

Senate Bill 496

By: Senators Rogers of the 21st, Albers of the 56th and Loudermilk of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to enact an alternative homestead option sales and use tax; to provide for
3 a short title; to provide for definitions; to provide for creation of special districts; to provide
4 for a referendum on levying the tax; to provide for collection and administration of the tax;
5 to provide for a credit for similar taxes collected in other jurisdictions; to provide for a
6 referendum on discontinuation of the tax; to provide an exemption for building and
7 construction materials; to provide that the commissioner shall have the power to issue rules
8 and regulations to administer this tax; to provide for related matters; to provide for an
9 effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
13 taxes, is amended by adding a new Article 2B, relating to an alternative homestead option
14 sales and use tax, to read as follows:

15 "ARTICLE 2B

16 48-8-109.1.

17 This article shall be known and may be cited as the 'Alternative Homestead Option Sales
18 and Use Tax Act.'

19 48-8-109.2.

20 As used in this article, the term:

21 (1) 'Ad valorem taxes for county purposes' means any and all ad valorem taxes for
22 county maintenance and operation purposes levied by, for, or on behalf of the county,
23 excluding taxes to retire general obligation bonded indebtedness of the county. In the

24 case of any tax levied pursuant to this article, such term shall also include any special
 25 district ad valorem taxes.

26 (2) 'Base year' shall be the first year in which the homestead exemption under this article
 27 is sufficient to equate to the complete elimination of ad valorem taxes for county
 28 purposes for each resident of the county receiving such exemption.

29 (3) 'Homestead' shall have the same meaning as provided in Code Section 48-5-40, with
 30 the additional qualification that it shall include only the primary residence and not more
 31 than five contiguous acres of land immediately surrounding such residence.

32 48-8-109.3.

33 (a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the
 34 Constitution of this state, there are created within this state 159 special districts. The
 35 geographical boundary of each county shall correspond with and shall be conterminous
 36 with the geographical boundary of one of the 159 special districts.

37 (b) When the imposition of a local sales and use tax is authorized according to the
 38 procedures provided in this article within a special district, the county whose geographical
 39 boundary is conterminous with that of the special district shall levy a local sales and use
 40 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond
 41 to the tax imposed and administered by Article 1 of this chapter. No item or transaction
 42 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and
 43 use tax levied pursuant to this article, except that the sales and use tax provided in this
 44 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined
 45 in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and
 46 alcoholic beverages only to the extent provided for in paragraph (57) of Code Section
 47 48-8-3.

48 (c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of
 49 the sales and use tax levied and collected under this article shall be used only for the
 50 purposes of funding services within a special district equal to the revenue lost to the
 51 homestead exemption as provided in Code Section 48-8-109.5 and of funding capital
 52 outlay projects and, in the event excess funds remain following the expenditure for such
 53 purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of
 54 Code Section 48-8-109.5.

55 (2) Prior to January 1 of the year immediately following the first complete calendar year
 56 in which the sales and use tax under this article is imposed, such proceeds may be used
 57 for funding all or any portion of those services which are to be provided by the governing
 58 authority of the county whose geographic boundary is conterminous with that of a special

59 district pursuant to and in accordance with Article IX, Section II, Paragraph III of the
60 Constitution of this state.

61 (d) Such sales and use tax shall only be levied in a special district following the enactment
62 of a local Act which provides for a homestead exemption of an amount to be determined
63 from the amount of sales and use tax collected under this article. Such exemption shall
64 commence with taxable years beginning on or after January 1 of the year immediately
65 following the first complete calendar year in which the sales and use tax under this article
66 is levied. Any such local Act shall incorporate by reference the terms and conditions
67 specified under this article. Any such homestead exemption under this article shall be in
68 addition to and not in lieu of any other homestead exemption applicable to county taxes for
69 county purposes within the special district. Notwithstanding any provision of such local
70 Act to the contrary, the referendum which shall otherwise be required to be conducted
71 under such local Act shall only be conducted if the resolution required under subsection (a)
72 of Code Section 48-8-109.4 is adopted prior to the issuance of the call for the referendum
73 under the local Act by the election superintendent. If such ordinance is not adopted by that
74 date, the referendum otherwise required to be conducted under the local Act shall not be
75 conducted.

76 (e) No sales and use tax shall be levied in a special district under this article in which a tax
77 is levied and collected under Article 2 of this chapter.

78 48-8-109.4.

