

House Bill 918

By: Representative Kidd of the 141<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to state sales and use taxation, so as to provide for a temporary increase in the rate  
3 of state sales and use taxation; to provide for the period for such rate to be in effect; to  
4 provide for a rollback of such increase when the Governor certifies that other state revenues  
5 have reached a certain level; to provide for conforming amendments; to provide for related  
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state  
10 sales and use taxation, is amended in Code Section 48-8-3, relating to exemptions from  
11 taxation, by revising subparagraph (B) of paragraph (33.1) as follows:

12 "(B) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall  
13 be exempt from the first 1.80 percent of the ~~4 percent~~ percentage of state sales and use  
14 tax imposed by this chapter and shall be subject to the remaining ~~2.20 percent~~  
15 percentage of the 4 percent state sales and use tax imposed by this chapter."

16 **SECTION 2.**

17 Said article is further amended in Code Section 48-8-3.1, relating to exemptions for and  
18 taxation of motor fuels, by revising subsections (a) and (b) as follows:

19 "(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as  
20 defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first 3 percent  
21 of the sales and use taxes levied or imposed by this article and shall be subject to the  
22 remaining ~~1 percent~~ percentage of the sales and use taxes levied or imposed by this article.  
23 (b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is  
24 purchased for purposes other than propelling motor vehicles on public highways as defined  
25 in Article 1 of Chapter 9 of this title shall be fully subject to the ~~4 percent~~ sales and use

26 taxes levied or imposed by this article unless otherwise specifically exempted by this  
 27 article."

28 **SECTION 3.**

29 Said article is further amended by revising Code Section 48-8-30, relating to imposition, rate,  
 30 and collection of taxes, as follows:

31 "48-8-30.

32 (a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use,  
 33 or consumption of tangible personal property and on the services described in this article.

34 The rate of the state sales and use taxation provided for in this article shall be:

35 (1) Four percent, except as otherwise provided in paragraph (2) of this subsection; and  
 36 (2) Six percent for the time period specified in this paragraph. This time period for the  
 37 6 percent rate of taxation shall begin on July 1, 2010, and shall end 90 days after the end  
 38 of the fiscal year for which the Governor issues his or her certification that state revenues  
 39 for such fiscal year, other than revenue derived from the increase in the rate of state sales  
 40 and use taxation from 4 percent to 6 percent, are equal to or greater than state revenues  
 41 for the fiscal year ending June 30, 2006.

42 (b)(1) Every purchaser of tangible personal property at retail in this state shall be liable  
 43 for a tax on the purchase at the ~~rate of 4 percent~~ percentage of the sales price of the  
 44 purchase specified in subsection (a) of this Code section. The tax shall be paid by the  
 45 purchaser to the retailer making the sale, as provided in this article. The retailer shall  
 46 remit the tax to the commissioner as provided in this article and, when received by the  
 47 commissioner, the tax shall be a credit against the tax imposed on the retailer. Every  
 48 person making a sale or sales of tangible personal property at retail in this state shall be  
 49 a retailer and a dealer and shall be liable for a tax on the sale at the ~~rate of 4 percent~~  
 50 percentage of the gross sale or gross sales specified in subsection (a) of this Code section,  
 51 or the amount of taxes collected by him from his purchaser or purchasers, whichever is  
 52 greater.

53 (2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the  
 54 purchaser at retail.

55 (c)(1) Upon the first instance of use, consumption, distribution, or storage within this  
 56 state of tangible personal property purchased at retail outside this state, the owner or user  
 57 of the property shall be a dealer and shall be liable for a tax at the ~~rate of 4 percent~~  
 58 percentage of the cost price specified in subsection (a) of this Code section, except as  
 59 provided in paragraph (2) of this subsection.

60 (2) Upon the first instance of use, consumption, distribution, or storage within this state  
 61 of tangible personal property purchased at retail outside this state and used outside this

62 state for more than six months prior to its first use within this state, the owner or user of  
63 the property shall be a dealer and shall be liable for a tax at the ~~rate of 4 percent~~  
64 percentage of the cost price or fair market value of the property specified in subsection  
65 (a) of this Code section, whichever is the lesser.

66 (3) This subsection shall not be construed to require a duplication in the payment of the  
67 tax. The tax imposed by this subsection shall be subject to the credit otherwise granted  
68 by this article for like taxes previously paid in another state.

