

Representative Powell of the 171<sup>st</sup> offers the following substitute to SB 216:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
2 taxation, so as to change the provisions regarding the furnishing of sales and use tax  
3 information to municipalities and counties; to provide for additional procedures, conditions,  
4 and limitations; to provide for confidentiality; to provide for a criminal penalty; to provide  
5 that no interest shall be paid on certain refunds of sales and use taxes to certain purchasers  
6 under certain circumstances; to revise procedures, conditions, and limitations relating to tax  
7 credits for the rehabilitation of historic structures; to authorize promulgation of regulations;  
8 to provide for preapproval of additional tax credits for current recipients of tax credits; to  
9 require the Department of Revenue to establish and maintain a direct pay permit program that  
10 permits a qualified taxpayer to accrue and pay directly to the department certain state and  
11 local sales and use taxes; to provide for related matters; to provide for an effective date and  
12 applicability; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
16 amended by repealing and reserving subsection (d) of Code Section 48-2-15, relating to  
17 confidential information secured in the administration of taxes, and enacting a new  
18 subsection to read as follows:

19 ~~"(d) Notwithstanding this Code section, the commissioner, upon request by resolution of~~  
20 ~~the governing authority of any municipality of this state having a population of 350,000 or~~  
21 ~~more according to the United States decennial census of 1970 or any future such census,~~  
22 ~~shall furnish to the finance officer or taxing official of the municipality any pertinent tax~~  
23 ~~information from state tax returns to be used by those officials in the discharge of their~~  
24 ~~official duties. Any information so furnished shall retain, in the hands of the local officials,~~  
25 ~~its privileged and confidential nature to the same extent and under the same conditions as~~  
26 ~~that information is privileged and confidential in the hands of the commissioner. The~~

27 commissioner may make a nominal charge for any information so furnished, not to exceed  
 28 the actual cost of furnishing the information. Nothing contained in this subsection shall be  
 29 construed to prevent the use of the information as evidence in any state or federal court in  
 30 the event of litigation involving any municipal or county tax liability of a taxpayer.

31 Reserved.

32 (d.1)(1) Notwithstanding this Code section, the commissioner, upon request by  
 33 resolution of the governing authority of any county, consolidated government, or  
 34 municipality of this state, shall furnish to the designated finance officer or taxing official  
 35 of the county, consolidated government, or municipality information included on the  
 36 vendor's sales tax certificate for all vendors that have filed a report for the designated  
 37 period, to be used by such designated officer or official in the discharge of his or her  
 38 official duties.

39 (2)(A) Such designated officer or official shall not be authorized to contact in any  
 40 manner any taxpayer identified in such confidential information.

41 (B) Such designated officer or official to whom such confidential information is  
 42 provided under this subsection may request the commissioner to validate the political  
 43 subdivision to which a taxpayer with a business location within the political subdivision  
 44 has remitted sales and use taxes for the designated period. Upon inquiry by such  
 45 designated officer or official, the commissioner shall, within thirty days, respond to the  
 46 inquiry and validate that the sales tax being collected from a taxpayer is being remitted  
 47 to the proper political subdivision and take other appropriate action as provided by law.

48 (C) Any information furnished under this subsection to such designated officer or  
 49 official shall retain its privileged and confidential nature to the same extent and under  
 50 the same conditions as such information is privileged and confidential in the hands of  
 51 the commissioner.

52 (3) Any such information furnished under this subsection shall constitute confidential tax  
 53 information for purposes of paragraph (2) of Code Section 50-14-2 and paragraph (43)  
 54 of subsection (a) of Code Section 50-18-72 and shall not be discussed or disclosed except  
 55 as specifically authorized under this subsection.

56 (4) Such information may be discussed with or disclosed to the members of the  
 57 governing authority of such county or municipality levying a tax pursuant to the  
 58 provisions of Article 4 of Chapter 8 of this title, but only when the members of such  
 59 governing authority are in executive session as defined in paragraph (2) of subsection (a)  
 60 of Code Section 50-14-1. In the event of such discussion with or disclosure to the  
 61 members of such governing authority, any such information so discussed or disclosed  
 62 shall retain its privileged and confidential nature to the same extent and under the same  
 63 conditions as such information is privileged and confidential in the hands of the

64 commissioner and any further disclosure by the members of such governing authority is  
 65 prohibited. Prior to such discussion with or disclosure to the members of such governing  
 66 authority, any member of the governing authority who has a conflict of interest shall be  
 67 required to recuse himself or herself from the executive session. For purposes of such  
 68 recusal, a conflict of interest shall include, but not be limited to, engaging in similar  
 69 business to those which are identified in the confidential information or having a financial  
 70 or other personal interest, direct or indirect, in such matter which is incompatible with the  
 71 impartial and proper discharge of that person's official duties, which would tend to impair  
 72 the independence of that person's judgment or actions, or which would make such person  
 73 privity to information that would provide a competitive business advantage.

