

House Bill 1071

By: Representative Houston of the 170th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes
2 on tobacco products, so as to change certain provisions relating to the excise tax on certain
3 tobacco products; to provide for a definition; to establish the rate of tax on certain tobacco
4 products; to establish the retail selling price before the addition of certain taxes; to provide
5 for annual renewal of tobacco dealer license; to provide for exemptions from certain taxes;
6 to authorize the collection and payment on the first taxable transaction; to change certain
7 provisions regarding civil and criminal penalties; to amend Code Section 50-13-2 of the
8 Official Code of Georgia Annotated, relating to definitions relative to administrative
9 procedure, so as to revise a definition to include hearings related to tobacco within its
10 meaning; to provide for related matters; to provide for an effective date; to repeal conflicting
11 laws; and for other purposes.

SECTION 1.

12 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on
13 tobacco products, is amended by revising Code Section 48-11-1, relating to definitions
14 relative to taxes on tobacco products, as follows:

15 "48-11-1.

16 As used in this chapter, the term:

17 (1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover
18 of the roll is also tobacco. Such term shall include a little cigar.

19 (2) 'Cigar dealer' means any person located within the borders of this state who sells or
20 distributes cigars to a consumer in this state.

21 (3) 'Cigar distributor' means any person, whether located within or outside the borders
22 of this state, other than a cigar dealer, who sells or distributes cigars within or into the
23 boundaries of this state and who:

24 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
25 contact and call on cigar dealers; and

26 (B) Is engaged in the business of:

- 28 (i) Importing cigars into this state or purchasing cigars from other cigar
 29 manufacturers or cigar distributors; and
- 30 (ii) Selling the cigars to cigar dealers in this state for resale but is not in the business
 31 of selling the cigars directly to the ultimate consumer of the cigars.
- 32 (4) 'Cigar importer' means any person who imports into or who brokers within the United
 33 States, either directly or indirectly, a finished cigar for sale or distribution.
- 34 (5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
 35 processes, or labels a finished cigar.
- 36 (6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
 37 cover of the roll is paper or any substance other than tobacco.
- 38 (7) 'Cigarette dealer' means any person located within the borders of this state who sells
 39 or distributes cigarettes to a consumer in this state.
- 40 (8) 'Cigarette distributor' means any person, whether located within or outside the
 41 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
 42 within or into the boundaries of this state and who:
- 43 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 44 contact and call on cigarette dealers; and
- 45 (B) Is engaged in the business of:
- 46 (i) Importing cigarettes into this state or purchasing cigarettes from other cigarette
 47 manufacturers or cigarette distributors; and
- 48 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
 49 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.
- 50 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
 51 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
 52 or distributes cigarettes in this state only to cigarette distributors who hold valid and
 53 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
 54 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.
- 55 (9) 'Cigarette importer' means any person who imports into or who brokers within the
 56 United States, either directly or indirectly, a finished cigarette for sale or distribution.
- 57 (10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,
 58 processes, or labels a finished cigarette.
- 59 (11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled,
 60 processed, packaged, or labeled by any person other than the trademark owner of a
 61 cigarette brand or the owner's designated agent.
- 62 (12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or
 63 smokeless tobacco dealer.

64 (13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or
65 a loose or smokeless tobacco distributor.

66 (14) 'First ~~taxable~~ transaction' means the first sale, receipt, purchase, possession,
67 consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless
68 tobacco within this state.

69 (15) 'Little cigar' means any cigar weighing not more than three pounds per thousand.

70 ~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
71 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
72 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
73 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
74 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
75 chewing and smoking, but does not include cigarettes or cigars or tobacco purchased for
76 the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

77 ~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the
78 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
79 this state.

80 ~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:

81 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
82 contact and call on loose or smokeless tobacco dealers; and

83 (B) Is engaged in the business of:

84 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
85 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
86 smokeless tobacco distributors; and

87 (ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in
88 this state for resale but is not in the business of selling the loose or smokeless tobacco
89 directly to the ultimate consumer of the loose or smokeless tobacco.

90 ~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or
91 who brokers within the United States, either directly or indirectly, finished loose or
92 smokeless tobacco for sale or distribution.

