

House Bill 62

By: Representatives Powell of the 171st, England of the 116th, Meadows of the 5th, Abrams of the 89th, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated,
2 relating to appellate practice, so as to revise provisions regarding those judgments and rulings
3 deemed directly appealable; to amend Article 1 of Chapter 8 of Title 48 of the Official Code
4 of Georgia Annotated, relating to state sales and use tax, so as to revise a definition; to
5 provide for certain legal actions, injunctions, and appeals under certain circumstances; to
6 provide for an effective date and applicability; to repeal conflicting laws; and for other
7 purposes.

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

9 **SECTION 1.**

10 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
11 appellate practice, is amended by revising subsection (a) of Code Section 5-6-34, relating to
12 judgments and rulings deemed directly appealable, procedure for review of judgments,
13 orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases
14 involving a capital offense for which death penalty is sought, and appeals involving
15 nonmonetary judgments in child custody cases, as follows:

16 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
17 following judgments and rulings of the superior courts, the constitutional city courts, and
18 such other courts or tribunals from which appeals are authorized by the Constitution and
19 laws of this state:

- 20 (1) All final judgments, that is to say, where the case is no longer pending in the court
21 below, except as provided in Code Section 5-6-35;
- 22 (2) All judgments involving applications for discharge in bail trover and contempt cases;
- 23 (3) All judgments or orders directing that an accounting be had;
- 24 (4) All judgments or orders granting or refusing applications for receivers or for
25 interlocutory or final injunctions;

- 26 (5) All judgments or orders granting or refusing applications for attachment against
 27 fraudulent debtors;
- 28 (6) Any ruling on a motion which would be dispositive if granted with respect to a
 29 defense that the action is barred by Code Section 16-11-173;
- 30 (7) All judgments or orders granting or refusing to grant mandamus or any other
 31 extraordinary remedy, except with respect to temporary restraining orders;
- 32 (8) All judgments or orders refusing applications for dissolution of corporations created
 33 by the superior courts;
- 34 (9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a
 35 will;
- 36 (10) All judgments or orders entered pursuant to subsection (c) of Code Section
 37 17-10-6.2;
- 38 (11) All judgments or orders in child custody cases awarding, refusing to change, or
 39 modifying child custody or holding or declining to hold persons in contempt of such child
 40 custody judgment or orders;
- 41 (12) All judgments or orders entered pursuant to Code Section 35-3-37; ~~and~~
- 42 (13) All judgments or orders entered pursuant to Code Section 9-11-11.1; and
- 43 (14) All judgments or orders entered pursuant to paragraph (2) of subsection (c.1) of
 44 Code Section 48-8-30, which shall be directly appealable to the Supreme Court."

45 **SECTION 2.**

46 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state
 47 sales and use tax, is amended by adding two new subparagraphs to paragraph (8) of Code
 48 Section 48-8-2, relating to definitions, to read as follows:

49 "(M.1) Obtains gross revenue, in an amount exceeding \$250,000.00 in the previous or
 50 current calendar year, from sales of tangible personal property at retail that result in the
 51 physical or electronic delivery of such property into this state to be used, consumed,
 52 distributed, or stored within this state;

53 (M.2) Conducts 200 or more separate sales at retail in the previous or current calendar
 54 year that result in the physical or electronic delivery of tangible personal property into
 55 this state to be used, consumed, distributed, or stored within this state;"

56 **SECTION 3.**

57 Said article is further amended by revising subsection (c.1) of Code Section 48-8-30, relating
 58 to imposition of tax, rates, and collection, as follows:

59 "(c.1)(1)(A) Every purchaser of tangible personal property at retail outside this state
 60 from a dealer, as defined in Code Section 48-8-2, when such property is to be used,

61 consumed, distributed, or stored within this state, shall be liable for a tax on the
 62 purchase at the rate of 4 percent of the sales price of the purchase. It shall be
 63 prima-facie evidence that such property is to be used, consumed, distributed, or stored
 64 within this state if that property is delivered in this state to the purchaser or agent
 65 thereof. The tax shall be paid by the purchaser to the retailer making the sale, as
 66 provided in this article. The retailer shall remit the tax to the commissioner as provided
 67 in this article, and, when received by the commissioner, the tax shall be a credit against
 68 the tax imposed on the retailer.

69 (B) Every person who is a dealer, as defined in Code Section 48-8-2, and who makes
 70 any sale of tangible personal property at retail outside this state which ~~property~~ is to be
 71 delivered in this state to a purchaser or purchaser's agent shall be a retailer and a dealer
 72 for purposes of this article and shall be liable for a tax on the sale at the rate of 4
 73 percent of such sales price or the amount of tax as collected by that person from
 74 purchasers having their purchases delivered in this state, whichever is greater.

75 ~~(2)~~(C) No retail sale shall be taxable to the retailer or dealer which is not taxable to the
 76 purchaser at retail. The tax imposed by this subsection shall be subject to the credit
 77 otherwise granted by this article for like taxes previously paid in another state. This
 78 ~~subsection~~ paragraph shall not be construed to require a duplication in the payment of
 79 the tax.

80 (2) The department may bring an action for a declaratory judgment in any superior court
 81 against any person the department believes meets the definition of dealer provided in
 82 subparagraph (M.1) or (M.2) of paragraph (8) of Code Section 48-8-2 in order to
 83 establish that the collection obligation created by this subsection is applicable and valid
 84 under state and federal law with respect to such a dealer. If such action presents a
 85 question for judicial determination related to the constitutionality of the imposition of
 86 taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the
 87 collection obligation against such a dealer. The superior court shall act on such
 88 declaratory judgment action and issue a final decision in an expeditious manner. Any
 89 appeal from such a final decision shall be made by direct appeal to the Supreme Court as
 90 provided in Code Section 5-6-34."

91 **SECTION 4.**

92 This Act shall become effective on January 1, 2018, and shall apply to all sales made on or
 93 after January 1, 2018.

94 **SECTION 5.**

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