74 (5) It shall be unlawful for any person to divulge confidential tax information in violation  
 75 of this subsection. Any person who violates this paragraph shall, upon conviction  
 76 thereof, be subject to the same penalties that would apply to an employee of the  
 77 department convicted of divulging confidential tax information.

78 (6) The commissioner may make a nominal charge for any information so furnished, not  
 79 to exceed the actual cost of furnishing the information; provided, however, that any such  
 80 charge shall be in addition to the 1 percent administrative fee otherwise allowed to the  
 81 commissioner for defraying the cost of collecting a local sales and use tax.

82 (7) Nothing contained in this subsection shall prevent or be construed to prevent:

83 (A) The use of the information as evidence in any state or federal court in the event of  
 84 litigation involving any municipal or county tax liability of a taxpayer; or

85 (B) The release of the information pursuant to a subpoena or court order."

86 **SECTION 2.**

87 Said title is further amended by revising subsection (a) of Code Section 48-2-35.1, relating  
 88 to refunds of sales and use taxes, as follows:

89 "(a)(1) If a certificate or exemption determination letter issued by the commissioner  
 90 certifying that the purchaser is entitled to purchase tangible personal property or taxable  
 91 services without the payment of sales and use tax has not been obtained and used prior  
 92 to purchasing such tangible personal property or taxable services, a refund of sales and  
 93 use taxes shall be made to such purchaser without interest.

94 (2)(A) For refunds of overpayments of state and local sales and use taxes made  
 95 pursuant to a direct payment permit issued in accordance with Code Section 48-8-49.1,  
 96 interest shall be paid on the overpaid amount of the taxes or fees pursuant to subsection  
 97 (a) of Code Section 48-2-35; however, if a taxpayer has overpaid its actual liability by  
 98 15 percent or more for any one payment during a filing period, interest shall not be paid  
 99 on any overpaid amounts by such taxpayer for all of such filing period, unless such

100 taxpayer demonstrates to the commissioner a good faith effort to avoid such  
 101 overpayment.

102 (B) Interest shall only be paid pursuant to this paragraph after the calculation of net  
 103 payments at the end of a filing period.

104 (C) The commissioner shall pay and a taxpayer shall not waive the interest on refunds  
 105 owed to such taxpayer pursuant to this paragraph.

106 (D) In the event of an underpayment of state and local sales and use taxes made  
 107 pursuant to a direct payment permit issued in accordance with Code Section 48-8-49.1,  
 108 interest shall be paid on the underpaid amount of the taxes or fees pursuant to  
 109 subsection (a) of Code Section 48-2-35; however, such interest shall not begin accruing  
 110 until the earlier of 90 days following purchase or the date of first use of such personal  
 111 property or taxable services."

112 **SECTION 3.**

113 Said title is further amended by revising Code Section 48-7-29.8, relating to tax credits for  
 114 the rehabilitation of historic structures, as follows:

115 "48-7-29.8.

116 (a) As used in this Code section, the term:

117 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are  
 118 certified by the Department of Natural Resources as meeting the United States Secretary  
 119 of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation  
 120 as provided by the Department of Natural Resources.

121 (2) 'Certified structure' means a historic building or structure that is located within a  
 122 national historic district, individually listed on the National Register of Historic Places,  
 123 individually listed in the Georgia Register of Historic Places, or is certified by the  
 124 Department of Natural Resources as contributing to the historic significance of a Georgia  
 125 Register Historic District.

126 (3) 'Historic home' means a certified structure which, or any portion of which is or will,  
 127 within a reasonable period, be owned and used as the principal residence of the person  
 128 claiming the tax credit allowed under this Code section. Historic home shall include any  
 129 structure or group of structures that constitute a multifamily or multipurpose structure,  
 130 including a cooperative or condominium. If only a portion of a building is used as such  
 131 person's principal residence, only those qualified rehabilitation expenditures that are  
 132 properly allocable to such portion shall be deemed to be made to a historic home.