93 ~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who
94 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
95 tobacco.

96 ~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind
97 or character used in manufacturing, packaging, labeling, stamping, transporting,
98 distributing, selling, or possessing counterfeit cigarettes.

99 ~~(21)~~(22) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
100 distribution in any manner or by any means whatever.

101 ~~(22)~~(23) 'Stamp' means any impression, device, stamp, label, or print manufactured,
102 printed, made, or affixed as prescribed by the commissioner.

103 ~~(23)~~(24) 'Vending machine' means any coin-in-the-slot device used for the automatic
104 merchandising of cigars, cigarettes, or loose or smokeless tobacco."

105 **SECTION 2.**

106 Said chapter is further amended by revising Code Section 48-11-2, relating to excise taxes,
107 rate on tobacco products, the retail selling price before the addition of tax, exemptions,
108 collection and payment on the first taxable transaction, distributors, taxes separately
109 identified, and collection, as follows:

110 "48-11-2.

111 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
112 upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of
113 cigars, cigarettes, and loose or smokeless tobacco in this state at the following rates:

114 (1) Little cigars ~~weighing not more than three pounds per thousand~~: two and one-half
115 mills each;

116 (2) All ~~other~~ cigars other than little cigars: 23 percent of the wholesale cost price,
117 exclusive of any trade, cash, or other discounts or any promotion, advertising, display,
118 or similar allowances;

119 (3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size
120 packages; and

121 (4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any
122 trade, cash, or other discounts or any promotion, advertising, display, or similar
123 allowances.

124 (b) When the retail selling price is referred to in this chapter as the basis for computing the
125 tax, it is intended to mean the ordinary retail selling price of the article to the consumer
126 before adding the amount of the tax.

127 (c) The taxes imposed by this chapter are levied ~~with respect to~~ on the purchase or use of
128 cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution,
129 or agency of the state and by the political subdivisions of the state and their departments,
130 institutions, and agencies. The taxes imposed by this chapter are not imposed ~~with respect~~
131 ~~to~~ on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the
132 patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

133 (d) The taxes imposed by this chapter are not levied ~~with respect to~~ on cigars, cigarettes,
134 or loose or smokeless tobacco the purchase or use of which this state is prohibited from
135 taxing under the Constitution or statutes of the United States.

136 (e) The taxes imposed by this chapter shall be advanced and paid by the ~~distributor~~ dealer
 137 or distributor licensed pursuant to this chapter to the commissioner for deposit and
 138 distribution as provided in this chapter upon the first ~~taxable~~ transaction within ~~the~~ this
 139 state, whether or not the transaction involves the ultimate purchaser or consumer. The
 140 ~~seller~~ licensed dealer or distributor shall collect the tax on the first transaction within this
 141 state from the purchaser or consumer, and the purchaser or consumer shall pay the tax to
 142 the ~~seller~~ dealer or distributor. The ~~seller~~ dealer or distributor shall be responsible for the
 143 collection of the tax and the payment of the tax to the commissioner. Whenever cigars,
 144 cigarettes, or loose or smokeless tobacco is shipped from outside ~~the~~ this state to anyone
 145 other than a distributor, the person receiving the cigars, cigarettes, or loose or smokeless
 146 tobacco shall be deemed to be a distributor and shall be responsible for the tax on the
 147 cigars, cigarettes, or loose or smokeless tobacco and the payment of the tax to the
 148 commissioner. No tobacco products shall be received in, sold in, or shipped into this state
 149 unless lawfully obtained from a person licensed pursuant to this chapter or from an
 150 importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.

151 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 152 shall be added to and collected as a part of the sales price of the cigars, cigarettes, or loose
 153 or smokeless tobacco sold or distributed. The amount of the tax shall be stated separately
 154 from the price of the cigars, cigarettes, or loose or smokeless tobacco.

155 (g) The cigars, cigarettes, and loose or smokeless tobacco tax imposed shall be collected
 156 only once upon the same ~~cigarettes, cigars, little cigars, cigarettes,~~ or loose or smokeless
 157 tobacco."

