

House Bill 1167

By: Representative Lucas of the 139<sup>th</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 legislative intent regarding the proceeds of such  
4 increase; to provide for conforming amendments; to provide for related matters; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

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

15 **SECTION 2.**

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

18 "(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as  
19 defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first 3 percent  
20 of the sales and use taxes levied or imposed by this article and shall be subject to the  
21 remaining ~~1 percent~~ percentage of the sales and use taxes levied or imposed by this article.

22 (b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is  
23 purchased for purposes other than propelling motor vehicles on public highways as defined  
24 in Article 1 of Chapter 9 of this title shall be fully subject to the ~~4 percent~~ sales and use

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

27 **SECTION 3.**

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

30 "48-8-30.

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

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

34 (1) Four percent, except as otherwise provided in paragraph (2) of this subsection; and  
 35 (2) Five percent for the time period specified in this paragraph. This time period for the  
 36 5 percent rate of taxation shall begin on July 1, 2010, and shall end at the last moment of  
 37 June 30, 2013. It is the intent of the General Assembly that the amount of proceeds  
 38 collected under this paragraph which exceed the amount collected at the rate of 4 percent  
 39 shall, subject to appropriation, be used solely to fund education and educational purposes  
 40 in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190 **SECTION 4.**

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

193 "48-8-32.

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

199 **SECTION 5.**

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

202 "48-8-43.

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

206 **SECTION 6.**

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

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

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

227 **SECTION 7.**

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