

House Bill 178

By: Representative Sims of the 169<sup>th</sup>

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 prepaid state and local consumables taxes; to change certain  
3 provisions regarding definitions; to repeal the sales and use tax exemption regarding food  
4 and food ingredients; to change certain provisions regarding applicability and exemptions  
5 with respect to sales and use taxes on alcoholic beverages, tobacco or tobacco products, or  
6 food and food ingredients; to change certain provisions regarding dealers' sales and use tax  
7 returns; to provide for procedures, conditions, and limitations; to change certain provisions  
8 regarding penalties; to provide an effective date; to repeal conflicting laws; and for other  
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
13 amended in Code Section 48-8-2, relating to definitions regarding sales and use taxes, by  
14 adding new paragraphs to read as follows:

15 "(22.1) 'Prepaid local consumables tax' means any local sales and use tax which is levied  
16 on the sale or use of alcoholic beverages, tobacco and tobacco products, or food and food  
17 ingredients and imposed in an area consisting of less than the entire state, however  
18 authorized, including, but not limited to, such taxes authorized by or pursuant to  
19 constitutional amendment; by or pursuant to Section 25 of an Act approved March 10,  
20 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid  
21 Transit Authority Act of 1965'; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.  
22 The person collecting and reporting the prepaid local consumables tax for the local  
23 jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This  
24 determination shall be based upon the shipping papers of the conveyance that delivered  
25 the alcoholic beverages, tobacco and tobacco products, or food and food ingredients to  
26 the dealer or consumer in the local jurisdiction. A seller may rely upon the representation

27 made by the purchaser as to which jurisdiction the shipment is bound and prepare  
 28 shipping papers in accordance with those instructions."

29 "(23.1) 'Prepaid state consumables tax' means the tax levied under Code Section 48-8-30  
 30 on the retail sale of alcoholic beverages, tobacco and tobacco products, or food and food  
 31 ingredients collected prior to that retail sale."

32 **SECTION 2.**

33 Said title is further amended in Code Section 48-8-3, relating to exemptions from sales and  
 34 use tax, by revising paragraph (57) as follows:

35 ~~"(57)(A) The sale of food and food ingredients, to the extent provided in subparagraph~~  
 36 ~~(B) of this paragraph.~~

37 ~~(B) For the purposes of this paragraph, 'food and food ingredients' shall not include~~  
 38 ~~prepared food, alcoholic beverages, or tobacco.~~

39 ~~(C)(i) The exemption provided for in this paragraph shall not apply to any local sales~~  
 40 ~~and use tax levied or imposed at any time.~~

41 ~~(ii) For the purposes of this subparagraph, the term 'local sales and use tax' shall~~  
 42 ~~mean any sales tax, use tax, or local sales and use tax which is levied and imposed in~~  
 43 ~~an area consisting of less than the entire state, however authorized, including, but not~~  
 44 ~~limited to, such taxes authorized by or pursuant to constitutional amendment; by or~~  
 45 ~~pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as~~  
 46 ~~amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965', by or~~  
 47 ~~pursuant to any article of this chapter.~~

48 ~~(D) The commissioner shall adopt rules and regulations to carry out the provisions of~~  
 49 ~~this paragraph Reserved;"~~

50 **SECTION 3.**

51 Said title is further amended in Code Section 48-8-30, relating to imposition of sales and use  
 52 taxes, by adding new subsections to read as follows:

53 "(1) In the event any seller purchases any alcoholic beverages, tobacco and tobacco  
 54 products, or food and food ingredients on which the prepaid state consumables tax or  
 55 prepaid local consumables tax or both have been imposed pursuant to this Code section and  
 56 resells the same to a governmental entity that is totally or partially exempt from such tax  
 57 under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a  
 58 credit or refund. The amount of the credit or refund shall be the prepaid state consumables  
 59 tax or prepaid local consumables tax or both rates for which such governmental entity is  
 60 exempt. To be eligible for the credit or refund, the seller shall reduce the amount such  
 61 seller charges for the consumables sold to such governmental entity by an amount equal

62 to the tax from which such governmental entity is exempt. Should a seller have a liability  
 63 under this Code section, the seller may elect to take a credit for those sales against such  
 64 liability.

65 (m) The prepaid state and local consumables taxes shall be imposed at the time a  
 66 distributor ships consumables to a seller.

67 (n) The distributor shall remit on a separate schedule the prepaid state consumables tax to  
 68 the state. The tax shall be separately invoiced throughout the chain of distribution until it  
 69 reaches the dealer who makes the retail sale and shall be at the same rate as provided under  
 70 Code Section 48-8-30."

71 **SECTION 4.**

72 Said title is further amended by revising Code Section 48-8-82, relating to imposition of the  
 73 joint county and municipal sales and use tax, as follows:

74 "48-8-82.

75 When the imposition of a joint county and municipal sales and use tax is authorized  
 76 according to the procedures provided in this article within a special district, the county  
 77 whose geographical boundary is conterminous with that of the special district and each  
 78 qualified municipality located wholly or partially within the special district shall levy a  
 79 joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall  
 80 correspond to the tax imposed and administered by Article 1 of this chapter. No item or  
 81 transaction which is not subject to taxation by Article 1 of this chapter shall be subject to  
 82 the tax levied pursuant to this article, except that the joint tax provided in this article shall  
 83 be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code  
 84 Section 48-8-2 and shall be applicable to the sale of food and food ingredients and  
 85 alcoholic beverages only to the extent provided for in paragraph (57) of Code Section  
 86 48-8-3."

87 **SECTION 5.**

88 Said title is further amended by revising subsection (b) of Code Section 48-8-102, relating  
 89 to the imposition of the homestead option sales and use tax, as follows:

90 "(b) When the imposition of a local sales and use tax is authorized according to the  
 91 procedures provided in this article within a special district, the county whose geographical  
 92 boundary is conterminous with that of the special district shall levy a local sales and use  
 93 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond  
 94 to the tax imposed and administered by Article 1 of this chapter. No item or transaction  
 95 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and  
 96 use tax levied pursuant to this article, except that the sales and use tax provided in this

97 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined  
98 in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and  
99 alcoholic beverages only to the extent provided for in paragraph (57) of Code Section  
100 48-8-3."

101 **SECTION 6.**

102 Said title is further amended by revising subsection (c) of Code Section 48-8-110.1, relating  
103 to imposition of the county special purpose local option sales and use tax, as follows:

104 "(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a  
105 tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter.  
106 No item or transaction which is not subject to taxation under Article 1 of this chapter shall  
107 be subject to a tax imposed under this part, except that a tax imposed under this part shall  
108 apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section  
109 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic  
110 beverages as provided for in Code Section 48-8-3."

111 **SECTION 7.**

112 This Act shall become effective on July 1, 2011.

113 **SECTION 8.**

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