79 (a) Whenever the governing authority of any county whose geographic boundary is
80 conterminous with that of a special district wishes to submit to the electors of such special
81 district the question of whether the sales and use tax authorized by Code Section
82 48-8-109.3 shall be imposed, any such governing authority shall notify the election
83 superintendent of the county whose geographical boundary is conterminous with that of the
84 special district by forwarding to the superintendent a copy of a resolution of the governing
85 authority calling for a referendum election. Upon receipt of the resolution, it shall be the
86 duty of the election superintendent to issue the call for an election for the purpose of
87 submitting the question of the imposition of the sales and use tax to the voters of the special
88 district for approval or rejection. The election superintendent shall issue the call and shall
89 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
90 Such election shall only be conducted on the date of and in conjunction with a referendum
91 provided for by local Act on the question of whether to impose a homestead exemption
92 within such county based on the amount of proceeds from the sales and use tax levied and
93 collected pursuant to this article and a homestead exemption within such county in an
94 amount sufficient to offset future millage rate increases. The election superintendent shall

95 cause the date and purpose of the election to be published once a week for two weeks
 96 immediately preceding the date of the election in the official organ of such county. The
 97 ballot shall have written or printed thereon the following statement which shall precede the
 98 ballot question specified in this subsection and the ballot question specified by the required
 99 local Act:

100 'NOTICE TO ELECTORS: Unless **BOTH** the homestead exemptions **AND** the retail
 101 homestead option sales and use tax are approved, then neither the exemptions nor the
 102 sales and use tax shall become effective.'

103 Such statement shall be followed by:

104 () YES Shall a homestead option sales and use tax of 1 percent be levied within
 105 the special district within _____ County for the purposes of
 106 () NO funding services to replace revenue lost to an additional homestead
 107 exemption of up to 100 percent of the assessed value of homesteads from
 108 county taxes for county purposes and, if excess proceeds remain, of
 109 funding capital outlay projects?'

110 Notwithstanding any other provision of law to the contrary, the statement, ballot question,
 111 and local Act ballot question referred to in this subsection shall precede any and all other
 112 ballot questions calling for the levy or imposition of any other sales and use tax which are
 113 to appear on the same ballot.

114 (b) All persons desiring to vote in favor of levying the sales and use tax shall vote 'Yes,'
 115 and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the
 116 votes cast are in favor of levying the tax and approving the local Act providing such
 117 homestead exemptions, then the tax shall be levied in accordance with this article;
 118 otherwise, the sales and use tax shall not be levied, and the question of the imposition of
 119 the sales and use tax may not again be submitted to the voters of the special district until
 120 after 24 months immediately following the month in which the election was held. It shall
 121 be the duty of the election superintendent to hold and conduct such elections under the
 122 same rules and regulations as govern special elections. It shall be the superintendent's
 123 further duty to canvass the returns, declare the result of the election, and certify the result
 124 to the Secretary of State and to the commissioner. The expense of the election shall be
 125 borne by the county whose geographical boundary is conterminous with that of the special
 126 district holding the election.

127 (c) If the imposition of the sales and use tax provided in Code Section 48-8-109.3 is
 128 approved in a referendum election as provided by subsections (a) and (b) of this Code
 129 section, the governing authority of the county whose geographical boundary is
 130 conterminous with that of the special district shall adopt a resolution during the first 30
 131 days following the certification of the result of the election imposing the sales and use tax

132 authorized by Code Section 48-8-109.3 on behalf of the county whose geographical
 133 boundary is conterminous with that of the special district. The resolution shall be effective
 134 on the first day of the next succeeding calendar quarter which begins more than 80 days
 135 after the adoption of the resolution. With respect to services which are billed on a regular
 136 monthly basis, however, the resolution shall become effective with the first regular billing
 137 period coinciding with or following the otherwise effective date of the resolution. A
 138 certified copy of the resolution shall be forwarded to the commissioner so that it will be
 139 received within five days after its adoption.

140 (d) In the event the millage rate for county maintenance and operation purposes, excluding
 141 any millage rate for the retirement of general bonded indebtedness, is increased in any year
 142 following the base year to a rate exceeding the millage rate for such purposes that was
 143 imposed in the base year, the local Act providing for the homestead option sales and use
 144 tax homestead exemption shall provide for an additional homestead exemption which shall
 145 be granted to each resident of the county receiving the homestead option sales and use tax
 146 homestead exemption. In that event, such local Act shall provide that each such resident
 147 is granted an additional homestead exemption in an amount equivalent to the increase in
 148 that resident's ad valorem taxes for county purposes which is attributable to the amount of
 149 the millage rate which exceeds the millage rate of the base year.

150 48-8-109.5.

151 (a) The sales and use tax levied pursuant to this article shall be exclusively administered
 152 and collected by the commissioner for the use and benefit of each county whose
 153 geographical boundary is conterminous with that of a special district. Such administration
 154 and collection shall be accomplished in the same manner and subject to the same applicable
 155 provisions, procedures, and penalties provided in Article 1 of this chapter except that the
 156 sales and use tax provided in this article shall be applicable to sales of motor fuels as
 157 prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that
 158 all moneys collected from each taxpayer by the commissioner shall be applied first to such
 159 taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the
 160 amount of the sales and use tax due and accounted for and shall be reimbursed in the form
 161 of a deduction in submitting, reporting, and paying the amount due if such amount is not
 162 delinquent at the time of payment. The deduction shall be at the rate and subject to the
 163 requirements specified under subsections (b) through (f) of Code Section 48-8-50.

