

House Bill 48 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st, Lindsey of the 54th, Stephens of the 164th, England of the 108th, Allison of the 8th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia
2 Annotated, relating to ad valorem tax exemptions, so as to revise and change certain
3 provisions regarding applications for, waiver of, denial of, renewal of, and granting of
4 freeport exemptions; to provide for level 1 and level 2 freeport exemptions; to provide for
5 applicability to business inventory; to provide for procedures, conditions, and limitations; to
6 provide an effective date; to provide for severability; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated,
11 relating to ad valorem tax exemptions, is amended by revising Code Section 48-5-48.1,
12 relating to freeport exemption applications, waivers, denials, and renewals, as follows:

13 "48-5-48.1.

14 (a) Any person, firm, or corporation seeking ~~an~~ a level 1 freeport exemption from ad
15 valorem taxation of certain tangible personal property inventory when such exemption has
16 been authorized by the governing authority of any county or municipality after approval
17 of the electors of such county or municipality pursuant to the authority of the Constitution
18 of Georgia or Code Section 48-5-48.2 shall file a written application and schedule of
19 property with the county board of tax assessors on forms furnished by such board. Such
20 application shall be filed in the year in which exemption from taxation is sought no later
21 than the date on which the tax receiver or tax commissioner of the county in which the
22 property is located closes ~~his~~ the books for the return of taxes.

23 (b) The application for the ~~tangible personal property inventory~~ level 1 freeport exemption
24 shall provide for:

25 (1) A schedule of the inventory of goods in the process of manufacture or production
26 which shall include all partly finished goods and raw materials held for direct use or

27 consumption in the ordinary course of the taxpayer's manufacturing or production
28 business in the State of Georgia;

29 (2) A schedule of the inventory of finished goods manufactured or produced within the
30 State of Georgia in the ordinary course of the taxpayer's manufacturing or production
31 business when held by the original manufacturer or producer of such finished goods; and

32 (3) A schedule of the inventory of finished goods which on January 1 are stored in a
33 warehouse, dock, or wharf, whether public or private, and which are destined for
34 shipment outside the State of Georgia and the inventory of finished goods which are
35 shipped into the State of Georgia from outside this state and which are stored for
36 transshipment to a final destination outside this state. The information required by Code
37 Section 48-5-48.2 to be contained in the official books and records of the warehouse,
38 dock, or wharf where such property is being stored, which official books and records are
39 required to be open to the inspection of taxing authorities of this state and political
40 subdivisions thereof, shall not be required to be included as a part of or to accompany the
41 application for such exemption.

42 (c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the
43 timely filing of the application and complete schedule of the inventory for which
44 exemption is sought on or before the due date specified in subsection (a) of this Code
45 section.

46 (2) The failure to file properly the application and schedule shall constitute a waiver of
47 the exemption on the part of the person, firm, or corporation failing to make the
48 application for such exemption for that year as follows:

49 (A) The failure to report any inventory for which such exemption is sought in the
50 schedule provided for in the application shall constitute a waiver of the exemption on
51 the part of the person, firm, or corporation failing to so report for that taxable year in
52 an amount equal to the difference between fair market value of the inventory as
53 reported and the fair market value finally determined to be applicable to the inventory
54 for which the exemption is sought; and

55 (B) The failure to file timely such application and schedule shall constitute a waiver
56 of the exemption until the first day of the month following the month such application
57 and schedule are filed properly with the county tax assessor; provided, however, that
58 unless the application and schedule are filed on or before June 1 of such year, the
59 exemption shall be waived for that entire year.