69 (c.1)(1) Every purchaser of tangible personal property at retail outside this state from a  
70 dealer, as defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2, when  
71 such property is to be used, consumed, distributed, or stored within this state, shall be  
72 liable for a tax on the purchase at the ~~rate of 4 percent~~ percentage of the sales price of the  
73 purchase specified in subsection (a) of this Code section. It shall be prima-facie evidence  
74 that such property is to be used, consumed, distributed, or stored within this state if that  
75 property is delivered in this state to the purchaser or agent thereof. The tax shall be paid  
76 by the purchaser to the retailer making the sale, as provided in this article. The retailer  
77 shall remit the tax to the commissioner as provided in this article and, when received by  
78 the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every  
79 person who is a dealer, as defined in subparagraph (H) of paragraph (3) of Code Section  
80 48-8-2 and who makes any sale of tangible personal property at retail outside this state  
81 which property is to be delivered in this state to a purchaser or purchaser's agent shall be  
82 a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale  
83 at the ~~rate of 4 percent~~ percentage of such gross sales specified in subsection (a) of this  
84 Code section or the amount of tax as collected by that person from purchasers having  
85 their purchases delivered in this state, whichever is greater.

86 (2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the  
87 purchaser at retail. The tax imposed by this subsection shall be subject to the credit  
88 otherwise granted by this article for like taxes previously paid in another state. This  
89 subsection shall not be construed to require a duplication in the payment of the tax.

90 (d)(1) Every person to whom tangible personal property in the state is leased or rented  
91 shall be liable for a tax on the lease or rental at the ~~rate of 4 percent~~ percentage of the  
92 gross lease or rental charge specified in subsection (a) of this Code section. The tax shall  
93 be paid to the person who leases or rents the property by the person to whom the property  
94 is leased or rented. A person who leases or rents property to others as a dealer under this  
95 article shall remit the tax to the commissioner as provided in this article. When received  
96 by the commissioner, the tax shall be a credit against the tax imposed on the person who  
97 leases or rents the property to others. Every person who leases or rents tangible personal  
98 property in this state to others shall be a dealer and shall be liable for a tax on the lease

99 or rental at the ~~rate of 4 percent~~ percentage of the gross lease or rental proceeds specified  
100 in subsection (a) of this Code section, or the amount of taxes collected by him from  
101 persons to whom he leases or rents tangible personal property, whichever is greater.

102 (2) No lease or rental shall be taxable to the person who leases or rents tangible property  
103 to another which is not taxable to the person to whom the property is leased or rented.

104 (3) The lessee of both taxable and exempt property in this state under a single lease  
105 agreement containing a lease period of ten years or more shall have the option to  
106 discharge in full all sales and use taxes imposed by this article relating to the tangible  
107 personal property by paying in a lump sum ~~4 percent~~ the percentage of the fair market  
108 value of the tangible personal property specified in subsection (a) of this Code section at  
109 the date of inception of the lease agreement in the same manner and under the same  
110 conditions applicable to sales of the tangible personal property.

111 (e) Upon the first instance of use within this state of tangible personal property leased or  
112 rented outside this state, the person to whom the property is leased or rented shall be a  
113 dealer and shall be liable for a tax at the ~~rate of 4 percent~~ percentage of the rental charge  
114 paid to the person who leased or rented the property specified in subsection (a) of this Code  
115 section, subject to the credit authorized for like taxes previously paid in another state.

116 (e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside  
117 this state for use within this state shall be liable for a tax at the ~~rate of 4 percent~~  
118 percentage of the rental charge paid for that lease or rental specified in subsection (a) of  
119 this Code section if that person is a dealer, as defined in subparagraph (H) of  
120 paragraph (3) of Code Section 48-8-2 and title to that property remains in that person. It  
121 shall be prima-facie evidence that such property is to be used within this state if that  
122 property is delivered in this state to the lessee or renter of such property, or to the agent  
123 of either. The tax shall be paid by the lessee or renter and payment of the tax shall be  
124 made to the lessor or person receiving rental payments for that property, which person  
125 shall be the dealer for purposes of this article. The dealer shall remit the tax to the  
126 commissioner as provided in this article and, when received by the commissioner, the tax  
127 shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as  
128 defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2 and who leases or  
129 rents tangible personal property outside this state to be delivered in this state to the lessee,  
130 renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease  
131 or rental at the ~~rate of 4 percent~~ percentage of the gross proceeds from such leases or  
132 rentals specified in subsection (a) of this Code section or the amount of taxes collected  
133 by that dealer for leases or rentals of tangible personal property delivered in this state,  
134 whichever is greater.

135 (2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or  
136 renter. The tax imposed by this subsection shall be subject to the credit granted by this  
137 article for like taxes previously paid in another state. This subsection shall not be  
138 construed to require a duplication in the payment of the tax.

139 (f)(1) Every person purchasing or receiving any service within this state, the purchase  
140 of which is a retail sale, shall be liable for tax on the purchase at the ~~rate of 4 percent~~  
141 percentage of the gross charge or charges made for the purchase specified in subsection  
142 (a) of this Code section. The tax shall be paid by the person purchasing or receiving the  
143 service to the person furnishing the service. The person furnishing the service, as a dealer  
144 under this article, shall remit the tax to the commissioner as provided in this article; and,  
145 when received by the commissioner, the tax shall be a credit against the tax imposed on  
146 the person furnishing the service. Every person furnishing a service, the purchase of  
147 which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the ~~rate~~  
148 ~~of 4 percent~~ percentage of the gross charge or charges made for furnishing the service  
149 specified in subsection (a) of this Code section, or the amount of taxes collected by him  
150 from the person to whom the service is furnished, whichever is greater.

