

House Bill 888 (COMMITTEE SUBSTITUTE)

By: Representatives Knight of the 130th, Harrell of the 106th, Rhodes of the 120th, Efstration of the 104th, and Rogers of the 10th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia
2 Annotated, relating to tax exemptions from property tax, so as to change certain reporting
3 requirements; to provide for related matters; to provide for an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated,
8 relating to tax exemptions from property tax, is amended by revising Code Section 48-5-48.1,
9 relating to the tangible personal property inventory exemption, as follows:

10 "48-5-48.1.

11 (a) Any person, firm, or corporation seeking a level 1 freeport exemption from ad valorem
12 taxation of certain tangible personal property inventory when such exemption has been
13 authorized by the governing authority of any county or municipality after approval of the
14 electors of such county or municipality pursuant to the authority of the Constitution of
15 Georgia or Code Section 48-5-48.2 shall file a written application and ~~schedule~~ summary
16 of property with the county board of tax assessors on forms furnished by such board. Such
17 application shall be filed in the year in which exemption from taxation is sought no later
18 than the date on which the tax receiver or tax commissioner of the county in which the
19 property is located closes the books for the return of taxes.

20 (b) The application for the level 1 freeport exemption shall provide for:

21 (1) A ~~schedule~~ summary, as prescribed by the department, of the inventory of goods in
22 the process of manufacture or production which shall include all partly finished goods
23 and raw materials held for direct use or consumption in the ordinary course of the
24 taxpayer's manufacturing or production business in the State of Georgia;

25 (2) A ~~schedule~~ summary, as prescribed by the department, of the inventory of finished
26 goods manufactured or produced within the State of Georgia in the ordinary course of the

27 taxpayer's manufacturing or production business when held by the original manufacturer
28 or producer of such finished goods;

29 (3) A ~~schedule~~ summary, as prescribed by the department, of the inventory of finished
30 goods which on January 1 are stored in a warehouse, dock, or wharf, whether public or
31 private, and which are destined for shipment outside the State of Georgia and the
32 inventory of finished goods which are shipped into the State of Georgia from outside this
33 state and which are stored for transshipment to a final destination outside this state. The
34 information required by Code Section 48-5-48.2 to be contained in the official books and
35 records of the warehouse, dock, or wharf where such property is being stored, which
36 official books and records are required to be open to the inspection of taxing authorities
37 of this state and political subdivisions thereof, shall not be required to be included as a
38 part of or to accompany the application for such exemption; and

39 (4) A ~~schedule~~ summary, as prescribed by the department, of the stock in trade of a
40 fulfillment center which on January 1 is stored in the fulfillment center. The information
41 required by Code Section 48-5-48.2 to be contained in the official books and records of
42 the fulfillment center where such property is being stored, which official books and
43 records are required to be open to the inspection of the taxing authorities of this state and
44 political subdivisions thereof, shall not be required to be included as a part of or to
45 accompany the application for such exemption.

46 (c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the
47 timely filing of the completed application ~~and complete schedule of the inventory~~ for
48 which exemption is sought on or before the due date specified in subsection (a) of this
49 Code section. Any clerical error, including, but not limited to, a typographical error,
50 scrivener's error, or any unintentional immaterial error or omission in the application shall
51 not be construed as a failure to file properly.

52 (2) The failure to file properly the completed application ~~and schedule~~ shall constitute
53 a waiver of the exemption on the part of the person, firm, or corporation failing to make
54 the application for such exemption for that year as follows:

55 (A) The failure to report any inventory for which such exemption is sought in the
56 ~~schedule~~ summary provided for in the application shall constitute a waiver of the
57 exemption on the part of the person, firm, or corporation failing to so report for that
58 taxable year in an amount equal to the difference between fair market value of the
59 inventory as reported and the fair market value finally determined to be applicable to
60 the inventory for which the exemption is sought; and

61 (B) The failure to file timely such completed application ~~and schedule~~ shall constitute
62 a waiver of the exemption until the first day of the month following the month such
63 completed application ~~and schedule~~ are is filed properly with the county tax assessor;

64 provided, however, that unless ~~the such completed application and schedule are~~ is filed
 65 on or before June 1 of such year, the exemption shall be waived for that entire year.

