

House Bill 56 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49th, Geisinger of the 48th, Powell of the 171st, and Thompson of the 104th

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the joint county and municipal sales and use tax, so as to revise and change
3 procedures and requirements regarding the renegotiation of distribution certificates; to
4 change certain provisions regarding failure to file a new certificate; to change certain
5 provisions regarding discontinuation of the tax; to provide an effective date; to repeal
6 conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Article 2 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 joint county and municipal sales and use tax, is amended by revising subsection (d) of Code
11 Section 48-8-89, relating to the distribution of proceeds and the renegotiation of distribution
12 certificates, as follows:

13 "(d)(1) Except as otherwise provided in paragraph (7) of this subsection, a certificate
14 providing for the distribution of the proceeds of the tax authorized by this article shall
15 expire on December 31 of the second year following the year in which the decennial
16 census is conducted. No later than December 30 of the second year following the year in
17 which the census is conducted, a renegotiated certificate meeting the requirements for
18 certificates specified by subsection (b) of this Code section shall be filed with and
19 received by the commissioner. The General Assembly recognizes that the requirement
20 for government services is not always in direct correlation with population. Although a
21 renegotiated certificate is required within a time certain of the decennial census, this
22 requirement is not meant to convey an intent by the General Assembly that population
23 as a criterion should be more heavily weighted than other criteria. It is the express intent
24 of the General Assembly in requiring such renegotiation that eligible political
25 subdivisions shall analyze local service delivery responsibilities and the existing
26 allocation of proceeds made available to such governments under the provisions of this

27 article and make rational the allocation of such resources to meet such service delivery
28 responsibilities. Political subdivisions in their renegotiation of such distributions shall at
29 a minimum consider the criteria specified in subsection (b) of this Code section.

30 (2) The commissioner shall be notified in writing of the commencement of renegotiation
31 proceedings by the county governing authority ~~in on~~ behalf of all eligible political
32 subdivisions within the special district. The eligible political subdivisions shall
33 commence renegotiations at the call of the county governing authority ~~but no later than~~
34 before July 1 of the second year following the year in which the census is conducted. If
35 the county governing authority does not issue the call by that date, any eligible
36 municipality may issue the call and so notify the commissioner and all eligible political
37 subdivisions in the special district.

38 (3)(A) Following the commencement of ~~such~~ renegotiation, if the parties necessary to
39 an agreement fail to reach an agreement within 60 days, such parties shall ~~agree to~~ submit
40 the dispute to nonbinding arbitration, mediation, or such other means of
41 resolving conflicts in a manner which; ~~in the judgment of the commissioner,~~ reflects a
42 good faith effort to resolve the dispute. Any renegotiation agreement reached pursuant
43 to this paragraph shall be in accordance with the requirements specified in paragraph
44 (1) of this subsection. If the parties fail to reach an agreement within 60 days of
45 submitting the dispute to nonbinding arbitration, mediation, or such other means of
46 resolving conflicts, any party necessary to an agreement may file a petition in superior
47 court of the county seeking resolution of the items remaining in dispute. Such petition
48 shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not
49 a judge in the circuit in which the county is located. The judge selected may also be a
50 senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

51 (B) The county and qualified municipalities representing at least one-half of the
52 aggregate municipal population of all qualified municipalities located wholly or
53 partially within the special district shall separately submit to the judge and the other
54 parties a written best and final offer as to the distribution of the tax proceeds. There
55 shall be one such offer from the county and one from qualified municipalities
56 representing at least one-half of the aggregate municipal population of all qualified
57 municipalities located wholly or partially within the special district. The offer from the
58 county may be an offer representing the county and any municipalities that are not
59 represented in the offer from the qualified municipalities representing at least one-half
60 of the aggregate municipal population of all qualified municipalities located wholly or
61 partially within the special district.

