

The House Committee on Ways and Means offers the following substitute to HB 729:

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 define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 clarify certain procedures relating to a receipt for a properly prepared county tax digest; to
5 clarify certain definitions relating to sales and use taxes; to clarify that insulin is exempt from
6 state sales and use tax; to provide effective dates; to provide applicability; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions regarding
12 revenue and taxation, as follows:

13 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
14 beginning on or after January 1, ~~2010~~ 2011, the provisions of the United States Internal
15 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
16 January 1, ~~2011~~ 2012, except that Section 85(c), Section 108(i), Section 163(e)(5)(F),
17 Section 164(a)(6), Section 164(b)(6), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii),
18 Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section
19 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 168(m),
20 Section 168(n), Section 172(b)(1)(H), Section 172(b)(1)(J), Section 172(j), Section 179(f),
21 Section 199, Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section 1400N(f),
22 Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code
23 of 1986, as amended, shall be treated as if they were not in effect, and except that Section
24 168(e)(7), Section 172(b)(1)(F), Section 172(i)(1), and Section 1221 of the Internal
25 Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008
26 enactment of federal Public Law 110-343, and except that Section 163(i)(1) of the Internal

27 Revenue Code of 1986, as amended, shall be treated as it was in effect before the 2009
 28 enactment of federal Public Law 111-5, and except that Section 13(e)(4) of 2009 federal
 29 Public Law 111-92 shall be treated as if it was not in effect, and except that the limitations
 30 provided in Section 179(b)(1) shall be \$250,000.00 for tax years beginning in 2010 and
 31 shall be \$250,000.00 for tax years beginning in 2011, and except that the limitations
 32 provided in Section 179(b)(2) shall be \$800,000.00 for tax years beginning in 2010 and
 33 shall be \$800,000.00 for tax years beginning in 2011. In the event a reference is made in
 34 this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed
 35 on a specific date prior to January 1, ~~2011~~ 2012, the term means the provisions of the
 36 Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date.
 37 Unless otherwise provided in this title, any term used in this title shall have the same
 38 meaning as when used in a comparable provision or context in the Internal Revenue Code
 39 of 1986, as amended. For taxable years beginning on or after January 1, ~~2010~~ 2011,
 40 provisions of the Internal Revenue Code of 1986, as amended, which were as of January
 41 1, ~~2011~~ 2012, enacted into law but not yet effective shall become effective for purposes of
 42 Georgia taxation on the same dates upon which they become effective for federal tax
 43 purposes."

44

SECTION 2.

45 Said title is further amended by revising Code Section 48-5-345, relating to a receipt for a
 46 properly prepared county tax digest, as follows:

47 "48-5-345.

48 (a)(1) Upon the determination by the commissioner that a county tax digest is in proper
 49 form, that the property therein that is under appeal is within the limits of Code Section
 50 48-5-304, and that the digest is accompanied by all documents, statistics, and
 51 certifications required by the commissioner, the commissioner shall issue a receipt for the
 52 digest and enter an order authorizing the use of said digest for the collection of taxes.

53 (2) Nothing in this subsection shall be construed to prevent the superior court from
 54 allowing the new digest to be used as the basis for the temporary collection of taxes under
 55 Code Section 48-5-310.

56 (b) Each year the commissioner shall determine if the overall assessment ratio for each
 57 county, as computed by the state auditor under paragraph (8) of subsection (b) of Code
 58 Section 48-5-274, deviates substantially from the proper assessment ratio as provided in
 59 Code Section 48-5-7, and if such deviation exists, the commissioner shall assess against
 60 the county governing authority additional state tax in an amount equal to the difference
 61 between the amount the state's levy, ~~of one-quarter of a mill as prescribed in Code Section~~
 62 48-5-8, would have produced if the digest had been at the proper assessment ratio and the

63 amount the digest that is actually used for collection purposes will produce. The
 64 commissioner shall notify the county governing authority annually of the amount so
 65 assessed and this amount shall be due and payable not later than five days after all appeals
 66 have been exhausted or the time for appeal has expired or the final date for payment of
 67 taxes in the county, whichever comes latest, and shall bear interest at the rate specified in
 68 Code Section 48-2-40 from the due date."