66 (d) Upon receiving the application required by this Code section, the county board of tax
 67 assessors shall determine the eligibility of all types of tangible personal property listed on
 68 the application. If any property has been listed which the board believes is not eligible for
 69 the exemption, the board shall issue a letter notifying the applicant, not later than 180 days
 70 after receiving the application, that all or a portion of the application has been denied. The
 71 denial letter shall list the type and total fair market value of all property listed on the
 72 application for which the exemption has been approved and the type and total fair market
 73 value of all property listed on the application for which the exemption has been denied.
 74 The applicant shall have the right to appeal from the denial of the exemption for any
 75 property listed and such appeal shall proceed as provided in Code Section 48-5-311.
 76 Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county
 77 board of assessors shall not send a second letter of notification denying the exemption of
 78 all or a portion of such property listed on the application on new grounds that could and
 79 should have been discerned at the time the initial denial letter was issued. If, however, the
 80 county board of tax assessors fails to issue a letter of denial within 180 days after receiving
 81 the taxpayer's application, then the freeport exemption sought in the application shall be
 82 deemed accepted in its entirety.

83 (e) If the level 1 freeport exemption has been granted to a taxpayer for a taxable year, the
 84 county board of tax assessors shall issue a notice of renewal to the taxpayer for the
 85 immediately following taxable year. Such notice of renewal shall be issued not later than
 86 January 15 of such immediately following taxable year to facilitate the filing of a timely
 87 completed application and schedule by the taxpayer for such taxable year."

88 SECTION 2.

89 Said part is further amended by revising Code Section 48-5-48.2, relating to the level 1
 90 freeport exemption and referendum, as follows:

91 "48-5-48.2.

92 (a) This Code section shall be known and may be cited as the 'Level 1 Freeport
 93 Exemption.'

94 (b) As used in this Code section, the term:

95 (1) 'Destined for shipment to a final destination outside this state' means, for purposes
 96 of a level 1 freeport exemption, that portion or percentage of an inventory of finished
 97 goods which the taxpayer can establish, through a historical sales or shipment analysis,
 98 either of which utilizes information from the preceding calendar year, or other reasonable,
 99 documented method, is reasonably anticipated to be shipped to a final destination outside

100 this state. Such other reasonable, documented method may only be utilized in the case
101 of a new business, in the case of a substantial change in scope of an existing business, or
102 in other unusual situations where a historical sales or shipment analysis does not
103 adequately reflect future anticipated shipments to a final destination outside this state.
104 It is not necessary that the actual final destination be known as of January 1 in order to
105 qualify for the exemption.

106 (2) 'Finished goods' means, for purposes of a level 1 freeport exemption, goods, wares,
107 and merchandise of every character and kind but shall not include unrecovered,
108 unextracted, or unsevered natural resources or raw materials or goods in the process of
109 manufacture or production or the stock in trade of a retailer.

110 (3) 'Foreign merchandise in transit' means, for purposes of a level 1 freeport exemption,
111 any goods which are in international commerce where the title has passed to a foreign
112 purchaser and the goods are temporarily stored in this state while awaiting shipment
113 overseas.

114 (4) 'Fulfillment center' means, for purposes of a level 1 freeport exemption, a business
115 location in Georgia which is used to pack, ship, store, or otherwise process tangible
116 personal property sold by electronic, Internet, telephonic, or other remote means,
117 provided that such a business location does not allow customers to purchase or receive
118 goods onsite at such business location.

119 (5) 'Raw materials' means, for purposes of a level 1 freeport exemption, any material,
120 whether crude or processed, that can be converted by manufacture, processing, or a
121 combination thereof into a new and useful product but shall not include unrecovered,
122 unextracted, or unsevered natural resources.

123 (6) 'Stock in trade of a fulfillment center' means, for purposes of a level 1 freeport
124 exemption, goods, wares, and merchandise held by one in the business of making sales
125 of such goods when such goods are held or stored at a fulfillment center.

126 (7) 'Stock in trade of a retailer' means, for purposes of a level 1 freeport exemption,
127 finished goods held by one in the business of making sales of such goods at retail in this
128 state, within the meaning of Chapter 8 of this title, when such goods are held or stored
129 at a business location from which such retail sales are regularly made. Goods stored in
130 a warehouse, dock, or wharf, including a warehouse or distribution center which is part
131 of or adjoins a place of business from which retail sales are regularly made, shall not be
132 considered stock in trade of a retailer to the extent that the taxpayer can establish, through
133 a historical sales or shipment analysis, either of which utilizes information from the
134 preceding calendar year, or other reasonable, documented method, the portion or
135 percentage of such goods which is reasonably anticipated to be shipped outside this state
136 for resale purposes.