158 SECTION 3.

159 Said chapter is further amended by revising Code Section 48-11-4, relating to the licensing
 160 of persons engaged in tobacco business, initial and annual fees, suspension and revocation
 161 of licenses, the registration and inspection of vending machines, bond, jurisdiction, and
 162 licensing of promotional activities, as follows:

163 "48-11-4.

164 (a) No person shall engage in or conduct the business of manufacturing, importing,
 165 brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or
 166 distributing cigars, cigarettes, or loose or smokeless tobacco in this state without first
 167 obtaining a license from the commissioner.

168 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 169 with respect to applications for and issuance of the licenses and for other purposes of
 170 enforcing this chapter. The commissioner may refuse to issue any license under this chapter
 171 when the commissioner has reasonable cause to believe that the applicant has willfully

172 withheld information requested of the applicant or required by the regulations to be
173 provided or reported or when the commissioner has reasonable cause to believe that the
174 information submitted in any application or report is false or misleading and is not given
175 in good faith.

176 (c) The fee for a manufacturer's, importer's, or distributor's or dealer's license shall be
177 \$50.00 annually, except that for a person commencing business as a manufacturer,
178 importer, or distributor for the first time, the first year's fee shall be \$250.00. All renewal
179 applications shall be filed at least 30 days in advance of the expiration date shown on the
180 license. ~~Each dealer shall have a permanent license issued by the commissioner free of~~
181 ~~charge.~~

182 (1) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of
183 the next succeeding year. The prescribed fee shall accompany every application for a
184 license and shall apply for any portion of the annual period.

185 (2) Each dealer's license shall be valid for 12 months beginning on the date of issue for
186 the initial license, and the first day of the month of issue for subsequent licenses, and
187 shall expire on the last day of the month preceding the month in which the initial license
188 was issued.

189 (3) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to
190 suspension or revocation for violation of any of the provisions of this chapter or of the
191 rules and regulations made pursuant to this chapter. A separate license shall be required
192 for each place of business. No person shall hold a distributor's license and a dealer's
193 license at the same time.

194 (d) The commissioner may make rules and regulations governing the sale of cigars,
195 cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines.
196 The commissioner shall require annually a special registration of each vending machine for
197 any operation in this state and charge a license fee for the registration in the amount of
198 ~~\$1.00~~ \$10.00 for each machine. The annual registration shall indicate the location of the
199 vending machine. No vending machine shall be purchased or transported into this state for
200 use in this state when the vending machine is not so designed as to permit inspection
201 without opening the machine for the purpose of determining that all cigars, cigarettes, loose
202 or smokeless tobacco, and other tobacco products contained in the machine bear the tax
203 stamp required under this chapter.

204 (e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the
205 place of business for which it is issued in the manner prescribed by the commissioner. The
206 commissioner shall require each licensed manufacturer, importer, or distributor to file with
207 the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper
208 performance of the manufacturer's, importer's, or distributor's duties and the discharge of

209 the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall
 210 run concurrently with the manufacturer's, importer's, or distributor's license but shall
 211 remain in full force and effect for a period of one year after the expiration or revocation of
 212 the manufacturer's, importer's, or distributor's license unless the commissioner certifies that
 213 all obligations due the state arising under this chapter have been paid.

214 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
 215 to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this
 216 state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any
 217 way for business purposes and maintaining a place of business in this state. For the purpose
 218 of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or
 219 regular sales or promotional activity, whether carried on automatically or by salespersons
 220 or other representatives, shall constitute, among other activities, the maintaining of a place
 221 of business. For the purpose of enforcement of this chapter and the rules and regulations
 222 promulgated ~~hereunder~~ under this chapter, notwithstanding any other provision of law, the
 223 commissioner or his or her duly appointed hearing officer is granted authority to conduct
 224 hearings which shall at all times be exercised in conformity with rules and regulations
 225 promulgated by the commissioner and consistent with Chapter 13 of Title 50, the 'Georgia
 226 Administrative Procedure Act.'

