

House Bill 61 (COMMITTEE SUBSTITUTE)

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 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state sales and use tax, so as to provide for definitions; to provide for certain legal
3 actions, injunctions, and appeals under certain circumstances; to require certain retailers to
4 either collect and remit sales and use taxes or provide certain notifications to certain
5 purchasers and the state; to provide for penalties; to provide for related matters; to provide
6 for an effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "(M.1) Obtains gross revenue, in an amount exceeding \$250,000.00 in the previous or
13 current calendar year, from retail sales of tangible personal property to be delivered
14 electronically or physically to a location within this state to be used, consumed,
15 distributed, or stored for use or consumption in this state;

16 (M.2) Conducts 200 or more separate retail sales of tangible personal property in the
17 previous or current calendar year to be delivered electronically or physically to a
18 location within this state to be used, consumed, distributed, or stored for use or
19 consumption in this state;"

20 **SECTION 2.**

21 Said article is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
22 and collection, by revising subsection (c.1) and by adding a new subsection to read as
23 follows:

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

26 consumed, distributed, or stored ~~within~~ for use or consumption in this state, shall be
 27 liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase.
 28 ~~It shall be prima-facie evidence that such property is to be used, consumed, distributed,~~
 29 ~~or stored within this state if that property is delivered in this state to the purchaser or~~
 30 ~~agent thereof.~~ The tax shall be paid by the purchaser to the retailer making the sale, as
 31 provided in this article. The retailer shall remit the tax to the commissioner as provided
 32 in this article, and, when received by the commissioner, the tax shall be a credit against
 33 the tax imposed on the retailer.

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

41 (C) It shall be prima-facie evidence that such property is to be used, consumed,
 42 distributed, or stored for use or consumption in this state if that property is delivered
 43 electronically or physically to a location within this state to the purchaser or agent
 44 thereof.

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

50 (2) The department may bring an action for a declaratory judgment in any superior court
 51 against any person the department believes meets the definition of dealer provided in
 52 subparagraph (M.1) or (M.2) of paragraph (8) of Code Section 48-8-2 in order to
 53 establish that the collection obligation created by this subsection is applicable and valid
 54 under state and federal law with respect to such a dealer. If such action presents a
 55 question for judicial determination related to the constitutionality of the imposition of
 56 taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the
 57 collection obligation against such a dealer. The superior court shall act on such
 58 declaratory judgment action and issue a final decision in an expeditious manner.

59 (c.2)(1) For the purposes of this subsection, the term:

60 (A) 'Delivery retailer' means a retailer that does not collect and remit the tax imposed
 61 by this Code section and that in the previous or current calendar year:

62 (i) Obtains gross revenue, in an amount exceeding \$250,000.00 from retail sales of
 63 tangible personal property to be delivered electronically or physically to a location
 64 within this state or used, consumed, distributed, or stored for use or consumption in
 65 this state; or

66 (ii) Conducts 200 or more retail sales of tangible personal property to be delivered
 67 electronically or physically to a location within this state or used, consumed,
 68 distributed, or stored for use or consumption in this state.

69 (B) 'Purchaser' means a person or agent thereof who gives consideration to a delivery
 70 retailer in exchange for tangible personal property to be delivered electronically or
 71 physically to a location within this state or used, consumed, distributed, or stored for
 72 use or consumption in this state.

73 (2) A delivery retailer shall collect and remit the tax imposed by this Code section or
 74 shall:

75 (A) Notify each potential purchaser immediately prior to the completion of each retail
 76 sale transaction with the following statement: 'Sales or use tax may be due to the State
 77 of Georgia on this purchase. Georgia law requires certain consumers to file a sales and
 78 use tax return remitting any unpaid taxes due to the State of Georgia.';

79 (B) On or before January 31 of each year, send a sales and use tax statement to each
 80 purchaser who completed one or more retail sales with such delivery retailer that totaled
 81 \$500.00 or more in aggregate during the prior calendar year in an envelope containing
 82 the words 'IMPORTANT TAX DOCUMENT ENCLOSED' on the exterior of the
 83 mailing by first class mail and separate from any other shipment; and

84 (C) On or before January 31 of each year, file a copy of each sales and use tax
 85 statement required under subparagraph (B) of this paragraph with the department in a
 86 manner to be prescribed by the department.

87 (3) For the purposes of this subsection, a sales and use tax statement shall:

88 (A) Be on a form to be prescribed by the department;

89 (B) Contain the total amount paid by the purchaser for retail sales from the delivery
 90 retailer during the previous calendar year, as well as, if available, the dates of
 91 purchases, the amounts of each purchase, and the category of each purchase, including,
 92 if known by the retailer, whether the purchase is exempt from taxation under this
 93 article; and

94 (C) Include the following statement: 'Sales or use taxes may be due to the State of
 95 Georgia on the purchase(s) identified in this statement as Georgia taxes were not
 96 collected at the time of purchase. Georgia law requires certain consumers to file a sales
 97 and use tax return remitting any unpaid taxes due to the State of Georgia.'

98 (4) Unless determined by the commissioner upon a showing of reasonable cause:

99 (A) Failure to provide the notice required by subparagraph (A) of paragraph (2) of this
100 subsection shall subject a delivery retailer to a penalty of \$5.00 for each failure;
101 (B) Failure to send a sales and use statement as required by subparagraph (B) of
102 paragraph (2) of this subsection shall subject a delivery retailer to a penalty of \$10.00
103 for each failure; and
104 (C) Failure to file a copy of a sales and use tax statement with the department as
105 required by subparagraph (C) of paragraph (2) of this subsection shall subject a delivery
106 retailer to a penalty of \$10.00 for each failure.
107 (5) It shall be prima-facie evidence that such property is to be used, consumed,
108 distributed, or stored for use or consumption in this state if that property is delivered
109 electronically or physically to a location within this state to the purchaser or agent
110 thereof."

111 **SECTION 3.**

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

114 **SECTION 4.**

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