137 (c) The governing authority of any county or municipality may, subject to the approval of
 138 the electors of such political subdivision, exempt from ad valorem taxation, including all
 139 such taxes levied for educational purposes and for state purposes, all or any combination
 140 of the following types of tangible personal property:

141 (1) Inventory of goods in the process of manufacture or production which shall include
 142 all partly finished goods and raw materials held by the taxpayer or the taxpayer's
 143 designated agent for direct use or consumption in the ordinary course of the taxpayer's
 144 manufacturing or production business in this state. The exemption provided for in this
 145 paragraph shall apply only to tangible personal property which is substantially modified,
 146 altered, combined, or changed in the ordinary course of the taxpayer's manufacturing,
 147 processing, or production operations in this state. For purposes of this paragraph, the
 148 following activities shall constitute substantial modification in the ordinary course of
 149 manufacturing, processing, or production operations:

150 (A) The cleaning, drying, pest control treatment, or segregation by grade of grain,
 151 peanuts or other oil seeds, or cotton;

152 (B) The remanufacture of aircraft engines or aircraft engine parts or components,
 153 meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine
 154 parts or components; ~~and~~

155 (C) The blending of fertilizer bulk materials into a custom mixture, whether performed
 156 at a commercial fertilizer blending plant, retail outlet, or any application site; and

157 (D) The substantial assembly of finished parts;

158 (2) Inventory of finished goods manufactured or produced within this state in the
 159 ordinary course of the taxpayer's manufacturing or production business when held by the
 160 original manufacturer or producer of such finished goods. The exemption provided for
 161 in this paragraph shall be for a period not exceeding 12 months from the date such
 162 property is produced or manufactured;

163 (3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or
 164 wharf, whether public or private, and which are destined for shipment to a final
 165 destination outside this state and inventory of finished goods which are shipped into this
 166 state from outside this state and stored for transshipment to a final destination outside this
 167 state, including foreign merchandise in transit. The exemption provided for in this
 168 paragraph shall be for a period not exceeding 12 months from the date such property is
 169 stored in this state. Such period shall be determined based on application of a first-in,
 170 first-out method of accounting for the inventory. The official books and records of the
 171 warehouse, dock, or wharf where such property is being stored shall contain a full, true,
 172 and accurate inventory of all such property, including the date of the receipt of the
 173 property, the date of the withdrawal of the property, the point of origin of the property,

174 and the point of final destination of the same, if known. The official books and records
175 of any such warehouse, dock, or wharf, whether public or private, pertaining to any such
176 property for which a freeport exemption has been claimed shall be at all times open to the
177 inspection of all taxing authorities of this state and of any political subdivision of this
178 state; or

179 (4) Stock in trade of a fulfillment center which, on January 1, is stored in a fulfillment
180 center and which is made available to remote purchasers who may make such purchases
181 by electronic, Internet, telephonic, or other remote means, and where such stock in trade
182 of a fulfillment center will be shipped from the fulfillment center and delivered to the
183 purchaser at a location other than the location of the fulfillment center. The exemption
184 provided for in this paragraph shall be for a period not exceeding 12 months from the date
185 such property is stored in this state. Such period shall be determined based on application
186 of a first-in, first-out method of accounting for the inventory. The official books and
187 records of the fulfillment center where such property is being stored shall contain a full,
188 true, and accurate inventory of all such property, including the date of the receipt of the
189 property and the date of the withdrawal of the property. The official books and records
190 of any such fulfillment center pertaining to any such property for which a freeport
191 exemption has been claimed shall be at all times open to the inspection of all taxing
192 authorities of this state and of any political subdivision of this state.

193 (d) Whenever the governing authority of any county or municipality wishes to exempt
194 such tangible property from ad valorem taxation, as provided in this Code section, the
195 governing authority thereof shall notify the election superintendent of such political
196 subdivision, and it shall be the duty of said election superintendent to issue the call for an
197 election for the purpose of submitting to the electors of the political subdivision the
198 question of whether such exemption shall be granted. The referendum ballot shall specify
199 as separate questions the type or types of property as defined in this Code section which
200 are being proposed to be exempted from taxation. The election superintendent shall issue
201 the call and shall conduct the election on a date and in the manner authorized under Code
202 Section 21-2-540.

203 (e) The governing authority of any county or municipality wherein an exemption has been
204 approved by the voters as provided in this Code section may, by appropriate resolution, a
205 copy of which shall be immediately transmitted to the state revenue commissioner, exempt
206 from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such
207 tangible personal property as defined in this Code section; provided, however, that once
208 an exemption has been granted, no reduction in the percent of the value of such property
209 to be exempted may be made until and unless such exemption is revoked or repealed as
210 provided in this Code section. An increase in the percent of the value of the property to be

211 exempted may be accomplished by appropriate resolution of the governing authority of
 212 such county or municipality, and a copy thereof shall be immediately transmitted to the
 213 state revenue commissioner, provided that such increase shall be in increments of 20
 214 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal
 215 property as defined in this Code section, within the discretion of such governing authority.

216 (f)(1) If more than one-half of the votes cast on such question are in favor of such
 217 exemption, then such exemption may be granted by the governing authority commencing
 218 on the first day of any ensuing calendar year; otherwise, such exemption may not be
 219 granted. This paragraph is intended to clearly provide that following approval of such
 220 exemption in such referendum, such exemption may be granted on the first day of any
 221 calendar year following the year in which such referendum was conducted. This
 222 paragraph shall not be construed to imply that the granting of such exemption could not
 223 previously be delayed to any such calendar year.

