

House Bill 485 (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 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 for alternative tax credits for base year port traffic; to provide for
10 procedures, conditions, and limitations; to provide for powers, duties, and authority of the
11 state revenue commissioner; to provide for effective dates; to provide for applicability; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

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

17 **SECTION 2.**

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

21 "(4) Subpoena the attendance of witnesses and require the production of books, papers,
22 records, and documents and, subject to the rights of the taxpayer as to rights of privacy
23 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine
24 such items and the books, records, inventories, or business of any taxpayer or of any
25 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer

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

37 **SECTION 3.**

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

40 "48-2-35.

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

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

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

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

60 (B) Each claim shall be filed in writing in the form and containing such information
 61 as the commissioner may reasonably require and shall include a summary statement of

62 the grounds upon which the taxpayer relies and an identification of the transactions
 63 being contested.

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

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

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

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

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

97 (A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right
 98 to bring an action for a refund in the superior court of the county in which is located the

99 taxpayer's principal place of doing business in this state or in which the taxpayer's chief
 100 or highest corporate officer or employee resident in this state maintains ~~his or her~~ an
 101 office; or

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

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

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

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

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

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

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

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

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

SECTION 4.

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

139 "48-2-35.1.

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

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

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

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

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

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

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

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

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

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

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

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

175 **SECTION 5.**

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

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

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

212 **SECTION 6.**

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

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

227 **SECTION 7.**

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

229 "48-7-40.15A.

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

231 (1) 'Base year port traffic' means the total amount of net tons, containers, or twenty-foot
 232 equivalent units (TEU's) of product actually imported into this state or exported out of
 233 this state by way of a waterborne ship or vehicle through a port facility during the period
 234 from January 1, 1997, through December 31, 1997; provided, however, that in the event
 235 the total amount actually imported into this state or exported out of this state during such
 236 period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units
 237 (TEU's), then 'base year port traffic' means 75 net tons, five containers, or ten twenty-foot
 238 equivalent units (TEU's).

239 (2) 'Business enterprise' means any business located in a tier two or tier three county
 240 established pursuant to Code Section 48-7-40 and in a less developed area established
 241 pursuant to Code Section 48-7-40.1 and which qualifies and receives the tax credit under
 242 Code Section 48-7-40.1 and which:

- 243 (A) Consists of a distribution facility of greater than 650,000 square feet in operation
 244 in this state prior to December 31, 2008;
- 245 (B) Distributes product to retail stores owned by the same legal entity or its
 246 subsidiaries as such distribution facility; and
- 247 (C) Has a minimum of 8 retail stores in this state in the first year of operations.
- 248 (3) 'Port traffic' means the total amount of net tons, containers, or twenty-foot equivalent
 249 units (TEU's) of product imported into this state or exported out of this state by way of
 250 a waterborne ship or vehicle through a port facility.
- 251 (4) 'Product' means a marketable product or component of a product which has an
 252 economic value to the wholesale or retail consumer and is ready to be used without
 253 further alteration of its form or a product or material which is marketed as a prepared
 254 material or is a component in the manufacturing and assembly of other finished products.
- 255 (b)(1) In the case of any business enterprise which has increased its port traffic of
 256 products during the previous 12 month period by more than 10 percent above its base
 257 year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or
 258 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed
 259 an additional \$1,250.00 job tax credit against the tax imposed under this article.
- 260 (2) The tax credit described in this subsection shall be allowed subject to the conditions
 261 and limitations set forth in Code Section 48-7-40 and shall be in addition to the credit
 262 allowed under Code Section 48-7-40; provided, however, that such credit shall not be
 263 allowed during a year if the port traffic does not remain above the minimum level
 264 established in this Code section.
- 265 (c) No business enterprise shall be authorized to claim the credits provided for in both
 266 subsection (b) of this Code section and subsection (b) of Code Section 48-7-40.15 on a tax
 267 return for any taxable year unless such business enterprise has increased its port traffic of
 268 products during the previous 12 month period by more than 20 percent above its base year
 269 port traffic and has increased employment by 400 or more no sooner than January 1, 1998.
- 270 (d)(1) The credit granted under this Code section shall be subject to the following
 271 conditions and limitations:
- 272 (2) For every year in which a taxpayer claims the credit, the taxpayer shall attach a
 273 schedule to the taxpayer's state income tax return which shall set forth the following
 274 information, as a minimum, in addition to the information required under Code Sections
 275 48-7-40 and 48-7-40.2 or 48-7-40.7:
- 276 (A) A description of how the base year port traffic and the increase in port traffic was
 277 determined;
- 278 (B) The amount of the base year port traffic;

- 279 (C) The amount of the increase in port traffic for the taxable year, including
 280 information which demonstrates an increase in port traffic in excess of the minimum
 281 amount required to claim the tax credit under this Code section;
 282 (D) Any tax credit utilized by the taxpayer in prior years;
 283 (E) The amount of tax credit carried over from prior years;
 284 (F) The amount of tax credit utilized by the taxpayer in the current taxable year; and
 285 (G) The amount of tax credit to be carried over to subsequent tax years.
 286 (3)(A) Any tax credit claimed under subsection (b) of this Code section but not used
 287 in any taxable year may be carried forward for ten years from the close of the taxable
 288 year in which the qualified jobs were established, provided that the increase in port
 289 traffic remains above the minimum levels established in Code Section 48-7-40 and this
 290 Code section, respectively.
 291 (B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2,
 292 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount
 293 not greater than 50 percent of the taxpayer's state income tax liability which is
 294 attributable to income derived from operations in this state for that taxable year.
 295 (C) The tax credit established by this Code section in addition to that pursuant to Code
 296 Section 48-7-40 and taken in any one taxable year shall be limited to an amount not
 297 greater than 50 percent of the taxpayer's state income tax liability which is attributable
 298 to income derived from operations in this state for that taxable year.
 299 (D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new
 300 eligibility for any succeeding taxpayer, but any unused credit may be transferred and
 301 continued by any transferee of the taxpayer.
 302 (e) No tax credit may be claimed and allowed pursuant to this Code section for any jobs
 303 created on or after January 1, 2015."

304 **SECTION 8.**

- 305 (a) Except as otherwise provided in this section, this Act shall become effective upon its
 306 approval by the Governor or upon its becoming law without such approval.
 307 (b) Section 6 of this Act shall become effective upon this Act's approval by the Governor
 308 or upon its becoming law without such approval and shall be applicable to all taxable years
 309 beginning on or after January 1, 2008.

310 **SECTION 9.**

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