

Senate Bill 332

By: Senators Ligon, Jr. of the 3rd, McKoon of the 29th, Loudermilk of the 52nd, Albers of the 56th, Hill of the 32nd and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia
2 Annotated, relating to imposition, rate, collection, and assessment of sales and use taxes, so
3 as to provide that retailers may under certain circumstances advertise that the retailer will pay
4 the purchaser's sales and use tax on a transaction; to amend Article 3 of Chapter 8 of Title
5 48 of the Official Code of Georgia Annotated, relating to county sales and use tax, so as to
6 expand the matters which are included in annual reporting of the expenditure of certain
7 special purpose local option sales tax proceeds; to provide for enforcement actions by the
8 Attorney General; to amend Article 6 of Chapter 13 of Title 48 of the Official Code of
9 Georgia Annotated, as enacted by Section 5-4 of HB 386 in the 2012 regular session of the
10 General Assembly, relating to a local excise tax on energy used in manufacturing, to provide
11 for certain procedures to be used to implement a local excise tax on energy; to provide for
12 effective dates; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
16 relating to imposition, rate, collection, and assessment of sales and use taxes, is amended by
17 revising Code Section 48-8-36, relating to prohibition of advertising by dealer of his or her
18 assumption of payment of tax, as follows:

19 "48-8-36.

20 No person engaged in making retail sales shall advertise or represent to the public in any
21 manner directly or indirectly that he or she will absorb all or any part of the tax or that he
22 or she will relieve the purchaser of the payment of all or any part of the tax imposed by this
23 article unless:

24 (1) The retailer includes in the advertisement that any portion of the tax not paid by the
25 purchaser will be remitted on behalf of the purchaser by the retailer; and

26 (2) The retailer furnishes the purchaser with written evidence that the retailer will be
 27 liable for and pay any tax the purchaser was relieved from paying under this Code
 28 section.

29 If a retailer advertises that any portion of the tax not paid by the purchaser will be remitted
 30 on the purchaser's behalf by the retailer, the retailer shall be solely liable for and shall pay
 31 that portion of the tax. If a dealer or retailer complies with the provisions of this Code
 32 section and pays the absorbed tax over to the commissioner as provided by law, the dealer
 33 or retailer shall be deemed to have complied with the provisions of this article requiring
 34 collection of the tax from the purchaser or consumer."

35 **SECTION 2.**

36 Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to
 37 county sales and use tax, is amended by revising Code Section 48-8-122, relating to record
 38 of projects on which tax proceeds are used and annual reporting and newspaper publication
 39 of report, as follows:

40 "48-8-122.

41 The governing authority of the county and the governing authority of each municipality
 42 receiving any proceeds from the tax under this part or under Article 4 of this chapter shall
 43 maintain a record of each and every project for which the proceeds of the tax are used. Not
 44 later than December 31 of each year, the governing authority of each local government
 45 receiving any proceeds from the tax under this part shall publish annually, in a newspaper
 46 of general circulation in the boundaries of such local government and in a prominent
 47 location on the local government website, if such local government maintains a website,
 48 a simple, nontechnical report which shows for each project or purpose in the resolution or
 49 ordinance calling for imposition of the tax the original estimated cost, the current estimated
 50 cost if it is not the original estimated cost, amounts expended in prior years, ~~and~~ amounts
 51 expended in the current year, any excess proceeds which have not been expended for a
 52 project or purpose, estimated completion date, and the actual completion cost of a project
 53 completed during the current year. In the case of road, street, and bridge purposes, such
 54 information shall be in the form of a consolidated schedule of the total original estimated
 55 cost, the total current estimated cost if it is not the original estimated cost, and the total
 56 amounts expended in prior years and the current year for all such projects and not a
 57 separate enumeration of such information with respect to each such individual road, street,
 58 or bridge project. The report shall also include a statement of what corrective action the
 59 local government intends to implement with respect to each project which is underfunded
 60 or behind schedule ~~and a statement of any surplus funds which have not been expended for~~
 61 ~~a project or purpose."~~

62 **SECTION 3.**

63 Said article is further amended by adding a new Code section to read as follows:

64 "48-8-124.

65 The superior courts of this state shall have jurisdiction to enforce compliance with the
66 provisions of this part, including the power to grant injunctions or other equitable relief.

67 In addition to any action that may be brought by any person or entity, the Attorney General
68 shall have authority to bring enforcement actions, either civil or criminal, in his or her
69 discretion as may be appropriate to enforce compliance with this part."

