

ADOPTED

Representatives Kelly of the 16th and Powell of the 171st offer the following amendment:

1 *Amend the Senate substitute to HB 960 (LC 43 0398ERS) by deleting all matter from line 1*
 2 *through the end and inserting in lieu thereof the following:*

3 To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
 4 administration and collection of revenue, so as to provide for confidentiality of certain tax
 5 information; to provide for an interest rate on delinquent payments that adjusts to reflect
 6 changes in the prime rate; to adjust the penalties for nonpayment of ad valorem taxes to
 7 offset the reduction in interest rate; to provide for the distribution of penalties between taxing
 8 jurisdictions; to provide for additional procedures, conditions, and limitations; to provide for
 9 notice to political subdivisions upon the filing of certain tax refund requests; to provide for
 10 confidentiality of taxpayer information; to amend Chapter 13A of Title 50 of the Official
 11 Code of Georgia Annotated, relating to tax tribunals, so as to provide for automatic transfer
 12 to the Georgia Tax Tribunal in certain cases; to provide for related matters; to provide for an
 13 effective date and applicability; to repeal conflicting laws; and for other purposes.

14 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

15 **SECTION 1.**

16 Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
 17 administration and collection of revenue, is amended by revising subsection (b) and adding
 18 a new subsection to Code Section 48-2-15, relating to confidential information, to read as
 19 follows:

20 "(b) This Code section shall not:

- 21 (1) Be construed to prevent the use of confidential information as evidence before any
 22 state or federal court in the event of litigation involving tax liability of any taxpayer;
 23 (2) Be deemed to prevent the print or electronic publication of statistics so arranged as
 24 not to reveal information respecting an individual taxpayer;
 25 (3) Apply in any way whatsoever to any official finding of the commissioner with
 26 respect to any assessment or any information properly entered upon an assessment roll
 27 or other public record;
 28 (4) Affect any information which in the regular course of business is by law made the
 29 subject matter of a public document in any federal or state office or in any local office in
 30 this state; or

31 (5) Apply to information, records, and reports required and obtained under Article 1 of
 32 Chapter 9 of this title, which requires distributors of motor fuels to make reports of the
 33 amounts of motor fuels sold and used in each county by the distributor, or under Article
 34 2 of Chapter 9 of this title, relating to road tax on motor carriers; or

35 (6) Be construed to prevent the disclosure of information, so arranged as not to reveal
 36 information respecting an individual taxpayer, requested by the House Committee on
 37 Ways and Means or the Senate Finance Committee regarding the department's
 38 administration of any tax."

39 "(f) This Code section shall not be construed to prohibit disclosure as required in
 40 subsection (h) of Code Section 48-2-35."

41 SECTION 2.

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

45 "(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 46 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 47 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 48 as provided in subsection (b) of this Code section, on the amount of the taxes or fees ~~at the~~
 49 ~~rate of 1 percent per month~~ from the date of payment of the tax or fee to the commissioner
 50 at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of
 51 the Federal Reserve System in statistical release H. 15 or any publication that may
 52 supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be
 53 determined for each calendar year based on the first weekly posting of statistical release
 54 H. 15 on or after January 1 of each calendar year. For the purposes of this Code section,
 55 any period of less than one month shall be considered to be one month. Refunds shall be
 56 drawn from the treasury on warrants of the Governor issued upon itemized requisitions
 57 showing in each instance the person to whom the refund is to be made, the amount of the
 58 refund, and the reason for the refund."

59 "(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
 60 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
 61 apply. Such claim for refund shall contain the total refund claimed and the allocation of
 62 the local sales and use tax by the political subdivision.

63 (g) Any taxpayer required to pay taxes electronically in accordance with paragraph (2.1)
 64 of subsection (f) of Code Section 48-2-32 shall also file any claims for refund
 65 electronically. The department shall make claim for refund forms consistent with this
 66 subsection electronically available.

67 (h)(1) As used in this subsection, the term:

68 (A) 'Political subdivision designee' means the chief officer or officers designated by
69 the political subdivision to receive information about a refund claim of local
70 significance pursuant to this subsection. Each political subdivision shall certify to the
71 commissioner that any such designee is so authorized on a form and in a manner
72 prescribed by the department.