69 **SECTION 3.**

70 Said title is further amended by revising paragraphs (17), (25), and (33) of Code Section
 71 48-8-2, relating to definitions regarding sales and use taxation, as follows:

72 "(17) 'Lease or rental' means any transfer of possession or control of tangible personal
 73 property for a fixed or indeterminate term for consideration. A lease or rental may
 74 include future options to purchase or extend. 'Lease or rental' includes agreements
 75 covering motor vehicles and trailers where the amount of consideration may be increased
 76 or decreased by reference to the amount realized upon sale or disposition of the property
 77 as defined in 26 U.S.C. Section 7701(h)(1). 'Lease or rental' shall not include:

78 (A) A transfer of possession or control of property under a security agreement or
 79 deferred payment plan that requires the transfer of title upon completion of the required
 80 payments;

81 (B) A transfer of possession or control of property under an agreement that requires the
 82 transfer of title upon completion of required payments and payment of an option price
 83 does not exceed the greater of ~~one hundred dollars~~ \$100.00 or ~~one~~ 1 percent of the total
 84 required payments; or

85 (C) Providing tangible personal property along with an operator for a fixed or
 86 indeterminate period of time. A condition of this exclusion is that the operator is
 87 necessary for the equipment to perform as designed. For the purpose of this
 88 subparagraph, an operator must do more than maintain, inspect, or install the tangible
 89 personal property."

90 "(25) 'Prepaid wireless calling service' means a 'telecommunications service' that
 91 provides the right to utilize 'mobile wireless service' as well as other
 92 nontelecommunications services including the download of digital products 'delivered
 93 electronically,' content, and 'ancillary services,' which must be paid for in advance that
 94 is sold in predetermined units of ~~or~~ or dollars of which the number declines with use in a
 95 known amount."

96 "(33)(A) 'Sale' means any transfer of title or possession, transfer of title and possession,
 97 exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any

98 means of any kind of tangible personal property for a consideration except as otherwise
 99 provided in subparagraph (B) of this paragraph and includes, but is not limited to:

100 (i) The fabrication of tangible personal property for consumers who directly or
 101 indirectly furnish the materials used in such fabrication;

102 (ii) The furnishing, repairing, or serving for a consideration of any tangible personal
 103 property consumed on the premises of the person furnishing, repairing, or serving the
 104 tangible personal property; or

105 (iii) A transaction by which the possession of property is transferred but the seller
 106 retains title as security for the payment of the price.

107 (B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail
 108 sale, ~~or a motor vehicle lease or rental when the lease or rental period exceeds 30 days~~
 109 ~~and when the purchaser or lessee is a resident of this state, excluding lease or rental,~~ the
 110 taxable situs of the transaction for the purposes of collecting local sales and use taxes
 111 shall be the county of motor vehicle registration of the purchaser ~~or lessee.~~"

112 **SECTION 4.**

113 Said title is further amended by revising division (47)(A)(i) of Code Section 48-8-3, relating
 114 to exemptions from sales and use taxation, as follows:

115 "(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by
 116 prescription for the treatment of natural persons, the sale or use of insulin regardless
 117 of whether the insulin is dispensable only by prescription, and the sale or use of
 118 prescription eyeglasses and contact lenses including, without limitation, prescription
 119 contact lenses distributed by the manufacturer to licensed dispensers as free samples
 120 not intended for resale and labeled as such; and"

121 **SECTION 5.**

122 (a) This Act shall become effective upon its approval by the Governor or upon its
 123 becoming law without such approval.

124 (b) Section 1 of this Act shall be applicable to all taxable years beginning on or after
 125 January 1, 2011.

126 **SECTION 6.**

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