133 (4) 'Qualified rehabilitation expenditure' means any qualified rehabilitation expenditure  
 134 as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount  
 135 properly chargeable to a capital account expended in the substantial rehabilitation of a

136 structure that by the end of the taxable year in which the certified rehabilitation is  
 137 completed is a certified structure. This term does not include the cost of acquisition of  
 138 the certified structure, the cost attributable to enlargement or additions to an existing  
 139 building, site preparation, or personal property.

140 (5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the  
 141 qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the  
 142 exterior during the 24 month period selected by the taxpayer ending with or within the  
 143 taxable year, exceed:

144 (A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of  
 145 the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the  
 146 case of a historic home located in a target area, \$5,000.00; or

147 (B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of  
 148 the property.

149 (6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue  
 150 Code of 1986, found in the United States Department of Housing and Urban  
 151 Development document number N-94-3821; FR-3796-N-01.

152 (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter ~~for the~~  
 153 ~~taxable year in which~~ at such time as the certified rehabilitation is completed:

154 (1) In the case of a historic home, equal to 25 percent of qualified rehabilitation  
 155 expenditures, except that, in the case of a historic home located within a target area, an  
 156 additional credit equal to 5 percent of qualified rehabilitation expenditures shall be  
 157 allowed; and

158 (2) In the case of any other certified structure, equal to 25 percent of qualified  
 159 rehabilitation expenditures.

160 Qualified rehabilitation expenditures may only be counted once in determining the amount  
 161 of the tax credit available, and more than one entity may not claim a credit for the same  
 162 qualified rehabilitation expenditures.

163 (c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month  
 164 period.

165 (2) The maximum credit for any other individual certified structure shall be \$5 million  
 166 for any taxable year, except in the case that the project creates 200 or more full-time,  
 167 permanent jobs or \$5 million in annual payroll within two years of the placed in service  
 168 date, in which case the project is eligible for credits up to \$10 million for an individual  
 169 certified structure. In no event shall more than one application for any individual  
 170 certified structure under this paragraph be approved in any 120 month period.

171 (3) In no event shall credits issued under this Code section for projects earning more than  
 172 \$300,000.00 in credits exceed in the aggregate ~~\$25 million~~ \$30 million per calendar year.

173 (d)(1) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of  
 174 this Code section shall submit an application to the commissioner for preapproval of such  
 175 tax credit. An applicant shall, at the time of application, either own the real property for  
 176 which said tax credit is to be claimed, or be a party to a written purchase contract, written  
 177 option contract, written lease-purchase contract, or written lease having a term of more  
 178 than 40 years. Such application shall include a precertification from the Department of  
 179 Natural Resources certifying that the improvements to the certified structure are to be  
 180 consistent with the Department of Natural Resources Standards for Rehabilitation. The  
 181 ~~Department~~ department shall have the authority to require electronic submission of such  
 182 application in the manner specified by the department. The commissioner shall  
 183 preapprove the tax credits within 30 days based on the order in which properly completed  
 184 applications were submitted. In the event that two or more applications were submitted  
 185 on the same day and the amount of funds available will not be sufficient to fully fund the  
 186 tax credits requested, the commissioner shall prorate the available funds between or  
 187 among the applicants. For applications on projects over the annual ~~\$25 million~~ \$30  
 188 million limitation, those applications shall be given priority the following year.

189 (2) In order to be eligible to receive the credit authorized under subsection (b) of this  
 190 Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the  
 191 completed certification of the Department of Natural Resources verifying that the  
 192 improvements to the certified structure are consistent with the Department of Natural  
 193 Resources Standards for Rehabilitation.

194 (e)(1) If the credit allowed under paragraph (1) of subsection (b) of this Code section in  
 195 any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable  
 196 year, the taxpayer may apply the excess as a credit for succeeding years until the earlier  
 197 of:

198 (A) The full amount of the excess is used; or

199 (B) The expiration of the tenth taxable year after the taxable year in which the certified  
 200 rehabilitation has been completed.

