

House Bill 960

By: Representatives Kelley of the 16th, Sims of the 123rd, Dempsey of the 13th, Harrell of the 106th, Houston of the 170th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
2 administration and collection of revenue, so as to provide for confidentiality of certain tax
3 information; to provide for an interest rate on delinquent payments that adjusts to reflect
4 changes in the prime rate; to adjust the penalties for nonpayment of ad valorem taxes to
5 offset the reduction in interest rate; to make distribution of penalties equitable between taxing
6 jurisdictions; to provide for additional procedures, conditions, and limitations; to provide for
7 notice to political subdivisions upon the filing of certain tax refund requests; to provide for
8 confidentiality of taxpayer information; to provide for automatic transfer to the Georgia Tax
9 Tribunal in certain cases; to provide for related matters; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
14 administration and collection of revenue, is amended by adding a new subsection to Code
15 Section 48-2-15, relating to confidential information, to read as follows:

16 "(f) In general, the return of a person shall, upon written request, be open to inspection by
17 or disclosure to:

18 (1) In the case of an individual return:

19 (A) The individual who filed the return;

20 (B) The spouse of such individual if the individual and such spouse have signified their
21 consent to consider a gift reported on such return as made one-half by the individual
22 and one-half by the spouse pursuant to the provisions of 26 U.S.C. Section 2513; or

23 (C) The child of such individual or such child's legal representative;

24 (2) In the case of an income tax return filed jointly, either of the individuals with respect
25 to whom the return is filed;

- 26 (3) In the case of the return of a partnership, any person who was a member of such
 27 partnership during any part of the period covered by the return;
- 28 (4) In the case of the return of a corporation or a subsidiary thereof:
- 29 (A) Any person designated by resolution of its board of directors or other similar
 30 governing body;
- 31 (B) Any officer or employee of such corporation upon written request signed by any
 32 principal officer and attested to by the secretary or other officer;
- 33 (C) Any bona fide shareholder of record owning 1 percent or more of the outstanding
 34 stock of such corporation;
- 35 (D) If the corporation is an S corporation, any person who was a shareholder during
 36 any part of the period covered by such return during which an election under 26 U.S.C.
 37 Section 1362(a) was in effect; or
- 38 (E) If the corporation has been dissolved, any person authorized by applicable law to
 39 act for the corporation or any person having a material interest which will be affected
 40 by information contained therein;
- 41 (5) In the case of the return of an estate, the administrator, executor, or trustee of such
 42 estate and any heir at law, next of kin, or beneficiary under the will of the decedent,
 43 provided such heir at law, next of kin, or beneficiary has a material interest which will
 44 be affected by information contained therein;
- 45 (6) In the case of the return of a trust, the trustee or trustees, jointly or separately, and
 46 any beneficiary of such trust, provided such beneficiary has a material interest which will
 47 be affected by information contained therein; and
- 48 (7) In the case of a refund request to the department resulting in a debt owed by a
 49 political subdivision in Georgia, the chief officer or officers of the affected political
 50 subdivision subject to the provisions of Code Section 48-2-35."

51 **SECTION 2.**

52 Said chapter is further amended by revising subsections (a) and (f) and adding new
 53 subsections in Code Section 48-2-35, relating to refunds of taxes and fees determined to have
 54 been erroneously or illegally assessed and collected, to read as follows:

55 "(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 56 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 57 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 58 as provided in subsection (b) of this Code section, on the amount of the taxes or fees ~~at the~~
 59 ~~rate of 1 percent per month~~ at an annual rate equal to the prime rate as published by the
 60 Board of Governors of the Federal Reserve System, as published in statistical release H.
 61 15 or any publication that may supersede it, plus 3 percent with interest calculated from the

62 ~~date of payment of the tax or fee to the commissioner~~ the request for a refund or the date
 63 that the taxpayer was notified of an overpayment by the department, whichever is earlier.
 64 The department may bill such interest on a month-by-month basis so long as the monthly
 65 bills equal what would have been the lump sum owed due to the annual interest rate as
 66 provided for in this Code section. For the purposes of this Code section, any period of less
 67 than one month shall be considered to be one month. Refunds shall be drawn from the
 68 treasury on warrants of the Governor issued upon itemized requisitions showing in each
 69 instance the person to whom the refund is to be made, the amount of the refund, and the
 70 reason for the refund."

71 "(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
 72 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
 73 apply and any interest applicable to the refund request accrued after the date on which the
 74 department notified the taxpayer or after the taxpayer requested a refund, whichever is
 75 earlier, shall be paid by the state.

76 (g)(1) Within 30 business days following the filing of a refund request by a taxpayer or
 77 the discovery of an overpayment by the department, the department shall, if such request
 78 or overpayment is for an amount equal to or greater than 8 percent of the total yearly
 79 average of aggregate sales and use tax collections for any single political subdivision
 80 based on an average of three calendar years, notify each affected political subdivision
 81 through its chief officer or officers that a refund request has been filed or an overpayment
 82 has been discovered by the department. Such political subdivisions have a material
 83 interest in refund requests pursuant to subsection (f) of Code Section 48-2-15. Such
 84 notification shall include the fact that a refund has been filed, the total amount requested
 85 by the taxpayer, the portion of the total amount for which the political subdivision itself
 86 is responsible, any knowledge either that other political subdivisions are also affected by
 87 the refund or that no other political subdivisions are also affected by the same refund, and
 88 a copy of the confidentiality provisions contained in this Code section. After the
 89 department has completed an audit of the refund request and determined a final refund
 90 amount, the department shall supplement the above notice by transmitting to the political
 91 subdivision the final refund amount for all affected political subdivisions in sum and the
 92 final refund amount for which the political subdivision is responsible.

