

The Senate Finance Committee offered the following substitute to HB 322:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia
2 Annotated, relating to general provisions regarding state sales and use taxes, so as to change
3 the sales and use tax exemption for the sale or use of jet fuel to or by certain qualifying
4 airlines at a qualifying airport; to provide for a state sales tax refund for a limited period of
5 time for the sale or use of jet fuel by qualifying airlines at a qualifying airport; to provide for
6 definitions, procedures, conditions, and limitations; to provide for automatic repeal; to
7 provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Part 1 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
11 relating to general provisions regarding state sales and use taxes, is amended in Code Section
12 48-8-3, relating to exemptions from sales and use taxation, by revising paragraph (33.1) as
13 follows:

14 "(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport,
15 to the extent provided in ~~subparagraphs (B), (C), and (D)~~ subparagraph (C) of this
16 paragraph.

17 ~~(B) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall~~
18 ~~be exempt from the first 1.80 percent of the 4 percent state sales and use tax imposed~~
19 ~~by this chapter and shall be subject to the remaining 2.20 percent of the 4 percent state~~
20 ~~sales and use tax imposed by this chapter.~~

21 ~~(C)(B)~~ The sale or use of jet fuel to or by a qualifying airline at a qualifying airport
22 shall also be exempt at all times from the sales or use tax levied and imposed as
23 authorized pursuant to Part 1 of Article 3 of this chapter.

24 ~~(D)(C)~~ Except as provided for in subparagraph ~~(C)~~ (B) of this paragraph, this
25 exemption shall not apply to any other local sales and use tax levied or imposed at
26 anytime in any area consisting of less than the entire state, however authorized,
27 including, but not limited to, such taxes authorized by or pursuant to Section 25 of an

28 Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan
 29 Atlanta Rapid Transit Authority Act of 1965,' or such taxes as authorized by or pursuant
 30 to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.

31 ~~(E)~~(D) For purposes of this paragraph and paragraph (2) of subsection (d) of Code
 32 Section 48-8-241, a 'qualifying airline' shall mean any person which:

33 (i) Is is authorized by the Federal Aviation Administration or appropriate agency of
 34 the United States to operate as an air carrier under an air carrier operating certificate
 35 and which provides regularly scheduled flights for the transportation of passengers
 36 or cargo for hire; and

37 (ii) For the 12 months immediately preceding the applicable period specified in
 38 division (i) or (ii) of subparagraph (B) of this paragraph would have had in the
 39 absence of the exemption provided in this paragraph state sales and use tax liability
 40 on jet fuel of more than \$15 million.

41 ~~(F)~~(E) For purposes of this paragraph and paragraph (2) of subsection (d) of Code
 42 Section 48-8-241, a 'qualifying airport' shall mean any airport in the state that has had
 43 more than 750,000 takeoffs and landings during a calendar year;

44 ~~(G) The commissioner shall adopt rules and regulations to carry out the provisions of~~
 45 ~~this paragraph.~~

46 ~~(H) The exemption provided for in this paragraph shall apply only as to transactions~~
 47 ~~occurring on or after July 1, 2009, and prior to July 1, 2011;”~~

48 SECTION 2.

49 Said part is further amended by adding a new Code section to read as follows:

50 "48-8-3.2.

51 (a) As used in this Code section, the term:

52 (1) 'Qualifying airline' means any person which:

53 (A) Is authorized by the Federal Aviation Administration or appropriate agency of the
 54 United States to operate as an air carrier under an air carrier operating certificate and
 55 which provides regularly scheduled flights for the transportation of passengers; and

56 (B) For the 12 month period immediately preceding the applicable period specified in
 57 a refund claim employed not less than 4,500 Georgia domiciled workers on a full-time
 58 basis to whom W-2 forms are issued.

59 (2) 'Qualifying airport' means any airport in the state that has had more than 750,000
 60 takeoffs and landings during a calendar year.

61 (b) A state sales tax refund for state sales taxes paid under Part 2 of this article shall be
 62 allowed to a qualifying airline in this state for state sales taxes paid in this state on the sale

63 of jet fuel at a qualifying airport to such qualifying airline when the sales price of such jet
64 fuel exceeds \$3.00 per gallon.

65 (c) To claim a refund allowed by this Code section, such qualifying airline shall provide
66 any information required by the department. Every such qualifying airline claiming a
67 refund under this Code section shall maintain and make available for inspection by the
68 department any records that the department considers necessary to determine and verify the
69 amount of the refund to which such qualifying airline is entitled. The burden of proving
70 eligibility for a refund and the amount of the refund rests upon such qualifying airline, and
71 no refund may be allowed to such qualifying airline that fails to maintain adequate records
72 or to make them available for inspection.

73 (d) The state sales tax refunds allowed by this Code section shall be limited as follows:

74 (1) For the period commencing July 1, 2011, and concluding at the last moment of
75 June 30, 2012, in no event shall any qualifying airline claim and be allowed a sales tax
76 refund of more than \$20 million and in no event shall the total aggregate amount of state
77 sales tax refunds under this Code section exceed \$30 million; and

78 (2) For the period commencing July 1, 2012, and concluding at the last moment of
79 June 30, 2013, in no event shall any qualifying airline claim and be allowed a sales tax
80 refund of more than \$10 million and in no event shall the total aggregate amount of state
81 sales tax refunds under this Code section exceed \$15 million.

82 (e)(1) A qualifying airline seeking to claim any state sales tax refund provided for under
83 this Code section must submit an application to the commissioner for tentative approval
84 of such state sales tax refund. The commissioner shall promulgate the rules and forms
85 on which the application is to be submitted. The commissioner shall review such
86 application and shall tentatively approve such application upon determining that it meets
87 the requirements of this Code section within 60 days after receiving such application.

88 (2) The commissioner shall allow the state sales tax refunds for state sales taxes on a
89 proportional and pro rata basis based upon the number and dollar amount of the total
90 approved refund claims received during a calendar year. In no event shall the aggregate
91 amount of sales tax refunds approved by the commissioner for all qualifying airlines
92 services under this Code section in a calendar year exceed the limitation specified in
93 subsection (d) of this Code section.

94 (f) No interest shall be paid on any state sales tax refund authorized under this Code
95 section.

96 (g)(1) The commissioner shall be authorized to adopt rules and regulations to provide for
97 the administration of any state sales tax refund provided by this Code section.

98 (2) The commissioner shall establish and maintain rules governing the cost of jet fuel in
99 cases of dispute or disagreement regarding the sales price of such jet fuel for purposes of

100 this Code section. Such rules shall include the determination and use of an appropriate
101 index which reflects the true cost of such jet fuel. The rules may use for this purpose the
102 United States Gulf Coast Jet Fuel Price Index or any other similar index established by
103 the federal government, if the commissioner determines that such federal index reflects
104 the true cost of such jet fuel in the State of Georgia.

105 (h) This Code section shall stand repealed in its entirety on July 1, 2013."

106 **SECTION 3.**

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

108 **SECTION 4.**

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