224 (2) Exemptions may only be revoked by a referendum election called and conducted as
 225 provided in this Code section, provided that the call for such referendum shall not be
 226 issued within five years from the date such exemptions were first granted and, if the
 227 results of said election are in favor of the revocation of such exemptions, then such
 228 revocation shall be effective only at the end of a five-year period from the date of such
 229 referendum.

230 (g) Level 1 freeport exemptions effected pursuant to this Code section may be granted
 231 either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

232 (h) The commissioner shall by regulation adopt uniform procedures and forms for the use
 233 of local officials in the administration of this Code section."

234 SECTION 3.

235 Said part is further amended by revising Code Section 48-5-48.5, relating to the application
 236 for the level 2 freeport exemption, as follows:

237 "48-5-48.5.

238 (a) Any person, firm, or corporation seeking a level 2 freeport exemption from ad valorem
 239 taxation of certain tangible personal property inventory when such exemption has been
 240 authorized by the governing authority of any county or municipality after approval of the
 241 electors of such county or municipality pursuant to the authority of the Constitution of
 242 Georgia and Code Section 48-5-48.6 shall file a written application and ~~schedule~~ summary,
 243 as prescribed by the department, of property with the county board of tax assessors on
 244 forms furnished by such board. Such application shall be filed in the year in which
 245 exemption from taxation is sought no later than the date on which the tax receiver or tax

246 commissioner of the county in which the property is located closes the books for the return
247 of taxes.

248 (b) The application for the level 2 freeport exemption shall provide for a ~~schedule~~
249 summary, as prescribed by the department, of the inventory of finished goods held by one
250 in the business of making sales of such goods in this state.

251 (c)(1) For purposes of this subsection, the term 'file properly' shall mean and include the
252 timely filing of the application and complete ~~schedule~~ summary, as prescribed by the
253 department, of the inventory for which exemption is sought on or before the due date
254 specified in subsection (a) of this Code section. Any clerical error, including, but not
255 limited to, a typographical error, scrivener's error, or any unintentional immaterial error
256 or omission in the application shall not be construed as a failure to file properly.

257 (2) The failure to file properly the application and ~~schedule~~ summary, as prescribed by
258 the department, shall constitute a waiver of the exemption on the part of the person, firm,
259 or corporation failing to make the application for such exemption for that year as follows:

260 (A) The failure to report any inventory for which such exemption is sought in the
261 ~~schedule~~ summary, as prescribed by the department, provided for in the application
262 shall constitute a waiver of the exemption on the part of the person, firm, or corporation
263 failing to so report for that taxable year in an amount equal to the difference between
264 fair market value of the inventory as reported and the fair market value finally
265 determined to be applicable to the inventory for which the exemption is sought; and

266 (B) The failure to file timely such application and ~~schedule~~ summary, as prescribed by
267 the department, shall constitute a waiver of the exemption until the first day of the
268 month following the month such application and ~~schedule~~ summary, as prescribed by
269 the department, are filed properly with the county tax assessor; provided, however, that
270 unless the application and schedule are filed on or before June 1 of such year, the
271 exemption shall be waived for that entire year.

272 (d) Upon receiving the application required by this Code section, the county board of tax
273 assessors shall determine the eligibility of all types of tangible personal property listed on
274 the application. If any property has been listed which the board believes is not eligible for
275 the exemption, the board shall issue a letter notifying the applicant that all or a portion of
276 the application has been denied. The denial letter shall list the type and total fair market
277 value of all property listed on the application for which the exemption has been approved
278 and the type and total fair market value of all property listed on the application for which
279 the exemption has been denied. The applicant shall have the right to appeal from the denial
280 of the exemption for any property listed, and such appeal shall proceed as provided in Code
281 Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code
282 section, the county board of assessors shall not send a second letter of notification denying

283 the exemption of all or a portion of such property listed on the application on new grounds
284 that could and should have been discerned at the time the initial denial letter was issued.
285 (e) If the level 2 freeport exemption has been granted to a taxpayer for a taxable year, the
286 county board of tax assessors shall issue a notice of renewal to the taxpayer for the
287 immediately following taxable year. Such notice of renewal shall be issued not later than
288 January 15 of such immediately following taxable year to facilitate the filing of a timely
289 application and ~~schedule~~ summary, as prescribed by the department, by the taxpayer for
290 such taxable year."

291 **SECTION 4.**

292 This Act shall become effective upon its approval by the Governor or upon its becoming law
293 without such approval.

294 **SECTION 5.**

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