

The Senate Committee on Finance offered the following substitute to HB 846:

MOOT

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 define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 allow political subdivisions to elect to repay over a period of time certain final refund
5 amounts for refunds of local significance due to overpayments of sales and use taxes by a
6 taxpayer through a direct pay permit; to require the Department of Revenue to establish and
7 maintain a direct pay permit program that permits a qualified taxpayer to accrue and pay
8 directly to the department certain state and local sales and use taxes; to provide definitions;
9 to provide for related matters; to provide for effective dates and applicability; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
14 amended by revising paragraph (14) of Code Section 48-1-2, relating to definitions regarding
15 revenue and taxation, as follows:

16 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
17 beginning on or after January 1, ~~2018~~ 2020, the provisions of the United States Internal
18 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
~~January 1, 2019~~ March 27, 2020, except that Section 108(i), Section 163(e)(5)(F), Section
20 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8),
21 Section 168(k), Section 168(m), Section 168(n), Section 179(d)(1)(B)(ii), Section 179(f),
22 Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L,
23 Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section
24 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they
25 were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), and Section
26 172(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were

27 in effect before the 2008 enactment of federal Public Law 110-343, and except that
28 Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as
29 it was in effect before the 2009 enactment of federal Public Law 111-5, and except that
30 Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in
31 effect, and except that Section 118, Section 163(j), and Section 382(k)(1) of the Internal
32 Revenue Code of 1986, as amended, shall be treated as they were in effect before the
33 2017 enactment of federal Public Law 115-97, and except that all provisions in federal
34 Public Law 116-136 (CARES Act) that change or affect in any manner Section 172 and
35 Section 461(l) shall be treated as if they were not in effect, and except that the limitations
36 provided in Section 179(b)(1) shall be \$250,000.00 for tax years beginning in 2010, shall
37 be \$250,000.00 for tax years beginning in 2011, shall be \$250,000.00 for tax years
38 beginning in 2012, shall be \$250,000.00 for tax years beginning in 2013, and shall be
39 \$500,000.00 for tax years beginning in 2014, and except that the limitations provided in
40 Section 179(b)(2) shall be \$800,000.00 for tax years beginning in 2010, shall be
41 \$800,000.00 for tax years beginning in 2011, shall be \$800,000.00 for tax years
42 beginning in 2012, shall be \$800,000.00 for tax years beginning in 2013, and shall be \$2
43 million for tax years beginning in 2014, and provided that Section 1106 of federal Public
44 Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in
45 effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2015)' shall
46 be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2015)',
47 and notwithstanding any other provision in this title, no interest shall be refunded with
48 respect to any claim for refund filed pursuant to Section 1106 of federal Public Law
49 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall
50 be treated as if it is in effect, except the phrase 'Code Section 48-2-35' shall be substituted
51 for the phrase 'section 6511(a) of the Internal Revenue Code of 1986' and the phrase 'such
52 section' shall be substituted for the phrase 'such subsection.' In the event a reference is
53 made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as
54 it existed on a specific date prior to ~~January 1, 2019~~ March 27, 2020, the term means the
55 provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it
56 existed on the prior date. Unless otherwise provided in this title, any term used in this
57 title shall have the same meaning as when used in a comparable provision or context in
58 the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after
59 January 1, 2018 2020, provisions of the Internal Revenue Code of 1986, as amended,
60 which were as of ~~January 1, 2019~~ March 27, 2020, enacted into law but not yet effective
61 shall become effective for purposes of Georgia taxation on the same dates upon which
62 they become effective for federal tax purposes."

63

SECTION 2.

64 Said title is further amended by revising paragraph (2) of subsection (h) of Code Section
65 48-2-35, relating to refunds of taxes and fees, as follows:

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

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

78 (C)(i) With respect to a final refund amount due to a taxpayer that made an
79 overpayment of taxes pursuant to a direct pay permit issued in accordance with Code
80 Section 48-8-49.1, in lieu of a single payment of the final refund amount to the
81 taxpayer, an affected political subdivision may elect for the final refund amount,
82 including applicable interest, to be repaid by the department to the taxpayer over a
83 time period less than or equal to the total duration of the periods subject to the claim
84 for refund. Any such election must be made by the political subdivision, in a manner
85 prescribed by the department, within 30 days of the date the department notifies the
86 political subdivision of the final refund amount for which the political subdivision is
87 responsible.

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

94 (iii) The provisions of this subparagraph shall only apply to refund claims of local
95 significance and resulting final refund amounts due to a taxpayer that made an
96 overpayment of local sales and use taxes pursuant to a direct pay permit issued in
97 accordance with Code Section 48-8-49.1."

98

SECTION 3.

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

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

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

112

SECTION 4.

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

114 "48-8-49.1.

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

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

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

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

124 (B) Was classified under the previous year's federal income tax return under any
125 industry classification code, as determined by the commissioner, that would facilitate
126 and expedite the collection of the taxes imposed by this chapter or would be equivalent
127 to one of the following North American Industry Classification System (NAICS) codes
128 as such existed on January 1, 2017:

129 (i) National Industry Code 517110 - Wired Telecommunications Carriers;
130 (ii) National Industry Code 517210 - Wireless Telecommunications Carriers (except
131 Satellite);
132 (iii) National Industry Code 517410 - Satellite Telecommunications;
133 (iv) NAICS Industry Code 48111 - Scheduled Air Transportation;

(v) NAICS Industry Code 48211 - Rail Transportation;

(vi) Industry Group Code 4841 - General Freight Trucking;

(vii) Economic Sector Code 21 - Mining, Quarrying, and Oil and Gas Extraction:

(viii) Economic Sector Code 22 - Utilities; or

(ix) Economic Sector Codes 31-33 - Manufacturing.

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

(1) Purchases of fuels subject to prepaid local tax as such term is defined in Code Section 48-8-2;

(2) Purchases of meals, beverages, or tobacco;

(3) Purchases of local telephone services, transportation of persons, or lodging accommodations and ancillary charges associated with lodging accommodations;

(4) Purchases to places of amusement, entertainment, or athletic events; admissions to displays or exhibitions; participation in games or sports; or charges for the use of amusement devices; or

(5) Rental charges for periods of 31 days or less for motor vehicles required to be titled in this state.

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

(d) The department shall, at a minimum, provide for the following by rule or regulation:

(1) Certain attestations to be made by a qualified taxpayer in its application for a direct pay permit;

(2) Responsibilities and duties for holders of direct pay permits;

(3) Transferability or nontransferability of direct pay permits;

(4) Expiration and renewal of direct pay permits; and

(5) Revocation of direct pay permits."

SECTION 5.

164 This Act shall become effective upon its approval by the Governor or upon its becoming law
165 without such approval; provided, however that:

166 (a) Section 1 of this Act shall be applicable to all taxable years beginning on or after
167 January 1, 2020.

168 (b) Sections 2, 3, and 4 of this Act shall become effective on September 1, 2020. The
169 revisions to paragraph (2) of subsection (h) of Code section 48-2-35 in Section 2 of this Act

170 shall apply to notices for final refund amounts received by a political subdivision on or after
171 September 1, 2020, and the interest rate provided in Section 3 of this Act shall apply to
172 interest accruing on or after September 1, 2020.

173

SECTION 6.

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