60 (d) Upon receiving the application required by this Code section, the county board of tax
61 assessors shall determine the eligibility of all types of tangible personal property listed on
62 the application. If any property has been listed which the board believes is not eligible for
63 the exemption, the board shall issue a letter notifying the applicant that all or a portion of

64 the application has been denied. The denial letter shall list the type and total fair market
 65 value of all property listed on the application for which the exemption has been approved
 66 and the type and total fair market value of all property listed on the application for which
 67 the exemption has been denied. The applicant shall have the right to appeal from the denial
 68 of the exemption for any property listed and such appeal shall proceed as provided in Code
 69 Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code
 70 section, the county board of assessors shall not send a second letter of notification denying
 71 the exemption of all or a portion of such property listed on the application on new grounds
 72 that could and should have been discerned at the time the initial denial letter was issued.
 73 (e) If the ~~tangible personal property inventory~~ level 1 freeport exemption has been granted
 74 to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of
 75 renewal to the taxpayer for the immediately following taxable year. Such notice of renewal
 76 shall be issued not later than January 15 of such immediately following taxable year to
 77 facilitate the filing of a timely application and schedule by the taxpayer for such taxable
 78 year."

79 **SECTION 2.**

80 Said part is further amended by revising Code Section 48-5-48.2, relating to the freeport
 81 exemption, as follows:

82 "48-5-48.2.

83 (a) This Code section shall be known and may be cited as the 'Level 1 Freeport
 84 Exemption.'

85 (b) As used in this Code section, the term:

86 (1) 'Destined for shipment to a final destination outside this state' ~~includes~~ means, for
 87 purposes of a level 1 freeport exemption, that portion or percentage of an inventory of
 88 finished goods which the taxpayer can establish, through a historical sales or shipment
 89 analysis, either of which utilizes information from the preceding calendar year, or other
 90 reasonable, documented method, is reasonably anticipated to be shipped to a final
 91 destination outside this state. Such other reasonable, documented method may only be
 92 utilized in the case of a new business, in the case of a substantial change in scope of an
 93 existing business, or in other unusual situations where a historical sales or shipment
 94 analysis does not adequately reflect future anticipated shipments to a final destination
 95 outside this state. It is not necessary that the actual final destination be known as of
 96 January 1 in order to qualify for the exemption.

97 (2) 'Finished goods' ~~shall mean~~ means, for purposes of a level 1 freeport exemption,
 98 goods, wares, and merchandise of every character and kind but shall not include

99 unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the
100 process of manufacture or production or the stock in trade of a retailer.

101 (3) 'Foreign merchandise in transit' means, for purposes of a level 1 freeport exemption,
102 any goods which are in international commerce where the title has passed to a foreign
103 purchaser and the goods are temporarily stored in this state while awaiting shipment
104 overseas.

105 ~~(3)~~(4) 'Raw materials' shall mean means, for purposes of a level 1 freeport exemption,
106 any material, whether crude or processed, that can be converted by manufacture,
107 processing, or a combination thereof into a new and useful product but shall not include
108 unrecovered, unextracted, or unsevered natural resources.

109 ~~(4)~~(5) 'Stock in trade of a retailer' means, for purposes of a level 1 freeport exemption,
110 finished goods held by one in the business of making sales of such goods at retail in this
111 state, within the meaning of Chapter 8 of this title, when such goods are held or stored
112 at a business location from which such retail sales are regularly made. Goods stored in
113 a warehouse, dock, or wharf, including a warehouse or distribution center which is part
114 of or adjoins a place of business from which retail sales are regularly made, shall not be
115 considered stock in trade of a retailer to the extent that the taxpayer can establish, through
116 a historical sales or shipment analysis, either of which utilizes information from the
117 preceding calendar year, or other reasonable, documented method, the portion or
118 percentage of such goods which is reasonably anticipated to be shipped outside this state
119 for resale purposes.