70 **SECTION 4.**

71 Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, as enacted by
72 Section 5-4 of HB 386 in the 2012 regular session of the General Assembly, relating to a
73 local excise tax on energy used in manufacturing, is amended by revising Code Section
74 48-13-115, relating to the implementation of the excise tax, as follows:

75 "48-13-115.

76 (a)(1) Within 30 days following the meeting required under Code Section 48-13-113, if
77 the governing authority of the county within the special district fails or refuses to enter
78 into an intergovernmental agreement with the governing authority of each municipality
79 wishing to participate in such excise tax, then the governing authority of each
80 municipality wishing to levy the excise tax shall be authorized to adopt an ordinance
81 levying the excise tax within the corporate limits of such municipality. If a county elects
82 not to participate in such excise tax by not signing such agreement, then the county shall
83 not receive any proceeds from the excise tax. The proceeds of such excise tax shall be
84 deposited in the general fund of each municipality.

85 (2) If, subsequent to the levy of an excise tax by a municipality under paragraph (1) of
86 this subsection, a county determines to commence proceedings for the imposition of the
87 excise tax under this article, then proceedings for such imposition shall commence in the
88 same manner as otherwise provided under Code Section 48-13-113. Except as to a
89 municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of
90 Chapter 8 of this title, if a county complies with the requirements of this article and
91 enacts an ordinance imposing the excise tax, the excise tax levied by such municipality
92 shall cease on the day immediately prior to the day the new tax levied by the county
93 commences. If such municipality elects not to participate, its current excise tax under this
94 article shall terminate on the date the county's tax levy becomes effective, and it shall not
95 receive any proceeds under the county levy.

96 (b)(1) If a municipality located within a special district where the excise tax is imposed
97 by the county is not participating in such excise tax and is not receiving proceeds of that

98 excise tax, the governing authority of that nonparticipating municipality may give written
 99 notice to the governing authority of the county and the governing authority of each
 100 participating municipality within the special district of its decision to opt in to the existing
 101 intergovernmental agreement. Within 60 days of the date of such notice, an amended
 102 intergovernmental agreement shall be executed by the governing authority of the
 103 municipality exercising such opt in and the governing authorities of the county and each
 104 currently participating municipality.

105 (2) Notwithstanding the provisions of paragraph (1) of subsection (a) of Code Section
 106 48-13-116, when an amended intergovernmental agreement is executed pursuant to
 107 paragraph (1) of this subsection, the revised distribution of proceeds thereunder shall not
 108 become effective until the first day of the first month which is at least 12 months after the
 109 execution of such amended intergovernmental agreement. The distribution of proceeds
 110 of the excise tax shall continue under the prior intergovernmental agreement until the date
 111 provided for in this paragraph.

112 (c) Any county that desires to have an excise tax under this article levied county wide
 113 within the special district commencing January 1, 2013, shall deliver the written notice
 114 pursuant to Code Section 48-13-113 no later than September 1, 2012."

115 **SECTION 5.**

116 Said article is further amended by revising Code Section 48-13-116, as enacted by Section
 117 5-4 of HB 386 in the 2012 regular session of the General Assembly, relating to procedures
 118 and limitations on the local excise tax on energy, as follows:

119 "48-13-116.

120 (a)(1) Except as otherwise provided in Code Section 48-13-115, an excise tax imposed
 121 under this article shall become effective on the first day of the next succeeding month
 122 following adoption of the ordinance unless otherwise specified in the intergovernmental
 123 agreement required by subsection (a) of Code Section 48-13-114, except that no such tax
 124 shall be imposed prior to January 1, 2013.

125 (2) If services are regularly billed on a monthly basis, however, the excise tax shall
 126 become effective with respect to and the tax shall apply to services billed on or after the
 127 effective date specified in paragraph (1) of this subsection.

128 (b) The excise tax shall cease to be imposed on the first day of the next succeeding
 129 calendar quarter which begins more than 80 days after the adoption date of an ordinance
 130 terminating the excise tax.

131 (c) At no time shall more than a single 2 percent excise tax under this article be imposed
 132 within a special district or a municipality, except that in the event a municipality levies a

133 water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, a
134 single 3 percent excise tax may be imposed within such municipality.
135 (d) Following the termination of an excise tax under this article, the governing authority
136 of a county within a special district or the mayor or chief elected official of a municipality
137 in the special district in which an excise tax authorized by this article is in effect may
138 initiate proceedings for the reimposition of a tax under this article in the same manner as
139 provided in this article for the initial imposition of such tax."

140 **SECTION 6.**

- 141 (a) Except as provided in subsection (b) of this section, this Act shall become effective on
142 July 1, 2012.
143 (b) Sections 4 and 5 of this Act shall become effective on January 1, 2013.

144 **SECTION 7.**

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