

The Senate Finance Committee offered the following substitute to HB 965:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to current income tax payment, so as to allow certain fiduciaries an exception to the  
3 requirement of paying estimated taxes; to change certain provisions relating to withholding  
4 tax on taxable income of nonresident members of certain associations; to provide for related  
5 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
10 current income tax payment, is amended by revising Code Section 48-7-114, relating to  
11 payment of estimated income tax, as follows:

12 "48-7-114.

13 (a) **'Estimated tax' defined.** For purposes of this Code section, the term 'estimated tax'  
14 means the amount which the individual estimates as the amount of income tax imposed by  
15 Code Section 48-7-20 less the amount which the individual estimates as the sum of credits  
16 allowable by law against the tax.

17 (b) **Requirement of estimated tax.** Except as otherwise provided in subsection (d) of this  
18 Code section, every resident individual and every taxable nonresident individual shall file  
19 his or her estimated tax for the current taxable year if he or she can be reasonably expected  
20 to be required to file a Georgia income tax return for the current taxable year and his or her  
21 gross income can reasonably be expected to:

22 (1) Include more than \$1,000.00 from sources other than wages as defined in paragraph  
23 (10) of Code Section 48-7-100; and

24 (2) Exceed:

25 (A) One thousand five hundred dollars if the individual is single or the individual is  
 26 married and not living with his or her spouse or the individual is married and expects  
 27 to claim only \$1,500.00 of the marital exemption; or

28 (B) Three thousand dollars if the individual is married and living with his or her spouse  
 29 and expects to claim the full marital exemption.

30 (c) **Return as estimated tax.** If on or before January 31 of the succeeding taxable year  
 31 or, in the case of an individual referred to in subsection (b) of Code Section 48-7-115,  
 32 relating to income from farming and fishing, on or before March 1 of the succeeding  
 33 taxable year, the taxpayer files a return for the taxable year for which the estimated tax is  
 34 required and pays in full the amount computed on the return as payable and the estimate  
 35 is not required to be filed during the taxable year but is required to be filed on or before  
 36 January 15, then the return shall be considered as the estimate.

37 (d) **Exemptions.** This Code section shall not apply to an individual in a given tax year if:

38 (1) The sum of the allowable credits shown on the individual's income tax return for the  
 39 tax year exceeds the individual's tax liability shown on the return before the tax liability  
 40 is reduced by the amount of the allowable credits; and

41 (2) The individual reasonably expected at the time estimated tax was otherwise required  
 42 to be filed with respect to the tax year that the conditions of paragraph (1) of this  
 43 subsection would be met for the tax year.

44 (e)(1) **Applicability to fiduciaries.** With respect to taxable years beginning on or after  
 45 January 1, 1988, fiduciaries shall be subject to all requirements of this article in the same  
 46 manner as individuals, except as provided in paragraph (2) of this subsection.

47 (2) This Code section shall not apply with respect to any taxable year ending before the  
 48 date two years after the date of the decedent's death in the case of:

49 (A) The estate of such decedent; or

50 (B) A testamentary trust as defined in IRC Section 6654(1)(2)(B)."

## 51 SECTION 2.

52 Said article is further amended by revising Code Section 48-7-129, relating to withholding  
 53 tax on distributions to nonresidents, as follows:

54 "48-7-129.

55 (a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which  
 56 owns property or does business within this state shall be subject to a withholding tax.  
 57 Such tax shall be withheld from ~~any distributions paid or any distributions credited but~~  
 58 ~~not paid to members who are not residents of Georgia~~ a nonresident member's share of  
 59 taxable income sourced to this state, whether distributed or not, except as provided in  
 60 subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term

61 'taxable income sourced to this state' means the entity's income allocated or apportioned  
62 to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

63 (2) The amount of tax to be withheld for each nonresident member shall be determined  
64 by multiplying the ~~distribution paid or the distribution credited but not paid~~ nonresident  
65 member's share of the taxable income sourced to this state by a rate of 4 percent. To the  
66 extent that the partnership, Subchapter 'S' corporation, or limited liability company remits  
67 withholding tax during the course of the tax year which exceeds the Georgia income tax  
68 liability of a nonresident member, that member shall be entitled to a refund of the excess  
69 withholding at the end of the taxable year.

70 (3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails  
71 to withhold and pay over to the commissioner any amount required to be withheld under  
72 this Code section may be liable for a penalty equal to 25 percent of the amount not  
73 withheld and paid over. Any penalty imposed under this subsection shall be paid upon  
74 notice and demand by the commissioner or the commissioner's delegate and shall be  
75 assessed and collected in the same manner as the withholding taxes imposed by this  
76 article.

77 (4) The partnership, Subchapter 'S' corporation, or limited liability company and its  
78 members shall be jointly and severally liable for the withholding tax liability imposed  
79 under this subsection and shall be assessed accordingly.

80 (b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this  
81 Code section, the commissioner may allow the filing of composite returns by  
82 partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their  
83 nonresident members and may provide for the requirements of filing composite returns  
84 by regulation. For purposes of this subsection, the term 'composite return' means a return  
85 filed by a partnership, Subchapter 'S' corporation, or limited liability company on behalf  
86 of all of its nonresident members which reports and remits the Georgia income tax of the  
87 nonresident members.

88 (2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses  
89 to file a composite return and meets all the requirements of filing such composite return,  
90 such partnership, Subchapter 'S' corporation, or limited liability company shall be exempt  
91 from the withholding requirements imposed under subsection (a) of this Code section.