151 (2) No sale of services shall be taxable to the person furnishing the service which is not  
152 taxable to the purchaser of the service.

153 (g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of  
154 this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this  
155 Code section, or a purchaser of taxable services under subsection (f) of this Code section  
156 does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is  
157 involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself  
158 or herself and the commissioner, whenever he or she has reason to believe that a purchaser  
159 or lessee has not so paid the tax, may assess and collect the tax directly against and from  
160 the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the  
161 retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the  
162 commissioner the tax imposed on the transaction. If payment is received directly from the  
163 purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is  
164 involved.

165 (h) The tax imposed by this Code section shall be collected from the dealer and paid at the  
166 time and in the manner provided in this article. Any person engaging or continuing in  
167 business as a retailer and wholesaler or jobber shall pay the tax imposed on the gross  
168 proceeds of retail sales of the business at the rate specified when proper books are kept  
169 showing separately the gross proceeds of sales for each business. If the records are not  
170 kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the  
171 business. For the purpose of this Code section, all sales through any one vending machine

172 shall be treated as a single sale. The gross proceeds for reporting vending sales shall be  
 173 treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax  
 174 included in the sale.

175 (i) The tax levied by this Code section is in addition to all other taxes, whether levied in  
 176 the form of excise, license, or privilege taxes, and shall be in addition to all other fees and  
 177 taxes levied.

178 (j) In the event any distributor licensed under Chapter 9 of this title purchases any motor  
 179 fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant  
 180 to this Code section and resells the same to a governmental entity that is totally or partially  
 181 exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall  
 182 be entitled to either a credit or refund. The amount of the credit or refund shall be the  
 183 prepaid state tax or prepaid local tax or both rates for which such governmental entity is  
 184 exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be  
 185 eligible for the credit or refund, the distributor shall reduce the amount such distributor  
 186 charges for the fuel sold to such governmental entity by an amount equal to the tax from  
 187 which such governmental entity is exempt. Should a distributor have a liability under this  
 188 Code section, the distributor may elect to take a credit for those sales against such liability.

189 (k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph  
 190 (b)(2)(B) of Code Section 48-9-14."

191 **SECTION 4.**

192 Said article is further amended by revising Code Section 48-8-32, relating to collection of  
 193 tax from dealers, as follows:

194 "48-8-32.

195 ~~The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the~~  
 196 ~~cost price at the time of purchase, as the case may be,~~ shall be collectable at the rate  
 197 specified in subsection (a) of Code Section 48-8-30 from all persons engaged as dealers in  
 198 the sale at retail, or in the use, consumption, distribution, or storage for use or consumption  
 199 in this state of tangible personal property."

200 **SECTION 5.**

201 Said article is further amended by revising Code Section 48-8-43, relating to disposition of  
 202 excess collections, as follows:

203 "48-8-43.  
204 When the tax collected for any period is in excess of ~~4 percent~~ the rate specified in  
205 subsection (a) of Code Section 48-8-30, the total tax collected shall be paid over to the  
206 commissioner less the compensation to be allowed the dealer."

207 **SECTION 6.**

208 Said article is further amended in Code Section 48-8-63, relating to taxation of nonresident  
209 subcontractors, by revising subsection (e) as follows:

210 "(e)(1) Any subcontractor who enters into a construction contract with a general or prime  
211 contractor shall be liable under this article as a general or prime contractor. Any general  
212 or prime contractor who enters into any construction contract or contracts with any  
213 nonresident subcontractor, where the total amount of such contract or contracts between  
214 such general or prime contractor and any nonresident subcontractors on any given project  
215 equals or exceeds \$250,000.00 shall withhold ~~up to 4 percent~~ a percentage of the  
216 payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed  
217 this state. The percentage withheld shall be at the rate specified in subsection (a) of Code  
218 Section 48-8-30.

219 (2) The prime or general contractor shall withhold payments on all contracts that meet  
220 the criteria specified in paragraph (1) of this subsection until the nonresident  
221 subcontractor furnishes such prime or general contractor with a certificate issued by the  
222 commissioner showing that all sales taxes accruing by reason of the contract between the  
223 nonresident subcontractor and the general or prime contractor have been paid and  
224 satisfied. If the prime or general contractor for any reason fails to withhold ~~up to 4~~  
225 ~~percent~~ the percentage of the payments due the nonresident subcontractor under their  
226 contract, such prime or general contractor shall become liable for any sales or use taxes  
227 due or owed this state by the nonresident subcontractor."

228 **SECTION 7.**

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