227 (g) The commissioner may provide for the licensing of promotional activities, not
 228 including the sale of cigars, cigarettes, or loose or smokeless tobacco, carried on by the
 229 manufacturer. The fee for any such license shall be \$10.00 annually."

230 **SECTION 4.**

231 Said chapter is further amended by revising Code Section 48-11-10, relating to monthly
 232 reports of licensed distributors, contents, and authority to require reports from common
 233 carriers, warehousemen, and others, as follows:

234 "48-11-10.

235 (a) Every licensed distributor shall file with the commissioner, on or before the tenth day
 236 of each month, a report in the form prescribed by the commissioner ~~and~~ disclosing:

237 (1) The quantity of cigars, cigarettes, or loose or smokeless tobacco on hand on the first
 238 and last days of the calendar month immediately preceding the month in which the report
 239 is filed;

240 (2) Information required by the commissioner concerning the amount of stamps
 241 purchased, used, and on hand during the report period; and

242 (3) Information otherwise required by the commissioner for the report period.

243 (b) The commissioner may require other reports as the commissioner deems necessary for
 244 the proper administration of this chapter, including, but not limited to, reports from

245 common carriers and warehousemen with respect to cigars, cigarettes, and loose or
246 smokeless tobacco delivered to or stored at any point in this state.

247 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
248 after the due date until the report is filed the sum of ~~\$1.00~~ \$25.00, to be collected in the
249 manner provided in subsection (c) of Code Section 48-11-24 for the collection of
250 penalties."

251 **SECTION 5.**

252 Said chapter is further amended by revising Code Section 48-11-11, relating to
253 record-keeping requirements for tobacco products, as follows:

254 "48-11-11.

255 (a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
256 cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and sold.
257 ~~The original records or a complete and legible photocopy or electronic image shall be of~~
258 ~~the kind and in the form prescribed by the commissioner and shall be safely preserved for~~
259 three years in an appropriate manner to ensure permanency and accessibility for inspection
260 by the commissioner and the commissioner's authorized agents. The commissioner and the
261 commissioner's authorized agents may examine the books, papers, and records of any
262 distributor or dealer in this state for the purpose of determining whether the tax imposed
263 by this chapter has been fully paid and, for the purpose of determining whether the
264 provisions of this chapter are properly observed, may investigate and examine the stock of
265 cigars, cigarettes, or loose or smokeless tobacco in or upon any premises, including, but not
266 limited to, public and private warehouses where the cigars, cigarettes, or loose or
267 smokeless tobacco is possessed, stored, or sold. Invoices sufficient to cover current
268 inventory at a licensed location shall be maintained at that licensed location and made
269 available for immediate inspection. All other records may be kept at a locality other than
270 the licensed location and shall be provided for inspection within two business days after
271 receipt of notification from the commissioner or an authorized agent of the commissioner
272 to make such records available.

273 (b) The commissioner and his or her authorized agents may examine the books, papers,
274 and records of any transportation company, any common, contract, or private carrier, and
275 any public or private warehouse for the purpose of determining whether the provisions of
276 this chapter are properly observed."

277 **SECTION 6.**

278 Said chapter is further amended by revising Code Section 48-11-18, relating to the procedure
279 for hearing by persons aggrieved by actions of commissioner, initiation of hearings by the

280 commissioner, production of evidence, appeals, bond, and grounds for not sustaining the
 281 commissioner's action, as follows:

282 "48-11-18.

283 (a) Any person aggrieved by any action of the commissioner or the commissioner's
 284 authorized agent may apply to the commissioner, in writing within ten days after the notice
 285 of the action is delivered or mailed to the commissioner, for a hearing. The application
 286 shall set forth the reasons why the hearing should be granted and the manner of relief
 287 sought. The commissioner shall notify the applicant of the time and place fixed for the
 288 hearing. After the hearing, the commissioner may make an order as may appear to the
 289 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
 290 The commissioner at any time by notice in writing may order a hearing on the
 291 commissioner's own initiative and require the taxpayer or any other person whom the
 292 commissioner believes to be in possession of information concerning any manufacture,
 293 importation, use, consumption, storage, or sale of cigars, cigarettes, or loose or smokeless
 294 tobacco which has escaped taxation to appear before the commissioner or the
 295 commissioner's duly authorized agent with any specific books of account, papers, or other
 296 documents for examination under oath relative to the information.