62 (C) Any qualified municipality or municipalities located wholly or partially within the
63 special district who are not a party to an offer under subparagraph (B) of this paragraph

64 and representing at least one-half of the aggregate municipal population of all qualified
65 municipalities who are not a party to an offer under subparagraph (B) of this paragraph
66 shall be authorized to separately submit to the judge and the other parties a written best
67 and final offer as to the distribution of the tax proceeds. There shall be one such offer
68 from such qualified municipality or municipalities.

69 (D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into
70 account the allocation required for any absent municipalities in accordance with
71 subsection (b) of this Code section. The visiting or senior judge shall conduct such
72 hearings as the judge deems necessary and shall render a decision based on, but not
73 limited to, the criteria in subsection (b) of this Code section and in paragraph (1) of this
74 subsection. The judge's decision as to the allocation of the tax proceeds shall adopt the
75 best and final offer of one of the parties under subparagraphs (B) and (C) of this
76 paragraph but shall also include findings of fact. The judge shall enter a final order
77 containing a new distribution certificate and transmit a copy of it to the commissioner.
78 Appeal shall be by application and the decision of the judge shall be disturbed only for
79 the judge's disregard of the law, for partiality of the judge, or for corruption, fraud, or
80 misconduct by the judge or a party.

81 (4) If the renegotiated certificate provided for in paragraph (1) of this subsection is not
82 received by the commissioner by the required date, ~~the authority to impose the tax~~
83 ~~authorized by Code Section 48-8-82~~ shall cease on December 31 of the second year
84 following the year in which the decennial census is conducted and the tax shall not be
85 levied in the special district after such date unless the reimposition of the tax is
86 subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the
87 tax is so terminated, the commissioner shall retain the proceeds of the tax which were to
88 be distributed to the governing authorities of the county and qualified municipalities
89 within the special district until the commissioner receives a certificate in behalf of each
90 such governing authority specifying the percentage of the proceeds which each such
91 governing authority shall receive. If no such certificate is received by the commissioner
92 within 120 days of the date on which the authority to levy the tax was terminated, the
93 proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the
94 state's general fund the commissioner shall continue to distribute the sales tax proceeds
95 according to the percentages specified in the existing certificate or in accordance with
96 subsection (f) of Code Section 48-8-89.1, as applicable, until a new certificate is properly
97 filed.

98 (5) If the commissioner receives ~~the~~ a renegotiated certificate by the required date, the
99 commissioner shall distribute the proceeds of the tax in accordance with the directions
100 of the renegotiated certificate commencing on January 1 of the year immediately

101 following the year in which such certificate was renegotiated or the first day of the
102 second calendar month following the month such certificate was renegotiated, whichever
103 is sooner.

104 (6) Costs of any conflict resolution under paragraph (3) of this subsection shall be borne
105 proportionately by the affected political subdivisions in accordance with the final
106 percentage distributions of the proceeds of the tax as reflected by the renegotiated
107 certificate or as otherwise ordered by the court.

108 ~~(7) All distribution certificates on file with the commissioner on July 1, 1994, which
109 were not renegotiated in accordance with the 1990 decennial census figures or
110 renegotiated on or after January 1, 1992, shall expire on December 31, 1995.
111 Renegotiations with respect to such certificates shall be commenced in accordance with
112 the requirements of this subsection on or before July 1, 1994. If a renegotiated certificate
113 is not received by the commissioner by July 1, 1995, the authority to impose the tax
114 authorized by Code Section 48-8-82 shall cease on December 31, 1995, and the tax shall
115 not be levied in the special district after that date unless reimposition of the tax is
116 subsequently authorized pursuant to Code Section 48-8-85. The commissioner shall retain
117 and distribute the proceeds of such terminated tax in accordance with paragraph (4) of
118 this subsection.~~

119 ~~(8) No qualified municipality within the special district whose population is less than 5
120 percent of the population in the special district according to the United States decennial
121 census of 1990 shall receive a reduced percentage of distribution than presently being
122 received under the existing certificate prior to renegotiations required in paragraph (7) of
123 this subsection unless the new agreement is executed by the qualified municipality. This
124 paragraph shall apply only to the negotiations required by paragraph (7) of this subsection
125 and shall not apply to any subsequent renegotiations required by this subsection.~~

126 ~~(9)(7) Political subdivisions shall be authorized, at their option, to renegotiate
127 distribution certificates on a more frequent basis than is otherwise required under this
128 subsection.~~

129 (8) Notwithstanding any other provision of this article to the contrary, the imposition of
130 this tax shall not terminate based on a failure to file a new or renegotiated certificate.