120 ~~(b)~~(c) The governing authority of any county or municipality may, subject to the approval
121 of the electors of such political subdivision, exempt from ad valorem taxation, including
122 all such taxes levied for educational purposes and for state purposes, all or any combination
123 of the following types of tangible personal property:

124 (1) Inventory of goods in the process of manufacture or production which shall include
125 all partly finished goods and raw materials held for direct use or consumption in the
126 ordinary course of the taxpayer's manufacturing or production business in this state. The
127 exemption provided for in this paragraph shall apply only to tangible personal property
128 which is substantially modified, altered, or changed in the ordinary course of the
129 taxpayer's manufacturing, processing, or production operations in this state. For purposes
130 of this paragraph, the cleaning, drying, pest control treatment, or segregation by grade of
131 grain, peanuts or other oil seeds, or cotton shall constitute substantial modification in the
132 course of processing or production operations. For purposes of this paragraph,
133 remanufacture of aircraft engines or aircraft engine parts or components shall constitute
134 manufacturing operations in this state. Remanufacture of aircraft engines or aircraft

135 engine parts or components means the substantial overhauling or rebuilding of aircraft
 136 engines or aircraft engine parts or components;

137 (2) Inventory of finished goods manufactured or produced within this state in the
 138 ordinary course of the taxpayer's manufacturing or production business when held by the
 139 original manufacturer or producer of such finished goods. The exemption provided for
 140 in this paragraph shall be for a period not exceeding 12 months from the date such
 141 property is produced or manufactured; or

142 (3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or
 143 wharf, whether public or private, and which are destined for shipment to a final
 144 destination outside this state and inventory of finished goods which are shipped into this
 145 state from outside this state and stored for transshipment to a final destination outside this
 146 state, including foreign merchandise in transit. The exemption provided for in this
 147 paragraph shall be for a period not exceeding 12 months from the date such property is
 148 stored in this state. Such period shall be determined based on application of a first-in,
 149 first-out method of accounting for the inventory. The official books and records of the
 150 warehouse, dock, or wharf where such property is being stored shall contain a full, true,
 151 and accurate inventory of all such property, including the date of the receipt of the
 152 property, the date of the withdrawal of the property, the point of origin of the property,
 153 and the point of final destination of the same, if known. The official books and records
 154 of any such warehouse, dock, or wharf, whether public or private, pertaining to any such
 155 property for which a freeport exemption has been claimed shall be at all times open to the
 156 inspection of all taxing authorities of this state and of any political subdivision of this
 157 state.

158 ~~(c)~~(d) Whenever the governing authority of any county or municipality wishes to exempt
 159 such tangible property from ad valorem taxation, as provided in this Code section, the
 160 governing authority thereof shall notify the election superintendent of such political
 161 subdivision, and it shall be the duty of said election superintendent to issue the call for an
 162 election for the purpose of submitting to the electors of the political subdivision the
 163 question of whether such exemption shall be granted. The referendum ballot shall specify
 164 as separate questions the type or types of property as defined in this Code section which
 165 are being proposed to be exempted from taxation. The election superintendent shall issue
 166 the call and shall conduct the election on a date and in the manner authorized under Code
 167 Section 21-2-540.

168 ~~(d)~~(e) The governing authority of any county or municipality wherein an exemption has
 169 been approved by the voters as provided in this Code section may, by appropriate
 170 resolution, a copy of which shall be immediately transmitted to the state revenue
 171 commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent or all

172 of the value of such tangible personal property as defined in this Code section; provided,
 173 however, that once an exemption has been granted, no reduction in the percent of the value
 174 of such property to be exempted may be made until and unless such exemption is revoked
 175 or repealed as provided in this Code section. An increase in the percent of the value of the
 176 property to be exempted may be accomplished by appropriate resolution of the governing
 177 authority of such county or municipality, and a copy thereof shall be immediately
 178 transmitted to the state revenue commissioner, provided that such increase shall be in
 179 increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible
 180 personal property as defined in this Code section, within the discretion of such governing
 181 authority.

