

House Bill 729 (AS PASSED HOUSE AND SENATE)

By: Representative Knight of the 126th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 clarify certain procedures relating to a receipt for a properly prepared county tax digest; to
5 clarify certain definitions relating to sales and use taxes; to clarify that insulin is exempt from
6 state sales and use tax; to provide a new exemption from sales and use taxes for an
7 instrumentality of the states for a limited period of time; to provide effective dates; to provide
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

27 before the 2008 enactment of federal Public Law 110-343, and except that Section
 28 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in
 29 effect before the 2009 enactment of federal Public Law 111-5, and except that Section
 30 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and
 31 except that the limitations provided in Section 179(b)(1) shall be \$250,000.00 for tax
 32 years beginning in 2010 and shall be \$250,000.00 for tax years beginning in 2011, and
 33 except that the limitations provided in Section 179(b)(2) shall be \$800,000.00 for tax
 34 years beginning in 2010 and shall be \$800,000.00 for tax years beginning in 2011. In the
 35 event a reference is made in this title to the Internal Revenue Code or the Internal
 36 Revenue Code of 1954 as it existed on a specific date prior to January 1, ~~2011~~ 2012, the
 37 term means the provisions of the Internal Revenue Code or the Internal Revenue Code
 38 of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term
 39 used in this title shall have the same meaning as when used in a comparable provision or
 40 context in the Internal Revenue Code of 1986, as amended. For taxable years beginning
 41 on or after January 1, ~~2010~~ 2011, provisions of the Internal Revenue Code of 1986, as
 42 amended, which were as of January 1, ~~2011~~ 2012, enacted into law but not yet effective
 43 shall become effective for purposes of Georgia taxation on the same dates upon which
 44 they become effective for federal tax purposes."

45

SECTION 2.

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

48 "48-5-345.

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

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

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

63 48-5-8, would have produced if the digest had been at the proper assessment ratio and the
 64 amount the digest that is actually used for collection purposes will produce. The
 65 commissioner shall notify the county governing authority annually of the amount so
 66 assessed and this amount shall be due and payable not later than five days after all appeals
 67 have been exhausted or the time for appeal has expired or the final date for payment of
 68 taxes in the county, whichever comes latest, and shall bear interest at the rate specified in
 69 Code Section 48-2-40 from the due date."

70 **SECTION 3.**

71 Said title is further amended by revising paragraphs (17), (25), and (33) of Code Section
 72 48-8-2, relating to definitions regarding sales and use taxation, as follows:

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

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

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

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

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

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

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

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

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

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

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

113 **SECTION 4.**

114 Said title is further amended by revising division (47)(A)(I), deleting the "or" at the end of
115 paragraph (90), deleting the period at the end of paragraph (91) and inserting "; or", and
116 adding a new paragraph in Code Section 48-8-3, relating to exemptions from sales and use
117 taxation, as follows:

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

124 "(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales
125 to an organization defined by the Internal Revenue Service as an instrumentality of the
126 states relating to the holding of an annual meeting in this state."

127 **SECTION 5.**

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

130 (b) Section 1 of this Act shall be applicable to all taxable years beginning on or after January
131 1, 2011.

132

SECTION 6.

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