92 (3) The liability imposed by this subsection shall be paid upon notice and demand by the  
93 commissioner or the commissioner's delegate and shall be assessed and collected in the  
94 same manner as all other withholding taxes imposed by this article.

95 (c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to  
96 remit withholding for a nonresident member and the commissioner determines that such  
97 failure is due to a false representation that the member is a resident of Georgia, there shall

98 be imposed in addition to the tax a penalty of the greater of \$250.00 or 5 percent of the  
 99 amount which should have been withheld. The partnership, Subchapter 'S' corporation,  
 100 or limited liability company and the nonresident member shall be jointly and severally  
 101 liable for any such penalty imposed.

102 (2) The penalty imposed by this subsection shall be paid upon notice and demand by the  
 103 commissioner or the commissioner's delegate and shall be assessed and collected in the  
 104 same manner as withholding tax imposed by this article.

105 (d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which  
 106 is required to deduct and withhold the withholding tax imposed by subsection (a) of this  
 107 Code section shall remit such tax and file the required return on a form approved by the  
 108 commissioner as follows:

109 ~~(A) Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S'~~  
 110 ~~corporation, or limited liability company to members who are nonresidents shall be due~~  
 111 ~~on or before the last day of the calendar month following the calendar month within~~  
 112 ~~which the distribution was paid; and~~

113 ~~(B) Taxes deducted and withheld on distributions credited but not paid by a~~  
 114 ~~partnership, Subchapter 'S' corporation, or limited liability company to members who~~  
 115 ~~are nonresidents~~ a nonresident member's share of the taxable income sourced to this  
 116 state shall be due on or before the due date for filing the income tax return for the  
 117 partnership, Subchapter 'S' corporation, or limited liability company as prescribed in  
 118 subsection (a) of Code Section 48-7-56 without regard to any extension of time for  
 119 filing such income tax return.

120 (2) Every partnership, Subchapter 'S' corporation, or limited liability company required  
 121 to deduct and withhold tax under this article shall furnish a written statement or form  
 122 approved by the commissioner to each nonresident member. Such statement or form  
 123 shall include the name and federal tax identification number of the partnership,  
 124 Subchapter 'S' corporation, or limited liability company, the member's name and federal  
 125 tax identification number, the total amount of ~~distributions paid to the member~~ the  
 126 nonresident member's share of the taxable income sourced to this state during the taxable  
 127 year, the total amount of tax deducted and withheld with respect to such member during  
 128 the year, and such other information as the commissioner shall prescribe. Such statement  
 129 or form shall be furnished to the nonresident member and filed in duplicate with the  
 130 commissioner on or before the earlier of the date the income tax return is filed or the due  
 131 date for filing the income tax return of such partnership, Subchapter 'S' corporation, or  
 132 limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without  
 133 regard to any extension of time for filing such income tax return.

134 (3) Any partnership, Subchapter 'S' corporation, or limited liability company required to  
 135 furnish a nonresident member with the written statement required by this subsection  
 136 which furnishes a false or fraudulent statement or which fails to furnish the statement  
 137 shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The  
 138 penalty imposed by this subsection shall be paid upon notice and demand by the  
 139 commissioner or the commissioner's delegate and shall be assessed and collected in the  
 140 same manner as the withholding tax imposed by this article.

141 (e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S'  
 142 corporation, or limited liability company shall not be required to deduct and withhold tax  
 143 for a nonresident member if:

144 (A) A composite return is filed on behalf of nonresident members pursuant to the  
 145 requirements of filing such composite returns as set by the commissioner;

146 (B) The aggregate ~~annual distributions made to a member are~~ amount of a nonresident  
 147 member's share of the taxable income sourced to this state is less than \$1,000.00;

148 (C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of  
 149 subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit  
 150 corporate income tax;

151 (D) Compliance will cause undue hardship on the partnership, Subchapter 'S'  
 152 corporation, or limited liability company, provided that no partnership, Subchapter 'S'  
 153 corporation, or limited liability company shall be exempt from complying with the  
 154 withholding requirements imposed under subsection (a) of this Code section unless the  
 155 commissioner approves in writing a written petition for exemption from the  
 156 withholding requirements based on undue hardship. The commissioner may prescribe  
 157 the form and contents of such a petition and specify standards for when a partnership,  
 158 Subchapter 'S' corporation, or limited liability company shall not be required to comply  
 159 with the withholding requirements due to undue hardship;

160 (E) The partnership is a publicly traded partnership as defined in Section 7704 of the  
 161 Internal Revenue Code of 1986; or

162 (F) The member meets one of the exceptions as set forth in the rules and regulations  
 163 promulgated by the commissioner.

164 (2) Where ~~distributions paid or distributions credited but not paid, or both, to nonresident~~  
 165 ~~members of partnerships, Subchapter 'S' corporations, or limited liability companies are~~  
 166 a nonresident member's share of the taxable income sourced to this state is subject to  
 167 withholding under other provisions of Georgia law ~~or represent a return of such member's~~  
 168 ~~investment or a return of capital~~, such ~~distributions~~ amount shall not be subject to  
 169 withholding under subsection (a) of this Code section.

170 (f) The commissioner shall be authorized to prescribe forms and to promulgate rules and  
171 regulations which the commissioner deems necessary in order to effectuate this Code  
172 section."

173 **SECTION 3.**

174 This Act shall become effective upon its approval by the Governor or upon its becoming law  
175 without such approval, and Section 2 of this Act shall be applicable to all taxable years  
176 beginning on or after January 1, 2012.

177 **SECTION 4.**

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