the superior court of the county in which the
 104 commissioner in office at the time the action is filed resides.

105 (5) An action for a refund pursuant to paragraph (4) of this subsection ~~may~~ shall not be
 106 brought by the taxpayer on behalf of a class consisting of other taxpayers who are alleged
 107 to be similarly situated.

108 (6)(A) No action or proceeding for the recovery of a refund under this Code section
 109 shall be commenced before the expiration of one year from the date of filing the claim
 110 for refund unless the commissioner or ~~his or her~~ the commissioner's delegate renders
 111 a decision on the claim within that time, nor shall any action or proceeding be
 112 commenced after the later of:

113 (i) The expiration of two years from the date the claim is denied; or

114 (ii) If a valid protest is filed under paragraph (2) of this subsection, 30 days after the
 115 date of the department's notice of decision on such protest.

116 (B) The ~~two-year~~ period prescribed in this paragraph for filing an action for refund
 117 shall be extended for such period as may be agreed upon in writing between the
 118 taxpayer and the commissioner ~~during the two-year~~ prior to the expiration of such
 119 period or any extension thereof.

120 (d) In the event any taxpayer's claim for refund is approved by the commissioner or ~~his or~~
 121 ~~her~~ the commissioner's delegate and the taxpayer has not paid other state taxes which have
 122 become due, the commissioner or department may ~~set off the unpaid taxes~~ offset any
 123 existing liabilities against the refund. ~~When~~ Once the ~~setoff~~ offset authorized by this
 124 subsection ~~is exercised~~ occurs, the refund shall be deemed granted and the amount of the
 125 ~~setoff~~ offset shall be considered for all purposes as a payment toward the particular tax ~~debt~~
 126 ~~which is being set off~~ liabilities at issue. Any excess refund ~~remaining~~ amount after the
 127 ~~setoff~~ has any offsets have been applied shall be refunded to the taxpayer at the same time
 128 the offset is taken.

129 (e) This Code section shall not apply to taxes paid ~~or stamps purchased~~ for alcoholic
 130 beverages pursuant to Title 3.

131 (f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
 132 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
 133 apply."

134 **SECTION 4.**

135 Said title is further amended by revising Code Section 48-2-35.1, relating to sales and use
136 tax refunds, as follows:

137 "48-2-35.1.

138 (a) Except as provided for in this subsection, for the purposes of all claims for refund of
139 sales and use taxes erroneously or illegally assessed and collected, the term 'taxpayer' as
140 used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that
141 collected and remitted erroneous or illegal sales and use taxes to the commissioner. A
142 person that has erroneously or illegally paid sales taxes to a dealer that collected and
143 remitted such taxes to the commissioner may elect to seek a refund from such dealer.
144 Alternatively, such person may file a claim for refund either initially with the
145 commissioner or with the commissioner after being unable to obtain a refund from such
146 dealer and shall also be considered a taxpayer for purposes of filing a claim for refund
147 under Code Section 48-2-35, but only if such person:

148 (1) When filing a refund claim initially with the commissioner, provides the department
149 with a notarized form prescribed by the commissioner and executed by the dealer
150 affirming that the dealer:

151 (A) Has not claimed or will not claim a refund of the same tax included in the person's
152 request for refund;

153 (B) Will provide to the person any information or documentation in the dealer's
154 possession needed for submission to the department to support or prove the claim for
155 refund;

156 (C) Has remitted to the state the taxes being sought for refund; and

157 (D) Has not taken or will not take a credit for taxes being sought for refund; or

158 (2)(A) When filing a refund claim with the commissioner after being unable to obtain
159 a refund from such dealer, such person provides a letter or other information as may be
160 requested by the commissioner that either:

161 (i) The dealer refused or was unable to refund the erroneously or illegally assessed
162 and collected taxes; or

163 (ii) The dealer did not act upon the person's written request for refund of the
164 erroneously or illegally assessed and collected taxes within 90 days from the date of
165 such request for refund.

166 (B) Upon acceptance of such letter or information by the commissioner, the dealer
167 shall be deemed to have assigned all rights to the refund to such person.

