

House Bill 846 (RULES COMMITTEE SUBSTITUTE)

By: Representatives Corbett of the 174th, Harrell of the 106th, Carson of the 46th, Kelley of the 16th, and Williamson of the 115th

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 provide that interest paid on refunds of overpayments of taxes and past due
3 taxes shall be equal to the bank prime loan rate; to allow political subdivisions to elect to
4 repay certain final refund amounts for refunds of local significance due to overpayments by
5 a taxpayer through a direct pay permit over a period of time; to require the Department of
6 Revenue to establish and maintain a direct pay permit program that permits a qualified
7 taxpayer to accrue and pay directly to the department certain state and local sales and use
8 taxes; to provide definitions; to provide for related matters; to provide for an effective date
9 and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
13 amended by revising subsection (a) and paragraph (2) of subsection (h) of Code Section
14 48-2-35, relating to refunds of taxes and fees, as follows:

15 "(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
16 been erroneously or illegally assessed and collected from such taxpayer under the laws
17 of this state, whether paid voluntarily or involuntarily, and shall be refunded interest,
18 except as provided in subsection (b) of this Code section, on the amount of the taxes or
19 fees from the date of payment of the tax or fee to the commissioner at an annual rate
20 equal to the bank prime loan rate as posted by the Board of Governors of the Federal
21 Reserve System in statistical release H. 15 or any publication that may supersede it, ~~plus~~
22 ~~3 percent~~, to accrue monthly. Such annual interest rate shall be determined for each
23 calendar year based on the first weekly posting of statistical release H. 15 on or after
24 January 1 of each calendar year. For the purposes of this Code section, any period of less
25 than one month shall be considered to be one month. Refunds shall be drawn from the
26 treasury on warrants of the Governor issued upon itemized requisitions showing in each

27 instance the person to whom the refund is to be made, the amount of the refund, and the
28 reason for the refund."

29 "(2)(A) Within 30 business days following the department's receipt of a refund claim
30 of local significance, the department shall notify each affected political subdivision's
31 political subdivision designee that a refund claim of local significance to the political
32 subdivision has been received and shall furnish the taxpayer with a copy of such
33 notification. Such notification shall include the date the refund claim of local
34 significance was filed, the amount in the claim for refund for which the political
35 subdivision itself would be responsible if the request is granted, and a copy of the
36 confidentiality provisions in Code Section 48-2-15 and this Code section.

37 (B) After the department has completed an audit of the claim for refund and
38 determined a final refund amount, the department shall supplement the above notice by
39 transmitting to the political subdivision designee the final refund amount for which the
40 political subdivision is responsible.

41 (C)(i) With respect to a final refund amount due to a taxpayer that made an
42 overpayment of taxes or fees pursuant to a direct pay permit issued in accordance with
43 Code Section 48-8-49.1, in lieu of a single payment of the final refund amount to the
44 taxpayer, an affected political subdivision may elect for the final refund amount,
45 including applicable interest, to be repaid by the department to the taxpayer over a
46 time period less than or equal to the total duration of the periods subject to the claim
47 for refund. Any such election must be made by the political subdivision, in a manner
48 prescribed by the department, within 30 days of the date the department notifies the
49 political subdivision of the final refund amount for which the political subdivision is
50 responsible.

51 (ii) When an election is made pursuant to division (i) of this subparagraph, the
52 department shall make payment of the total final refund amount, which shall include
53 amounts for both state and local sales and use taxes, to the taxpayer in monthly
54 installments due on or before the fifteenth day of each calendar month during
55 repayment period. Interest shall accrue on the unpaid balance during such repayment
56 period pursuant to subsection (a) of this Code section.

57 (iii) The provisions of this subparagraph shall only apply to final refund amounts due
58 from a political subdivision to a taxpayer that made an overpayment of taxes or fees
59 pursuant to a direct pay permit issued in accordance with Code Section 48-8-49.1."