182 ~~(e)~~~~(f)~~~~(1)~~ If more than one-half of the votes cast on such question are in favor of such
 183 exemption, then such exemption may be granted by the governing authority commencing
 184 on the first day of any ensuing calendar year; otherwise, such exemption may not be
 185 granted. This paragraph is intended to clearly provide that following approval of such
 186 exemption in such referendum, such exemption may be granted on the first day of any
 187 calendar year following the year in which such referendum was conducted. This
 188 paragraph shall not be construed to imply that the granting of such exemption could not
 189 previously be delayed to any such calendar year.

190 (2) Exemptions may only be revoked by a referendum election called and conducted as
 191 provided in this Code section, provided that the call for such referendum shall not be
 192 issued within five years from the date such exemptions were first granted and, if the
 193 results of said election are in favor of the revocation of such exemptions, then such
 194 revocation shall be effective only at the end of a five-year period from the date of such
 195 referendum.

196 (g) Level 1 freeport exemptions effected pursuant to this Code section may be granted
 197 either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

198 ~~(f)~~~~(h)~~ The commissioner shall by regulation adopt uniform procedures and forms for the
 199 use of local officials in the administration of this Code section."

200 SECTION 3.

201 Said part is further amended by adding new Code sections to read as follows:

202 "48-5-48.5.

203 (a) Any person, firm, or corporation seeking a level 2 freeport exemption from ad valorem
 204 taxation of certain tangible personal property inventory when such exemption has been
 205 authorized by the governing authority of any county or municipality after approval of the
 206 electors of such county or municipality pursuant to the authority of the Constitution of
 207 Georgia and Code Section 48-5-48.6 shall file a written application and schedule of

208 property with the county board of tax assessors on forms furnished by such board. Such
209 application shall be filed in the year in which exemption from taxation is sought no later
210 than the date on which the tax receiver or tax commissioner of the county in which the
211 property is located closes the books for the return of taxes.

212 (b) The application for the level 2 freeport exemption shall provide for a schedule of the
213 inventory of finished goods held by one in the business of making sales of such goods in
214 this state.

215 (c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the
216 timely filing of the application and complete schedule of the inventory for which
217 exemption is sought on or before the due date specified in subsection (a) of this Code
218 section.

219 (2) The failure to file properly the application and schedule shall constitute a waiver of
220 the exemption on the part of the person, firm, or corporation failing to make the
221 application for such exemption for that year as follows:

222 (A) The failure to report any inventory for which such exemption is sought in the
223 schedule provided for in the application shall constitute a waiver of the exemption on
224 the part of the person, firm, or corporation failing to so report for that taxable year in
225 an amount equal to the difference between fair market value of the inventory as
226 reported and the fair market value finally determined to be applicable to the inventory
227 for which the exemption is sought; and

228 (B) The failure to file timely such application and schedule shall constitute a waiver
229 of the exemption until the first day of the month following the month such application
230 and schedule are filed properly with the county tax assessor; provided, however, that
231 unless the application and schedule are filed on or before June 1 of such year, the
232 exemption shall be waived for that entire year.

233 (d) Upon receiving the application required by this Code section, the county board of tax
234 assessors shall determine the eligibility of all types of tangible personal property listed on
235 the application. If any property has been listed which the board believes is not eligible for
236 the exemption, the board shall issue a letter notifying the applicant that all or a portion of
237 the application has been denied. The denial letter shall list the type and total fair market
238 value of all property listed on the application for which the exemption has been approved
239 and the type and total fair market value of all property listed on the application for which
240 the exemption has been denied. The applicant shall have the right to appeal from the denial
241 of the exemption for any property listed, and such appeal shall proceed as provided in Code
242 Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code
243 section, the county board of assessors shall not send a second letter of notification denying

244 the exemption of all or a portion of such property listed on the application on new grounds
 245 that could and should have been discerned at the time the initial denial letter was issued.
 246 (e) If the level 2 freeport exemption has been granted to a taxpayer for a taxable year, the
 247 county board of tax assessors shall issue a notice of renewal to the taxpayer for the
 248 immediately following taxable year. Such notice of renewal shall be issued not later than
 249 January 15 of such immediately following taxable year to facilitate the filing of a timely
 250 application and schedule by the taxpayer for such taxable year.