297 (b) Any person aggrieved because of any final action or decision of the commissioner,
 298 after hearing, may appeal from the decision to the superior court of the county in which the
 299 appellant resides. The appeal shall be returnable at the same time and shall be served and
 300 returned in the same manner as required in the case of a summons in a civil action. The
 301 authority issuing the citation shall take from the appellant a bond of recognizance to the
 302 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
 303 orders and decrees of the court. The action of the commissioner shall be sustained unless
 304 the court finds that ~~he~~ the commissioner misinterpreted this chapter or that there is no
 305 evidence to support ~~his~~ the commissioner's action. If the commissioner's action is not
 306 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
 307 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
 308 any appeal shall be taxed against the state."

309 **SECTION 7.**

310 Said chapter is further amended by revising Code Section 48-11-22, relating to the
 311 transportation of unstamped tobacco products, the requirement of invoices or delivery tickets,
 312 contents, confiscation and disposition absent invoice or ticket, and penalties, as follows:

313 "48-11-22.

314 (a) Every person who transports upon the public highways, roads, and streets of this state
 315 cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been

316 paid in accordance with the alternate regulations provided by the commissioner under Code
 317 Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets
 318 for the cigars, cigarettes, and loose or smokeless tobacco which show the true name and
 319 address of the consignor or seller, the true name of the consignee or purchaser, the quantity
 320 and brands of the cigars, cigarettes, or loose or smokeless tobacco transported, and the
 321 name and address of the person who has assumed or shall assume the payment of the tax
 322 at the point of ultimate destination. In the absence of the invoices or delivery tickets, the
 323 cigars, cigarettes, or loose or smokeless tobacco being transported and the vehicles in
 324 which the cigars, cigarettes, or loose or smokeless tobacco is being transported shall be
 325 confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may
 326 be liable for a penalty of not more than \$25.00 for each individual carton of little cigars or
 327 cigarettes, \$50.00 for each individual box of cigars, and ~~\$25.00~~ \$50.00 for each individual
 328 container of loose or smokeless tobacco being transported by such person. The penalty
 329 shall be recovered as provided in subsection (c) of Code Section 48-11-24.

330 (b) This Code section shall apply only ~~with respect~~ to the transportation of more than 200
 331 cigarettes, more than 200 little cigars, more than 20 cigars, or more than six containers of
 332 loose or smokeless tobacco."

333 SECTION 8.

334 Said chapter is further amended by revising Code Section 48-11-24, relating to penalties for
 335 possession of unstamped tobacco products, penalties for operation of an unlicensed business
 336 or activity, procedure for enforcement and collection of penalties, and costs and expenses,
 337 as follows:

338 "48-11-24.

339 (a) Any person who possesses unstamped cigarettes ~~or loose or smokeless tobacco~~ or
 340 nontax-paid cigars, or little cigars, or loose or smokeless tobacco in violation of this
 341 chapter shall be liable for a penalty of not more than ~~\$25.00~~ \$50.00 for each individual
 342 carton of unstamped cigarettes ~~or loose or smokeless tobacco~~ and \$50.00 for each
 343 individual nontax-paid carton of little cigars, box of ~~nontax-paid~~ cigars or container of
 344 loose or smokeless tobacco in his or her possession.

345 (b) Any person who engages in any business or activity for which a license is required by
 346 this chapter without first having obtained a license to do so or any person who continues
 347 to engage in or conduct the business after ~~his~~ the person's license has been revoked or
 348 during a suspension of the license shall be ~~liable for a penalty of not more than \$250.00~~
 349 guilty of a misdemeanor of a high and aggravated nature. Each day that the business is
 350 engaged in or conducted shall be deemed a separate offense.

