

House Bill 441 (AS PASSED HOUSE AND SENATE)

By: Representative 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 expedited payment of sales and use tax refund claims
3 secured by a satisfactory bond; to provide for civil and criminal penalties regarding certain
4 sales and use tax refund claims; to authorize refunds to credit card issuers for certain motor
5 fuel sales to tax-exempt entities; to provide for procedures, conditions, and limitations; to
6 provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
10 amended by revising Code Section 48-2-35.1, relating to sales and use tax refunds, to read
11 as follows:

12 "48-2-35.1.

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

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

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

60 **SECTION 2.**

61 Said title is further amended by adding a new Code section to read as follows:

62 "48-9-10.1.

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

64 (1) 'Credit card issuer' means the party that extends credit, through the issuance of a
65 credit card, to the qualified governmental tax-exempt entity that purchases 'motor fuel'
66 for 'highway use' as those terms are defined under Code Section 48-9-2 for a qualified
67 governmental tax-exempt entity's exclusive use.

68 (2) 'Qualified governmental tax-exempt entity' means a government entity that is exempt
69 from sales and use tax under Chapter 8 of Title 48, or other provision of general law.

70 (b) In the event that a sale of 'motor fuel' for 'highway use' is made to a qualified
71 governmental tax-exempt entity, by means of a credit card issued by a credit card issuer to
72 the qualified governmental tax-exempt entity when such credit card issuer invoices and
73 bills such qualified governmental tax-exempt entity net of the applicable taxes, such credit
74 card issuer may obtain a refund for the sales and use taxes paid on such sales.

75 (c) In order for a credit card issuer to be eligible to claim a refund of sales and use taxes
76 provided under this Code section, the credit card issuer must be registered with Internal
77 Revenue Service under Section 4101 of the Internal Revenue Code as a credit card issuer;
78 establish that it has not collected the tax from the qualified governmental tax-exempt entity
79 who purchased the motor fuel; establish that it repaid the amount of the tax to the dealer
80 in full with all applicable taxes included; and has obtained the written consent of the dealer
81 to the allowance of the credit or refund or has otherwise made arrangements which directly
82 or indirectly provide the dealer with reimbursement of the tax.

83 (d) Refunds of sales and use tax pursuant to this Code section shall be made without
84 interest.

85 (e) The commissioner is authorized to promulgate rules and regulations deemed necessary
86 in order to administer and effectuate this Code section."

87 **SECTION 3.**

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

90 **SECTION 4.**

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