

House Bill 1143

By: Representatives Setzler of the 35th, Hamilton of the 23rd, Sheldon of the 105th, Glanton of the 76th, and Gardner of the 57th

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 change certain provisions relating to sales and use tax exemptions as to
3 motor fuels; to define transportation purposes; to provide for an increase in the motor fuel
4 tax; to provide for related matters; to provide for a conditional effective date; to provide for
5 automatic repeal; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
9 amended by revising Code Section 48-8-3.1, relating to exemptions from sales and use taxes
10 for motor fuels, as follows:

11 "48-8-3.1.

12 (a) Except as provided in ~~subsection (b)~~ subsections (b) and (c) of this Code section, sales
13 of motor fuels as defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the
14 first 3 percent of the sales and use taxes levied or imposed by this article and shall be
15 subject to the remaining 1 percent of the sales and use taxes levied or imposed by this
16 article.

17 (b) Beginning on July 1 of the fiscal year following the first fiscal year the phase-in of
18 transportation funding under the provisions of subparagraph (b.1) of Article III, Section IX,
19 Paragraph VI of the Constitution is completed, and continuing thereafter, except as
20 provided in subsection (c) of this Code section, sales of motor fuels as defined in paragraph
21 (9) of Code Section 48-9-2 shall be exempt from the 4 percent sales and use taxes levied
22 or imposed by this article.

23 ~~(b)(c)~~ 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 ~~(c)~~(d) It is specifically declared to be the intent of the General Assembly that taxation
 29 imposed on sales of motor fuel wholly ~~or partially~~ subject to taxation under subsection (c)
 30 this Code section shall not constitute motor fuel taxes for purposes of any provision of the
 31 Constitution providing for the automatic or mandatory appropriation of any amount of
 32 funds equal to funds derived from motor fuel taxes."

33 SECTION 2.

34 Said title is further amended by adding a new Article 5 of Chapter 8, relating to the state
 35 sales and use tax, as follows:

36 "ARTICLE 5

37 48-8-220.

38 "Transportation purposes' as used in subparagraph (b.1) of Article III, Section IX,
 39 Paragraph VI of the Constitution means, without limitation, roads and bridges, freight and
 40 passenger rail, airports, public transit, buses, seaports, and all activities and structures
 41 useful and incident to providing, operating, and maintaining the same; provided, however,
 42 that transportation purposes shall not include projects which are not included in any
 43 state-wide strategic transportation plan approved by the General Assembly."

44 SECTION 3.

45 Said title is further amended by revising subsection (b) of Code Section 48-9-14, relating to
 46 the second motor fuel tax and exemptions therefrom, as follows:

47 "(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent
 48 of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or
 49 consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall
 50 be subject only to the exemptions provided in Code Section 48-9-3.

51 (1.1) Beginning on July 1 of the fiscal year following the first fiscal year the phase-in of
 52 transportation funding under the provisions of subparagraph (b.1) of Article III, Section
 53 IX, Paragraph VI of the Constitution is completed, and continuing thereafter, the motor
 54 fuel tax imposed by this Code section is levied at the rate of 4 percent of the retail sale
 55 price less the tax imposed by Code Section 48-9-3 upon the sale, use, or consumption, as
 56 defined in Code Section 48-8-2, of motor fuel in this state. This tax shall be subject only
 57 to the exemptions provided in Code Section 48-9-3.

58 (2)(A) As used in this paragraph, the term 'prepaid state tax' shall have the same
59 meaning as provided in paragraph (5.2) of Code Section 48-8-2.

60 (B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer
61 of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax
62 imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid
63 state tax to the state. The tax shall be separately invoiced throughout the chain of
64 distribution until it reaches the dealer who makes the retail sale. The commissioner
65 shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest
66 \$.001 per gallon for use in the following semiannual period. The rate shall be
67 calculated at 4 percent of the state-wide average retail price by motor fuel type as
68 compiled by the Energy Information Agency of the United States Department of
69 Energy, the Oil Pricing Information Service, or a similar reliable published index less
70 taxes imposed under Code Section 48-9-3, this subsection, and all local sales and use
71 taxes. In the event that the retail price changes by 25 percent or more within a
72 semiannual period, the commissioner shall issue a revised prepaid state tax rate for the
73 remainder of that period."

74 **SECTION 4.**

75 This Act shall become effective on January 1, 2011; provided, however, that this Act shall
76 only become effective on January 1, 2011, upon the ratification of a resolution at the
77 November, 2010, state-wide general election, which resolution amends the Constitution so
78 as to authorize dedication of 25 percent of the state sales and use tax for transportation
79 purposes. If such resolution is not so ratified, this Act shall not become effective and shall
80 stand repealed in its entirety on January 1, 2011.

81 **SECTION 5.**

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