93 (2) In any case in which a refund request is filed by a political subdivision or an
 94 overpayment is discovered by the department for an amount equal to or greater than 8
 95 percent of the total yearly average of aggregate sales and use tax collections for any
 96 single political subdivision based on an average of three calendar years, the taxpayer
 97 may, and the department shall, prior to the issuance of a final determination, request an
 98 audit of the determination by the Department of Audits and Accounts. The Department

99 of Audits and Accounts shall certify that the department followed proper procedures and
 100 used appropriate calculations to reach the final determination.

101 (3) The commissioner, in his or her discretion, may allow any political subdivision in
 102 this state that is determined to owe a refund of taxes collected by the department and
 103 distributed to such political subdivision to repay such obligation, including applicable
 104 interest, over a period of up to one year. The one-year period shall begin on the date the
 105 department issues a final determination that the refund is due the state from the affected
 106 political subdivision.

107 (4) Any information supplied to a political subdivision or any official thereof shall be
 108 considered confidential and privileged information and furnishing information as
 109 permitted by this Code section shall not be deemed to change the confidential character
 110 of the information furnished. Any person who divulges any tax information obtained
 111 under this Code section shall be subject to the same civil and criminal penalties as
 112 provided for divulgence of tax information by members of the department. Though the
 113 confidential information may not be disclosed, the chief officer or officers of the political
 114 subdivision in receipt of such information may make reasonable budgetary
 115 recommendations to elected officials, city managers, and tax officials in their political
 116 subdivisions based on the confidential information furnished and may coordinate with the
 117 chief officer or officers of other political subdivisions included in the department's notice
 118 to the political subdivisions that are also affected by the refund.

119 (h) Any refund request that remains pending in the department for one year or longer after
 120 the initial request was filed shall be automatically transferred to the jurisdiction of the
 121 Georgia Tax Tribunal for determination. The department shall provide all requested
 122 information and supporting documentation to the Georgia Tax Tribunal."

123 **SECTION 3.**

124 Said chapter is further amended by revising Code Section 48-2-40, relating to the rate of
 125 interest on past due taxes, as follows:

126 "48-2-40.

127 Except as otherwise expressly provided by law, taxes owed the state or any local taxing
 128 jurisdiction shall bear interest ~~at the rate of 1 percent per month~~ at an annual rate equal to
 129 the prime rate as published by the Board of Governors of the Federal Reserve System, as
 130 published in statistical release H. 15 or any publication that may supersede it, plus 3
 131 percent with interest calculated from the date the tax is due until the date the tax is paid.

132 For the purposes of this Code section, any period of less than one month shall be
 133 considered to be one month. This Code section shall also apply to alcoholic beverage
 134 taxes."

135 **SECTION 4.**

136 Said chapter is further amended by revising subsection (b) of Code Section 48-2-44, relating
 137 to penalties and interest on failure to file return or timely pay taxes held in trust for the state,
 138 as follows:

139 "(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to
 140 pay, within 90 days of the date when due, any ad valorem tax owed the state or any local
 141 government, such person shall pay, in the absence of a specific statutory civil penalty for
 142 the failure, a penalty of ~~10~~ 12 percent of the amount of tax due and not paid at the time
 143 such penalty is assessed, together with interest as specified by law. ~~This 10 percent~~
 144 ~~penalty~~ An additional penalty of 6 percent of the amount of tax shall be imposed on any
 145 amount remaining due every six months after the due date, together with interest as
 146 specified by law. These penalties shall not, however, apply in the case of:

147 (A) Ad valorem taxes of \$500.00 or less on homestead property as defined in Part 1 of
 148 Article 2 of Chapter 5 of this title; or

149 (B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount
 150 on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the
 151 homestead property was during the tax year acquired by a new owner who did not
 152 receive a tax bill for the tax year and who immediately before acquiring the homestead
 153 property resided outside the State of Georgia and if the taxes are paid within one year
 154 following the due date.

155 (2) Any city or county authorized as of April 22, 1981, by statute or constitutional
 156 amendment to receive a penalty of greater than 10 percent for failure to pay an ad
 157 valorem tax is authorized to continue to receive that amount.

158 (3) With respect to all penalties and interest received by the tax commissioner on or after
 159 July 1, 1998, unless otherwise specifically provided for by general law, the tax
 160 commissioner shall distribute penalties collected and interest collected or earned as
 161 follows:

162 (A) ~~Penalties collected for failure to return property for ad valorem taxation or for~~
 163 ~~failure to pay ad valorem taxes, and interest~~ Interest earned by the tax commissioner on
 164 taxes collected but not yet disbursed; shall be paid into the county treasury in the same
 165 manner and at the same time the tax is collected and distributed to the county, and they
 166 shall remain the property of the county; and

167 (B) ~~Interest~~ Penalties collected for failure to return property for ad valorem taxation or
 168 for failure to pay ad valorem taxes and interest collected on delinquent ad valorem taxes
 169 shall be distributed pro rata based on each taxing jurisdiction's share of the total tax on
 170 which the penalty or interest was computed."

171 **SECTION 5.**

172 This Act shall become effective on July 1, 2016, and shall be applicable to all proceedings
173 initiated on or after that date. All proceedings initiated prior to the effective date of this Act
174 shall be governed by the law as it existed immediately prior to such effective date.

175 **SECTION 6.**

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