351 (c) Proceedings to enforce and collect the penalties provided by this chapter shall be
 352 brought by and in the name of the commissioner. With respect to offenses committed
 353 within the territorial jurisdiction of the court, each superior court shall have jurisdiction to
 354 enforce and collect the penalty. The costs recoverable in any such proceeding shall be
 355 recovered by the commissioner in the event of judgment in ~~his~~ the commissioner's favor.
 356 If the judgment is for the defendant, it shall be without costs against the commissioner. All
 357 expenses incident to the recovery of any penalty pursuant to this Code section shall be paid
 358 in the same manner as any other expense incident to the administration of this chapter."

359 **SECTION 9.**

360 Said chapter is further amended by revising Code Section 48-11-26, relating to failure to file
 361 a report or a filing false report, as follows:

362 "48-11-26.

363 (a) With respect to this chapter, it shall be unlawful for any person, with the intent to
 364 defraud the state or evade the payment of any tax, penalty, or interest or any part of a
 365 payment when due, to:

366 (1) Willfully fail or refuse to file any report or statement required to be filed pursuant to
 367 this chapter or by the commissioner's rules and regulations; or

368 ~~(2) File or cause to be filed with the commissioner any false or fraudulent report or~~
 369 ~~statement; or~~

370 ~~(3)~~(2) Aid or abet another in the filing with the commissioner of any false or fraudulent
 371 report or statement.

372 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 373 misdemeanor of a high and aggravated nature for each separate offense."

374 **SECTION 10.**

375 Said chapter is further amended by revising Code Section 48-11-28, relating to cigars and
 376 cigarettes and offenses relating to counterfeit stamps or tampering with metering machines,
 377 as follows:

378 "48-11-28.

379 (a) With respect to this chapter, it shall be unlawful for any person to:

380 (1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the
 381 commissioner;

382 (2) Cause or procure a violation of paragraph (1) of this subsection to be done;

383 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
 384 counterfeited stamp;

385 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;

- 386 (5) For the purpose of evading the tax imposed, use more than once any stamp required
 387 by this chapter; or
- 388 (6) Tamper with or cause to be tampered with any metering machine authorized to be
 389 used.
- 390 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
 391 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years nor
 392 more than ten years."

393 SECTION 11.

394 Said chapter is further amended by revising Code Section 48-11-29, relating to cigars and
 395 cigarettes and false swearing or giving false testimony, as follows:

396 "48-11-29.

397 ~~(a) It shall be unlawful for any person to:~~

398 ~~(1) Knowingly swear to or affirm any false or fraudulent statement with intent to evade~~
 399 ~~the payment of any tax imposed by this chapter; or~~

400 ~~(2) Under oath, testify falsely at any hearing held pursuant to this chapter.~~

401 ~~(b) Any person who violates subsection (a) of this Code section shall be guilty of a~~
 402 ~~misdemeanor Reserved.~~"

403 SECTION 12.

404 Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions
 405 relative to administrative procedure, is amended by revising paragraph (1) as follows:

406 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
 407 officer authorized by law expressly to make rules and regulations or to determine
 408 contested cases, except the General Assembly; the judiciary; the Governor; the State
 409 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
 410 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
 411 penal institutions; the State Board of Workers' Compensation; all public authorities
 412 except as otherwise expressly provided by law; the State Personnel Board (Merit
 413 System); the Department of Administrative Services or commissioner of administrative
 414 services; the Technical College System of Georgia; the Department of Revenue when
 415 conducting hearings relating to alcoholic beverages, tobacco, or ~~relating to~~ bona fide coin
 416 operated amusement machines or any violations relating thereto; the Georgia Tobacco
 417 Community Development Board; the Georgia Higher Education Savings Plan; any
 418 school, college, hospital, or other such educational, eleemosynary, or charitable
 419 institution; or any agency when its action is concerned with the military or naval affairs

420 of this state. The term 'agency' shall include the State Board of Education and
421 Department of Education, subject to the following qualifications:

422 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid
423 rules adopted by the State Board of Education and Department of Education prior to
424 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,
425 whether or not such rules were adopted in compliance with the requirements of this
426 chapter; and

427 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
428 of Education which has not been proposed, submitted, and adopted in accordance with
429 the requirements of this chapter shall be void and of no effect."

430 **SECTION 13.**

431 This Act shall become effective January 1, 2013.

432 **SECTION 14.**

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