60 **SECTION 2.**

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

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

68 (2) For refunds of overpayments of state and local sales and use taxes made pursuant to
 69 a direct payment permit issued in accordance with Code Section 48-8-49.1, interest shall
 70 be paid on the overpaid amount of the taxes or fees pursuant to subsection (a) of Code
 71 Section 48-2-35, and subject to the provisions of Code Section 50-13A-19.1; provided,
 72 however, that interest shall begin to accrue on the overpaid amount of taxes or fees from
 73 the date an amended return or refund claim claiming a refund is filed."

74 **SECTION 3.**

75 Said title is further amended by revising Code Section 48-2-40, relating to rate of interest on
 76 past due taxes, as follows:

77 "48-2-40.

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

87 **SECTION 4.**

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

89 "48-8-49.1.

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

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

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

95 (A) Purchased more than \$2 million of tangible personal property in the 12 months
 96 prior to application, purchased an annual average amount exceeding \$2 million of

97 tangible personal property during the 36 months prior to application, or met a lower
 98 purchase threshold prescribed the department; and
 99 (B) Was classified under the previous year's federal income tax return under any
 100 industry classification code, as determined by the commissioner, that would facilitate
 101 and expedite the collection of the taxes imposed by this chapter or would be equivalent
 102 to one of the following North American Industry Classification System (NAICS) codes
 103 as such existed on January 1, 2017:

- 104 (i) National Industry Code 517110 - Wired Telecommunications Carriers;
- 105 (ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except
 106 Satellite);
- 107 (iii) National Industry Code 517410 - Satellite Telecommunications;
- 108 (iv) NAICS Industry Code 48111 - Scheduled Air Transportation;
- 109 (v) NAICS Industry Code 48211 - Rail Transportation;
- 110 (vi) Industry Group Code 4841 - General Freight Trucking;
- 111 (vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction;
- 112 (viii) Economic Sector Code 22 - Utilities; or
- 113 (ix) Economic Sector Codes 31-33 - Manufacturing.

114 (b) The department shall establish and maintain a direct pay reporting program for the
 115 purpose of enabling qualified taxpayers to pay directly to the department taxes that are
 116 imposed by this chapter on the qualified taxpayers; provided, however, that such program
 117 shall exclude taxation on the following:

- 118 (1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section
 119 48-8-2;
- 120 (2) Purchases of meals, beverages, or tobacco;
- 121 (3) Purchases of local telephone services, transportation of persons, or lodging
 122 accommodations and ancillary charges associated with lodging accommodations;
- 123 (4) Purchases to places of amusement, entertainment, or athletic events; admissions to
 124 displays or exhibitions; participation in games or sports; or charges for the use of
 125 amusement devices; or
- 126 (5) Rental charges for periods of 31 days or less for motor vehicles required to be titled
 127 in this state.

128 (c) The commissioner shall not require a qualified taxpayer to waive interest on refunds
 129 made in accordance with Code Section 48-2-35 as a condition for obtaining a direct pay
 130 permit.

131 (d) The department shall, at a minimum, provide for the following by rule or regulation:
 132 (1) Certain attestations to be made by a qualified taxpayer in its application for a direct
 133 pay permit;

- 134 (2) Responsibilities and duties for holders of direct pay permits;
135 (3) Transferability or nontransferability of direct pay permits;
136 (4) Expiration and renewal of direct pay permits; and
137 (5) Revocation of direct pay permits."

138 **SECTION 5.**

- 139 (a) This act shall become effective on July 1, 2020.
140 (b) The interest rates provided in Sections 1 and 3 of this Act shall apply to interest accruing
141 on or after July 1, 2020.
142 (c) The revisions to paragraph (2) of subsection (h) of Code section 48-2-35 in Section 1 of
143 this Act shall apply to notices for final refund amounts received by a political subdivision on
144 or after July 1, 2020.

145 **SECTION 6.**

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