73 (B) 'Refund claim of local significance' means a taxpayer's claim for refund of sales
74 and use taxes erroneously or illegally assessed and collected or the department's
75 discovery of any overpayment of such taxes, if such claim for refund or overpayment
76 is for an amount equal to or greater than 10 percent of the total yearly average of
77 aggregate sales and use tax distributions to any single political subdivision based on the
78 average of the three most recent calendar years.

79 (2) Within 30 business days following the department's receipt of a refund claim of local
80 significance, the department shall notify each affected political subdivision's political
81 subdivision designee that a refund claim of local significance to the political subdivision
82 has been received and shall furnish the taxpayer with a copy of such notification. Such
83 notification shall include the date the refund claim of local significance was filed, the
84 amount in the claim for refund for which the political subdivision itself would be
85 responsible if the request is granted, and a copy of the confidentiality provisions in Code
86 Section 48-2-15 and this Code section. After the department has completed an audit of
87 the claim for refund and determined a final refund amount, the department shall
88 supplement the above notice by transmitting to the political subdivision designee the final
89 refund amount for which the political subdivision is responsible.

90 (3) Any information supplied to a political subdivision designee pursuant to this
91 subsection shall retain, in the hands of the local official, its privileged and confidential
92 nature to the same extent and under the same conditions as such information is privileged
93 and confidential in the hands of the commissioner, pursuant to Code Section 48-2-15. It
94 shall be the responsibility of the political subdivision designee, and not the department,
95 to protect privileged and confidential information received under this subsection. Any
96 person who divulges any tax information obtained under this subsection shall be subject
97 to the same civil and criminal penalties as provided for divulgence of tax information by
98 employees of the department. Though privileged and confidential information shall not
99 be disclosed, the political subdivision designee may make reasonable budgetary
100 recommendations to elected officials, city managers, and tax officials in political
101 subdivisions based on the confidential information furnished. The department shall not
102 be subject to any criminal or civil liability for the unauthorized divulgence of privileged
103 and confidential information by a political subdivision designee. Notwithstanding the

104 foregoing, in the event all or any portion of the refund claim of local significance is for
 105 a tax levied under Part 1 of Article 3 of Chapter 8 of this title, the affected county shall
 106 not be in violation of this confidential provision if it notifies all municipal political
 107 subdivision designees in the county that such notification has been received from the
 108 department.

109 (4) The commissioner, by rule or regulation, shall establish guidelines for identifying and
 110 producing documents to the Department of Audits and Accounts for review relating to
 111 the handling of refund claims of local significance. In the event of such review, the
 112 Department of Audits and Accounts shall assess whether the department followed proper
 113 procedures and used appropriate methodology to reach its final determination on a refund
 114 claim of local significance.

115 (5) Any refund claims of local significance pending with the department for two years
 116 after the claim for refund was filed shall be automatically transferred to the Georgia Tax
 117 Tribunal as a declaratory judgment of the commissioner requesting a show cause
 118 proceeding pursuant to Code Section 50-13A-19.1."

119 SECTION 3.

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

122 "48-2-40.

123 Except as otherwise expressly provided by law, taxes owed the state or any local taxing
 124 jurisdiction shall bear interest ~~at the rate of 1 percent per month~~ at an annual rate equal to
 125 the bank prime loan rate as posted by the Board of Governors of the Federal Reserve
 126 System in statistical release H. 15 or any publication that may supersede it, plus 3 percent,
 127 to accrue monthly. Such annual interest rate shall be determined for each calendar year
 128 based on the first weekly posting of statistical release H. 15 on or after January 1 of each
 129 calendar year. Interest shall begin to accrue from the date the tax is due until the date the
 130 tax is paid. For the purposes of this Code section, any period of less than one month shall
 131 be considered to be one month. This Code section shall also apply to alcoholic beverage
 132 taxes."