201 (2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of  
 202 subsection (b) of this Code section and previously claimed but not used by such taxpayer  
 203 against its income tax may be transferred or sold in whole or in part by such taxpayer to  
 204 another Georgia taxpayer, subject to the following conditions:

205 (A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all  
 206 or part of the tax credit that may be claimed for such costs and expenses to one or more  
 207 entities, but no further sale or assignment of any credit previously sold or assigned  
 208 pursuant to this subparagraph shall be allowed. All such transfers shall be subject to  
 209 the maximum total limits provided by subsection (c) of this Code section;

210 (B) A taxpayer who sells or assigns a credit under this Code section and the entity to  
211 which the credit is sold or assigned shall jointly submit written notice of the sale or  
212 assignment to the department not later than 30 days after the date of the sale or  
213 assignment. The notice must include:

- 214 (i) The date of the sale or assignment;
- 215 (ii) The amount of the credit sold or assigned;
- 216 (iii) The names and federal tax identification numbers of the entity that sold or  
217 assigned the credit or part of the credit and the entity to which the credit or part of the  
218 credit was sold or assigned; and
- 219 (iv) The amount of the credit owned by the selling or assigning entity before the sale  
220 or assignment and the amount the selling or assigning entity retained, if any, after the  
221 sale or assignment;

222 (C) The sale or assignment of a credit in accordance with this Code section does not  
223 extend the period for which a credit may be carried forward and does not increase the  
224 total amount of the credit that may be claimed. After an entity claims a credit for  
225 eligible costs and expenses, another entity may not use the same costs and expenses as  
226 the basis for claiming a credit; and

227 (D) Notwithstanding the requirements of this subsection, a credit earned or purchased  
228 by, or assigned to, a partnership, limited liability company, Subchapter 'S' corporation,  
229 or other pass-through entity may be allocated to the partners, members, or shareholders  
230 of that entity and claimed under this Code section in accordance with the provisions of  
231 any agreement among the partners, members, or shareholders of that entity and without  
232 regard to the ownership interest of the partners, members, or shareholders in the  
233 rehabilitated certified structure, provided that the entity or person that claims the credit  
234 must be subject to Georgia tax.

235 (E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall  
236 be responsible in the event of a recapture, reduction, disallowance, or other failure  
237 related to such credit.

238 (3) No such credit shall be allowed the taxpayer against prior years' tax liability.

239 (f) In the case of any rehabilitation which may reasonably be expected to be completed in  
240 phases set forth in architectural plans and specifications completed before the rehabilitation  
241 begins, a 60 month period may be substituted for the 24 month period provided for in  
242 paragraph (5) of subsection (a) of this Code section.

243 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event  
244 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the  
245 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the  
246 remaining unused amount of such credit to the purchaser of such certified structure. If

247 a historic home for which a certified rehabilitation has been completed by a nonprofit  
 248 corporation is sold or transferred, the full amount of the credit to which the nonprofit  
 249 corporation would be entitled if taxable shall be transferred to the purchaser or transferee  
 250 at the time of sale or transfer.

251 (2) Such purchaser shall be subject to the limitations of subsection (e) of this Code  
 252 section. Such purchaser shall file with such purchaser's tax return a copy of the approval  
 253 of the rehabilitation by the Department of Natural Resources as provided in subsection  
 254 (d) and a copy of the form evidencing the transfer of the tax credit.

255 (3) Such purchaser shall be entitled to rely in good faith on the information contained in  
 256 and used in connection with obtaining the approval of the credit including, without  
 257 limitation, the amount of qualified rehabilitation expenditures.

258 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three  
 259 years of receiving the credit, the seller shall recapture the credit to the Department of  
 260 Revenue as follows:

261 (A) If the property is sold within one year of receiving the credit, the recapture amount  
 262 will equal the lesser of the credit or the net profit of the sale;

263 (B) If the property is sold within two years of receiving the credit, the recapture  
 264 amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

265 (C) If the property is sold within three years of receiving the credit, the recapture  
 266 amount will equal the lesser of one-third of the credit or the net profit of the sale.

267 (2) The recapture provisions of this subsection shall not apply to a sale resulting from the  
 268 death of the owner.

269 (i)(1) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection  
 270 (b) of this Code section and leases such certified structure, the department shall aggregate  
 271 all total sales tax receipts from the certified structure.

272 (2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code  
 273 section shall report to the department the average full-time employees employed at the  
 274 certified structure. A full-time employee for the purposes of this Code section shall mean  
 275 a person who works a job that requires 30 or more hours per week. Such reports must be  
 276 submitted to the department for five calendar years following the year in which the credit  
 277 is claimed by the taxpayer.