164 (b) Each sales and use tax return remitting sales and use taxes collected under this article
 165 shall separately identify the location of each retail establishment at which any of the sales
 166 and use taxes remitted were collected and shall specify the amount of sales and the amount
 167 of taxes collected at each establishment for the period covered by the return in order to

168 facilitate the determination by the commissioner that all sales and use taxes imposed by this
 169 article are collected and distributed according to situs of sale.

170 (c) The proceeds of the sales and use tax collected by the commissioner in each special
 171 district under this article shall be disbursed as soon as practicable after collection as
 172 follows:

173 (1) One percent of the amount collected shall be paid into the general fund of the state
 174 treasury in order to defray the costs of administration;

175 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining
 176 proceeds of the sales and use tax shall be distributed to the governing authority of the
 177 county whose geographical boundary is conterminous with that of the special district. As
 178 a condition precedent for the authority to levy the sales and use tax or to collect any
 179 proceeds from the tax authorized by this article for the year following the first complete
 180 calendar year in which it is levied and for all subsequent years except the year following
 181 the year in which the sales and use tax is terminated under Code Section 48-8-109.7, the
 182 county whose geographical boundary is conterminous with that of the special district
 183 shall, except as otherwise provided in subsection (c) of Code Section 48-8-109.3, expend
 184 such proceeds as follows:

185 (A) Such proceeds shall be expended for the purpose of funding services within the
 186 special district equal to the revenue lost to the homestead exemption as provided in this
 187 Code section as follows:

188 (i) The homestead factor shall be calculated by multiplying the quantity 1.000 times
 189 an amount equal to the net amount of sales and use tax collected in the special district
 190 pursuant to this article for the previous calendar year, and then dividing by the taxes
 191 levied for county purposes on only that portion of the county tax digest that represents
 192 net assessments on qualified homestead property after all other homestead exemptions
 193 have been applied, rounding the result to three decimal places;

194 (ii) If the homestead factor is less than or equal to 1.000, the amount of homestead
 195 exemption created under this article on qualified homestead property shall be equal
 196 to the product of the homestead factor multiplied times the net assessment of each
 197 qualified homestead remaining after all other homestead exemptions have been
 198 applied; and

199 (iii) If the homestead factor is greater than 1.000, the homestead exemption created
 200 by this article on qualified homestead property shall be equal to the net assessment of
 201 each homestead remaining after all other homestead exemptions have been applied;

202 (B) In the event that excess proceeds remain following the expenditure of proceeds
 203 under subparagraph (A) of this paragraph such that the homestead exemption provided
 204 for under this article is sufficient to equate to the complete elimination of ad valorem

205 taxes for county purposes for each taxpayer receiving such exemption, then such
 206 remaining proceeds shall be expended for the purpose of funding capital outlay projects
 207 as follows:

208 (i) The governing authority of the county whose geographical boundary is
 209 conterminous with that of the special district shall establish the capital factor which
 210 shall not exceed .200; and

211 (ii) Capital outlay projects shall be funded from such excess proceeds in an amount
 212 equal to the product of the capital factor multiplied by the net amount of the sales and
 213 use tax proceeds collected under this article during the previous calendar year only
 214 to the extent that the amount of such excess proceeds will permit; and

215 (C) If any of such proceeds remain following the distribution provided for in
 216 subparagraphs (A) and (B) of this paragraph:

217 (i) The millage rate levied for county purposes shall be rolled back in an amount
 218 equal to such excess divided by the net taxable digest for county purposes after
 219 deducting all homestead exemptions, including the exemption under this article; and

220 (ii) In the event the rollback created by division (i) of this subparagraph exceeds the
 221 millage rate for county purposes, the governing authority of the county whose
 222 boundary is conterminous with the special district shall be authorized to expend the
 223 surplus funds for funding all or any portion of those services which are to be provided
 224 by such governing authorities pursuant to and in accordance with Article IX, Section
 225 II, Paragraph III of the Constitution of this state.

226 48-8-109.6.