251 48-5-48.6.

252 (a) This Code section shall be known and may be cited as the 'Level 2 Freeport
 253 Exemption.'

254 (b) As used in this Code section, the term 'finished goods' means, for purposes of a level 2
 255 freeport exemption, goods, wares, and merchandise of every character and kind
 256 constituting a business's inventory which would not otherwise qualify for a level 1 freeport
 257 exemption.

258 (c) The governing authority of any county or municipality may, subject to the approval of
 259 the electors of such political subdivision, exempt from ad valorem taxation, including all
 260 such taxes levied for educational purposes and for state purposes, inventory of finished
 261 goods.

262 (d) Whenever the governing authority of any county or municipality wishes to exempt
 263 such tangible property from ad valorem taxation, as provided in this Code section, the
 264 governing authority thereof shall notify the election superintendent of such political
 265 subdivision, and it shall be the duty of said election superintendent to issue the call for an
 266 election for the purpose of submitting to the electors of the political subdivision the
 267 question of whether such exemption shall be granted. The referendum ballot shall specify
 268 retail business inventory as the types of property as defined in this Code section which are
 269 being proposed to be exempted from taxation. The election superintendent shall issue the
 270 call and shall conduct the election on a date and in the manner authorized under Code
 271 Section 21-2-540.

272 (e) The governing authority of any county or municipality wherein an exemption has been
 273 approved by the voters as provided in this Code section may, by appropriate resolution, a
 274 copy of which shall be immediately transmitted to the state revenue commissioner, exempt
 275 from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such
 276 tangible personal property as defined in this Code section; provided, however, that once
 277 an exemption has been granted, no reduction in the percent of the value of such property
 278 to be exempted may be made until and unless such exemption is revoked or repealed as
 279 provided in this Code section. An increase in the percent of the value of the property to be

280 exempted may be accomplished by appropriate resolution of the governing authority of
 281 such county or municipality, and a copy thereof shall be immediately transmitted to the
 282 state revenue commissioner, provided that such increase shall be in increments of 20
 283 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal
 284 property as defined in this Code section, within the discretion of such governing authority.

285 (f)(1) If more than one-half of the votes cast on such question are in favor of such
 286 exemption, then such exemption may be granted by the governing authority commencing
 287 on the first day of any ensuing calendar year; otherwise, such exemption may not be
 288 granted. This paragraph is intended to clearly provide that following approval of such
 289 exemption in such referendum, such exemption may be granted on the first day of any
 290 calendar year following the year in which such referendum was conducted. This
 291 paragraph shall not be construed to imply that the granting of such exemption could not
 292 previously be delayed to any such calendar year.

293 (2) Exemptions may only be revoked by a referendum election called and conducted as
 294 provided in this Code section, provided that the call for such referendum shall not be
 295 issued within five years from the date such exemptions were first granted and, if the
 296 results of said election are in favor of the revocation of such exemptions, then such
 297 revocation shall be effective only at the end of a five-year period from the date of such
 298 referendum.

299 (g) Level 2 freeport exemptions effected pursuant to this Code section may be granted
 300 either in lieu of or in addition to level 1 freeport exemptions under Code Section 48-5-48.2.

301 (h) The commissioner shall by regulation adopt uniform procedures and forms for the use
 302 of local officials in the administration of this Code section."

303 **SECTION 4.**

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

306 **SECTION 5.**

307 If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or
 308 words of this Act is found to be unconstitutional, the same is declared to be severable, and
 309 the balance of this Act shall remain effective notwithstanding such unconstitutionality. The
 310 General Assembly declares that it would have enacted this Act and each Code section,
 311 subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or
 312 more provisions, Code sections, subsections, sentences, clauses, phrases, or words would be
 313 declared unconstitutional.

314

SECTION 6.

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