

Senate Bill 137

By: Senators Jeffares of the 17th, Bethel of the 54th and Jackson of the 24th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-2-35.1 of the Official Code of Georgia Annotated, relating to
2 refunds of sales and use taxes, so as to clarify that a person who has erroneously or illegally
3 paid sales tax to a dealer that collected and remitted such taxes to the revenue commissioner
4 has an election either to file a refund claim initially with the commissioner or to submit a
5 written refund request to the dealer and file a refund claim with the commissioner after being
6 unable to obtain such refund from the dealer; to amend Code Section 48-7-40.1 of the
7 Official Code of Georgia Annotated, relating to tax credits for business enterprises in certain
8 areas, so as to authorize the commissioner of economic development to designate areas as
9 impoverished areas; to provide for related matters; to provide for an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Code Section 48-2-35.1 of the Official Code of Georgia Annotated, relating to refunds of
14 sales and use taxes, is amended by revising subsection (d) as follows:

15 "(d) Except as provided for in this subsection, for the purposes of all claims for refund of
16 sales and use taxes erroneously or illegally assessed and collected, the term 'taxpayer' as
17 used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that
18 collected and remitted erroneous or illegal sales and use taxes to the commissioner. A
19 person that has erroneously or illegally paid sales taxes to a dealer that collected and
20 remitted such taxes to the commissioner ~~may elect to seek a refund from such dealer.~~
21 ~~Alternatively, such person~~ may file a claim for refund either initially with the
22 commissioner or, alternatively, elect to seek a refund from the dealer, by submitting a
23 written request for refund to the dealer, and file a claim for refund with the commissioner
24 after being unable to obtain a refund from such dealer, ~~and~~ Such person shall also be
25 considered a taxpayer for purposes of filing a claim for refund with the commissioner
26 under Code Section 48-2-35, but only if such person:

27 (1) When filing a refund claim initially with the commissioner, provides the department
 28 with a notarized form prescribed by the commissioner and executed by the dealer
 29 affirming that the dealer:

30 (A) Has not claimed or will not claim a refund of the same tax included in the person's
 31 request for refund;

32 (B) Will provide to the person any information or documentation in the dealer's
 33 possession needed for submission to the department to support or prove the claim for
 34 refund;

35 (C) Has remitted to the state the taxes being sought for refund; and

36 (D) Has not taken or will not take a credit for taxes being sought for refund; or

37 (2)(A) When filing a refund claim with the commissioner after being unable to obtain
 38 a refund from such dealer, such person provides a letter or other information as may be
 39 requested by the commissioner that either:

40 (i) The dealer refused or was unable to refund the erroneously or illegally assessed
 41 and collected taxes; or

42 (ii) The dealer did not act upon the person's written request for refund of the
 43 erroneously or illegally assessed and collected taxes within 90 days from the date of
 44 such request for refund.

45 (B) Upon acceptance of such letter or information by the commissioner, the dealer
 46 shall be deemed to have assigned all rights to the refund to such person."

47 **SECTION 2.**

48 Code Section 48-7-40.1 of the Official Code of Georgia Annotated, relating to tax credits for
 49 business enterprises in less developed areas, is amended by revising subsection (c) as
 50 follows:

51 "(c) The commissioner of community affairs, and the commissioner of economic
 52 development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this
 53 subsection, also shall be authorized to include in the designation provided for in subsection

54 (b) of this Code section:

55 (1) Any area ~~comprised~~ composed of ten or more contiguous census tracts which, in the
 56 opinion of the commissioner of community affairs and the commissioner of economic
 57 development, undergoes a sudden and severe period of economic distress caused by the
 58 closing of one or more business enterprises located in such area;

59 (2) Any area ~~comprised~~ composed of one or more census tracts adjacent to a federal
 60 military installation where pervasive poverty is evidenced by a 15 percent poverty rate
 61 or greater as reflected in the most recent decennial census;

62 (3) Any area ~~comprised~~ composed of one or more contiguous census tracts which, in the
63 opinion of the commissioner of community affairs and the commissioner of economic
64 development, is or will be adversely impacted by the loss of one or more jobs, businesses,
65 or residences as a result of an airport expansion, including noise buy-outs, or the closing
66 of a business enterprise which, in the opinion of the commissioner of community affairs
67 and the commissioner of economic development, results or will result in a sudden and
68 severe period of economic distress; or

69 (4) Any area which is within or adjacent to one or more contiguous census block groups
70 with a poverty rate of 15 percent or greater as determined from data in the most current
71 United States decennial census, where the area is also included within a state enterprise
72 zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted
73 pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of
74 community affairs and the commissioner of economic development, displays pervasive
75 poverty, underdevelopment, general distress, and blight.

76 No designation made pursuant to this subsection shall operate to displace or remove any
77 other area previously designated as a less developed area. Notwithstanding any provision
78 of this Code section to the contrary, in areas designated as suffering from pervasive poverty
79 under this subsection, job tax credits shall be allowed as provided in this Code section, in
80 addition to business enterprises, to any lawful business."

81 **SECTION 3.**

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

84 **SECTION 4.**

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