131 ~~(10)(9) No provision of this subsection shall apply to any county which is authorized to
132 levy or which levies a local sales tax, local use tax, or local sales and use tax for
133 educational purposes pursuant to a local constitutional amendment or to any county
134 which is authorized to expend all or any portion of the proceeds of any sales tax, use tax,
135 or sales and use tax for educational purposes pursuant to a local constitutional
136 amendment."~~

137

SECTION 2.

138 Said article is further amended by revising subsection (d) of Code Section 48-8-89.1, relating
139 to lapsing of the tax due to failure to file a new certificate, as follows:

140 ~~"(d) If a new certificate is not filed for any special district as required by this Code section,~~
141 ~~the authority to impose the tax authorized by Code Section 48-8-82 within that special~~
142 ~~district shall cease on the first day of January of the year following the year in which the~~
143 ~~required distribution certificate could last have been timely filed. In any special district in~~
144 ~~which the authority to impose the tax is terminated pursuant to this subsection, the tax may~~
145 ~~thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84~~
146 ~~through 48-8-86 Reserved."~~

147

SECTION 3.

148 Said article is further amended by revising Code Section 48-8-92, relating to the referendum
149 election on discontinuing imposition of the tax, as follows:

150 "48-8-92.

151 (a) Whenever the governing authority of any county ~~or and the governing authorities of~~
152 ~~at least one-half of qualified municipality municipalities located wholly or partially within~~
153 a special district in which the tax authorized by this article is being levied ~~wishes wish~~ to
154 submit to the electors of the special district the question of whether the tax authorized by
155 Code Section 48-8-82 shall be discontinued, ~~the such governing authority authorities~~ shall
156 notify the election superintendent of the county whose geographical boundary is
157 conterminous with that of the special district by forwarding to the superintendent a copy
158 of a joint resolution of the governing ~~authority authorities~~ calling for the referendum
159 election. Upon receipt of the resolution, it shall be the duty of the election superintendent
160 to issue the call for an election for the purpose of submitting the question of discontinuing
161 the levy of the tax to the voters of the special district for approval or rejection. The election
162 superintendent shall ~~set the date of the election for a day not less than 30 nor more than 45~~
163 ~~days after the date of the issuance of the call issue the call and shall conduct the election~~
164 ~~on a date and in the manner authorized under Code Section 21-2-540.~~ The election
165 superintendent shall cause the date and purpose of the election to be published once a week
166 for two weeks immediately preceding the date of the election in the official organ of the
167 county. The ballot shall have written or printed thereon the following:

168 YES Shall the 1 percent retail sales and use tax being levied within the special
169 NO district within _____ County be terminated?"

170 (b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes,' and all
171 persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes
172 cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first

173 day of the second calendar quarter following the month in which the commissioner receives
174 the certification of the result of the election; otherwise, the tax shall continue to be levied,
175 and the question of the discontinuing of the tax may not again be submitted to the voters
176 of the special district until after 24 months immediately following the month in which the
177 election was held. It shall be the duty of the election superintendent to hold and conduct
178 such elections under the same rules and regulations as govern special elections. It shall be
179 ~~his~~ such superintendent's further duty to canvass the returns, declare and certify the result
180 of the election, and certify the result to the Secretary of State and to the commissioner. The
181 expense of the election shall be borne by the county whose geographical boundary is
182 conterminous with that of the special district holding the election."

183 **SECTION 4.**

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

186 **SECTION 5.**

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