168 (b) If a certificate or exemption determination letter issued by the commissioner certifying
169 that the purchaser is entitled to purchase tangible personal property or taxable services
170 without the payment of sales and use tax has not been obtained and used prior to

171 purchasing such tangible personal property or taxable services, a refund of sales and use
 172 taxes shall be made without interest."

173 **SECTION 5.**

174 Said title is further amended by revising Code Section 48-2-55, relating to garnishments and
 175 levies, by revising paragraph (2) of subsection (b) as follows:

176 "(2) The commissioner or ~~his~~ the commissioner's authorized representative may use
 177 garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the
 178 state which are imposed by this title or which the commissioner or the department is
 179 responsible for collecting under any other law. Garnishment may be issued by the
 180 commissioner or ~~his~~ the commissioner's authorized representative against any person
 181 whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property,
 182 money, or effects in ~~his~~ such person's hands belonging to the defendant. The summons
 183 of garnishment shall be served by the commissioner or ~~his~~ the commissioner's authorized
 184 representative, shall be served at least 15 days before the sitting of the court to which the
 185 summons is made returnable, and shall be returned to either the superior court or the state
 186 court of the county in which the garnishee is served. The commissioner or ~~his~~ the
 187 commissioner's authorized representative shall enter on the execution the names of the
 188 persons garnished and shall return the execution to the appropriate court. All subsequent
 189 proceedings shall be the same as provided by law regarding garnishments in other cases
 190 when judgment has been obtained or execution issued. In addition to any other methods
 191 of service, the summons of garnishment may be served by the commissioner or the
 192 commissioner's authorized representative to the garnishee by registered or certified mail
 193 or statutory overnight delivery, return receipt requested. Either the return receipt
 194 indicating receipt by the garnishee or the envelope bearing the official notification from
 195 the United States Postal Service of the garnishee's refusal to accept delivery of such
 196 registered or certified mail or statutory overnight delivery shall be filed with the clerk of
 197 the court in which the garnishment is pending. If statutory overnight delivery was
 198 accomplished through a commercial firm as provided under paragraph (1) of subsection
 199 (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the
 200 envelope bearing the official notification of such commercial firm of the garnishee's
 201 refusal to accept delivery shall be filed with the clerk of the court in which garnishment
 202 is pending. If a garnishee refuses to accept service of a summons of garnishment by
 203 registered or certified mail or statutory overnight delivery, the summons of garnishment
 204 shall be served by the commissioner or the commissioner's authorized representative
 205 under any other method of lawful service and the garnishee shall be personally liable to
 206 the commissioner for a sum equal to the actual costs incurred to serve the summons of

207 garnishment. This liability shall be paid upon notice and demand by the commissioner
208 or the commissioner's delegate and shall be assessed and collected in the same manner
209 as other taxes administered by the commissioner."

210 **SECTION 6.**

211 Said title is further amended in Code Section 48-7-29.16, relating to qualified education tax
212 credits, by revising subsection (g) as follows:

213 "(g) In order for the taxpayer to claim the student scholarship organization tax credit under
214 this Code section, a letter of confirmation of donation issued by the student scholarship
215 organization to which the contribution was made shall be attached to the taxpayer's tax
216 return. However, in the event the taxpayer files an electronic return, such confirmation
217 shall only be required to be electronically attached to the return if the Internal Revenue
218 Service allows such attachments when the data is transmitted to the department. In the
219 event the taxpayer files an electronic return and such confirmation is not attached because
220 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic
221 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer
222 and made available upon request by the commissioner. The letter of confirmation of
223 donation shall contain the taxpayer's name, address, tax identification number, the amount
224 of the contribution, the date of the contribution, and the amount of the credit."

225 **SECTION 7.**

226 (a) Except as otherwise provided in this section, this Act shall become effective upon its
227 approval by the Governor or upon its becoming law without such approval.

228 (b) Section 6 of this Act shall become effective upon this Act's approval by the Governor
229 or upon its becoming law without such approval and shall be applicable to all taxable years
230 beginning on or after January 1, 2008.

231 **SECTION 8.**

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