133 SECTION 4.

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

137 "(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to
 138 pay, within ~~90~~ 120 days of the date when due, any ad valorem tax owed the state or any

139 local government, such person shall pay, in the absence of a specific statutory civil
 140 penalty for the failure, a penalty of ~~10~~ 5 percent of the amount of tax due and not paid at
 141 the time such penalty is assessed, together with interest as specified by law. ~~This 10~~
 142 ~~percent penalty~~ After 120 days from the imposition of the initial penalty, an additional
 143 penalty of 5 percent of any tax amount remaining due shall be imposed, together with
 144 interest as specified by law. If any tax amount remains due after 120 days from the
 145 imposition of such additional penalty, a penalty of 5 percent shall be imposed, together
 146 with interest as specified by law. Should any tax amount remain due 120 days after such
 147 date, a penalty of 5 percent shall be imposed, together with interest as specified by law.
 148 The aggregate amount of penalties imposed pursuant to this subsection shall not exceed
 149 an amount equal to 20 percent of the principal amount of the tax originally due. These
 150 penalties shall not, however, apply in the case of:

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

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

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

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

166 (A) Penalties collected for failure to ~~return property for ad valorem taxation or for~~
 167 ~~failure to pay ad valorem taxes, and interest earned by the tax commissioner on taxes~~
 168 ~~collected but not yet disbursed, pay ad valorem taxes attributable to the Board of~~
 169 Education or independent school district shall be paid into the county treasury in the
 170 same manner and at the same time the tax is collected and distributed to the county, and
 171 they shall remain the property of the county; ~~and~~

172 (B) Interest earned by the tax commissioner on taxes collected but not yet disbursed
 173 shall be distributed pro rata based on each taxing jurisdiction's share of the total amount
 174 upon which the interest was computed; and

175 ~~(B)~~(C) Except as otherwise provided in subparagraph (A) of this paragraph, penalties
 176 collected for failure to return property for ad valorem taxation or failure to pay ad
 177 valorem taxes, and interest Interest collected on delinquent ad valorem taxes, shall be
 178 distributed pro rata based on each taxing jurisdiction's share of the total tax on which
 179 the penalty or interest was computed."

180 SECTION 5.

181 Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals,
 182 is amended by adding a new Code section to read as follows:

183 "50-13A-19.1.

184 (a) The tribunal shall docket the declaratory judgments of the revenue commissioner
 185 pursuant to subsection (h) of Code Section 48-2-35 as actions in the tribunal without the
 186 filing of a petition for relief.

187 (b)(1) The tribunal shall determine by interlocutory order the party at fault for the delay
 188 in finally determining a claim for refund.

189 (2) If the tribunal determines that the Department of Revenue is primarily at fault, the
 190 order shall require that the Department of Revenue pay all interest due to the taxpayer on
 191 the claim for refund, including the interest due on the local sales and use tax deemed to
 192 have been illegally or erroneously collected. The tribunal shall thereafter remand the
 193 matter back to the Department of Revenue for determination on the underlying claim for
 194 refund.

195 (3) If the tribunal determines that the taxpayer who made the claim for refund is
 196 primarily at fault, the order shall prohibit the accrual of any interest due to the taxpayer
 197 on the finally determined claim for refund. The tribunal shall thereafter remand the
 198 matter back to the Department of Revenue for determination on the underlying claim for
 199 refund.

200 (4) If the tribunal determines that the delay is justified, the order shall remand the matter
 201 back to the Department of Revenue for determination and for further hearings at the
 202 tribunal's discretion.

203 (c) The tribunal, at its discretion, may award reasonable attorneys' fees to either party in
 204 such proceedings.

205 (d) Orders of the tribunal issued pursuant to this Code section shall be excluded from the
 206 provisions of subsection (d) of Code Section 50-13A-15.

207 (e) Except as otherwise provided in this Code section, such actions shall follow the
 208 procedures and tribunal rules applicable to other proceedings within the tribunal."

209

SECTION 6.

210

(a) This Act shall become effective on July 1, 2016.

211

(b) The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply to penalties and interest accrued on or after the effective date of this Act.

212

213

(c) The new notification requirement and the automatic transfer to the Georgia Tax Tribunal requirement contained in Section 2 of this Act regarding a refund claim of local significance shall apply to claims for refund received by the department on or after the effective date of this Act.

214

215

216

217

SECTION 7.

218

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