227 Where a local sales or use tax has been paid with respect to tangible personal property by
 228 the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction
 229 outside this state, the sales and use tax may be credited against the sales and use tax
 230 authorized to be imposed by this article upon the same property. If the amount of sales or
 231 use tax so paid is less than the amount of the use tax due under this article, the purchaser
 232 shall pay an amount equal to the difference between the amount paid in the other tax
 233 jurisdiction and the amount due under this article. The commissioner may require such
 234 proof of payment in another local tax jurisdiction as the commissioner deems necessary and
 235 proper. No credit shall be granted, however, against the sales and use tax imposed under
 236 this article for tax paid in another jurisdiction if the sales and use tax paid in such other
 237 jurisdiction is used to obtain a credit against any other local sales and use tax levied in the
 238 special district or in the county which is conterminous with the special district; and sales
 239 and use taxes so paid in another jurisdiction shall be credited first against the sales and use

240 tax levied under this article and then against the sales and use tax levied under Article 3 of
 241 this chapter, if applicable.

242 48-8-109.7.

243 (a) Whenever the governing authority of any county whose geographic boundary is
 244 conterminous with that of the special district in which the sales and use tax authorized by
 245 this article is being levied wishes to submit to the electors of the special district the
 246 question of whether the sales and use tax authorized by Code Section 48-8-109.3 shall be
 247 discontinued, the governing authority shall notify the election superintendent of the county
 248 whose geographical boundary is conterminous with that of the special district by
 249 forwarding to the superintendent a copy of a resolution of the governing authority calling
 250 for the referendum election. Upon receipt of the resolution, it shall be the duty of the
 251 election superintendent to issue the call for an election for the purpose of submitting the
 252 question of discontinuing the levy of the sales and use tax to the voters of the special
 253 district for approval or rejection. The election superintendent shall issue the call and shall
 254 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
 255 Such election shall only be conducted on the date of and in conjunction with a referendum
 256 provided for by local Act on the question of whether to repeal the homestead exemption
 257 within such county which is funded from the proceeds of the sales and use tax levied and
 258 collected pursuant to this article. The election superintendent shall cause the date and
 259 purpose of the election to be published once a week for two weeks immediately preceding
 260 the date of the election in the official organ of such county. The ballot shall have written
 261 or printed thereon the following:

262 '() YES Shall the 1 percent retail homestead option sales and use tax being
 263 levied within the special district within _____ County for the
 264 () NO purposes of funding capital outlay projects and of funding services to
 265 replace revenue lost to an additional homestead exemption of up to
 266 100 percent of the assessed value of homesteads from county taxes for
 267 county purposes be terminated?'

268 (b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote
 269 'Yes,' and those persons opposed to discontinuing the tax shall vote 'No.' If more than
 270 one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing
 271 the local Act providing for such homestead exemption, then the sales and use tax shall
 272 cease to be levied on the last day of the taxable year following the taxable year in which
 273 the commissioner receives the certification of the result of the election; otherwise, the sales
 274 and use tax shall continue to be levied, and the question of the discontinuing of the tax may
 275 not again be submitted to the voters of the special district until after 24 months immediately

276 following the month in which the election was held. It shall be the duty of the election
277 superintendent to hold and conduct such elections under the same rules and regulations as
278 govern special elections. It shall be the superintendent's further duty to canvass the returns,
279 declare and certify the result of the election, and certify the result to the Secretary of State
280 and to the commissioner. The expense of the election shall be borne by the county whose
281 geographical boundary is conterminous with that of the special district holding the election.

282 48-8-109.8.

283 No sales and use tax provided for in Code Section 48-8-109.3 shall be imposed upon the
284 sale of tangible personal property which is ordered by and delivered to the purchaser at a
285 point outside the geographical area of the special district in which the sales and use tax is
286 imposed under this article regardless of the point at which title passes, if the delivery is
287 made by the seller's vehicle, United States mail, or common carrier or by a licensed private
288 or contract carrier.

289 48-8-109.9.

290 (a) As used in this Code section, the term 'building and construction materials' means all
291 building and construction materials, supplies, fixtures, or equipment, any combination of
292 such items, and any other leased or purchased articles when the materials, supplies,
293 fixtures, equipment, or articles are to be utilized or consumed during construction or are
294 to be incorporated into construction work pursuant to a bona fide written construction
295 contract.

296 (b) No sales and use tax provided for in Code Section 48-8-109.3 shall be imposed in such
297 special district upon the sale or use of building and construction materials when the
298 contract pursuant to which the building and construction materials are purchased or used
299 was advertised for bid prior to approval of the levy of the sales and use tax by the county
300 whose geographical boundary is conterminous with that of the special district and the
301 contract was entered into as a result of a bid actually submitted in response to the
302 advertisement prior to approval of the levy of the sales and use tax.

303 48-8-109.10.

304 The commissioner shall have the power and authority to promulgate such rules and
305 regulations as shall be necessary for the effective and efficient administration and
306 enforcement of the collection of the sales and use tax authorized to be imposed by this
307 article."

308 **SECTION 2.**

309 This Act shall become effective upon its approval by the Governor or upon its becoming law
310 without such approval.

311 **SECTION 3.**

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