278 (3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection  
 279 (b) of this Code section and leases such certified structure, the department shall aggregate  
 280 all total full-time employees at the certified structure.

281 (j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall  
 282 furnish a report to the chairperson of the House Committee on Ways and Means and the  
 283 chairperson of the Senate Finance Committee by June 30 of each year. Such report shall

284 contain the total sales tax collected in the prior calendar year and the average number of  
 285 full-time employees at the certified structure and the total value of credits claimed for each  
 286 taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section.

287 (k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and  
 288 any recaptured tax credit, shall be allocated among some or all of the partners, members,  
 289 or shareholders of the entity owning the project in any manner agreed to by such persons,  
 290 whether or not such persons are allocated or allowed any portion of any other tax credit  
 291 with respect to the project.

292 (l) The Department of Natural Resources and the Department of Revenue shall prescribe  
 293 such regulations as may be appropriate to carry out the purposes of this Code section.

294 (m) The Department of Natural Resources shall report, on an annual basis, on the overall  
 295 economic activity, usage, and impact to the state from the rehabilitation of eligible  
 296 properties for which credits provided by this Code section have been allowed."

297 **SECTION 4.**

298 Said title is further amended by adding a new Code section to read as follows:

299 "48-8-49.1.

300 (a) As used in this Code section, the term:

301 (1) 'Direct payment permit' means a license that permits a qualified taxpayer to accrue  
 302 and pay directly to the department certain state and local sales and use taxes imposed by  
 303 this chapter.

304 (2) 'Qualified taxpayer' means a taxpayer that:

305 (A) Purchased more than \$2 million of tangible personal property in the 12 months  
 306 prior to application, purchased an annual average amount exceeding \$2 million of  
 307 tangible personal property during the 36 months prior to application, or met a lower  
 308 purchase threshold prescribed by the department; and

309 (B) Was classified under the previous year's federal income tax return under any  
 310 industry classification code as determined by the commissioner that may facilitate and  
 311 expedite the collection of the taxes imposed by this chapter or equivalent to one of the  
 312 following North American Industry Classification System (NAICS) codes as they  
 313 existed on January 1, 2017:

314 (i) National Industry Code 517110 - Wired Telecommunications Carriers;

315 (ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except  
 316 Satellite);

317 (iii) National Industry Code 517410 - Satellite Telecommunications;

318 (iv) NAICS Industry Code 48111 - Scheduled Air Transportation;

319 (v) NAICS Industry Code 48211 - Rail Transportation;

- 320 (vi) Industry Group Code 4841 - General Freight Trucking;  
 321 (vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction;  
 322 (viii) Economic Sector Code 22 - Utilities; or  
 323 (ix) Economic Sector Codes 31-33 - Manufacturing.
- 324 (b) The department shall establish and maintain a direct pay reporting program for the  
 325 purpose of enabling qualified taxpayers to directly pay to the department taxes that are  
 326 imposed on qualified taxpayers by this chapter provided that the commissioner may  
 327 exclude the following:
- 328 (1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section  
 329 48-8-2;
- 330 (2) Purchases of meals, beverages, or tobacco;
- 331 (3) Purchases of local telephone services, transportation of persons, or lodging  
 332 accommodations and ancillary charges associated with lodging accommodations;
- 333 (4) Purchases to places of amusement, entertainment, or athletic events; admissions to  
 334 displays or exhibitions; participation in games or sports; or charges for the use of  
 335 amusement devices; or
- 336 (5) Rental charges for periods of 31 days or less for motor vehicles required to be titled  
 337 in this state.
- 338 (c) The department shall issue a direct pay permit to a qualified taxpayer upon application  
 339 in a manner that the department shall prescribe by rule or regulation.
- 340 (d) The department shall, at a minimum, provide for the following by rule or regulation:
- 341 (1) Certain attestations to be made by a qualified taxpayer in its application for a direct  
 342 pay permit;
- 343 (2) Responsibilities and duties for holders of direct pay permits;
- 344 (3) Transferability or nontransferability of direct pay permits;
- 345 (4) Expiration and renewal of direct pay permits; and
- 346 (5) Revocation of direct pay permits."

347 **SECTION 5.**

348 This Act shall become effective on July 1, 2017. Section 3 of this Act shall be applicable to  
 349 certified rehabilitations completed on or after July 1, 2017.

350 **SECTION 6.**

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